A Study of Community Fair Cross-Section Representation of the Jury Venire in Travis County, Texas Under the I-Jury Process

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ABSTRACT

In March, 2002, Travis County, Texas instituted I-Jury, a pilot project offering jurors the option of using the Internet for the impaneling. The project has been successful and popular, with over eighty-five percent of jurors opting to use it. However, it has been criticized by criminal defense attorneys, who argue that it results in fewer minority jurors. These criticisms have led to four (unsuccessful) jury panel challenges. This research is designed to both evaluate this project and establish its legitimacy.

Two questions are key to this evaluation. (1) Has I-Jury had a detrimental impact on the percentage of minority jurors in the jury venire, and (2) Does the jury venire created under I-Jury meet the constitutional standard of fair cross-section representation? Not as key but worthwhile is a third question: (3) Do minorities use I-Jury? The criminal defense attorneys are concerned that Internet access among minorities is low, and if minorities as a group are less able to use I-Jury, they are less likely to respond to a summons. The final question relates to the fair cross-section: (4) Since legitimate factors that filter persons out of jury service may disproportionately impact racial/ethnic groups, how should this factor into establishing the fair cross-section?

To begin the evaluation, a baseline jury venire dataset was established, encompassing panels from January and February, 2002. Over 6000 jury questionnaires were reviewed to establish the racial/ethnic and gender composition of the baseline. A second dataset encompassing January – February, 2006 (sample of 2300 jurors) and August – October, 2006 (full set of over 7000 jurors) represented venires established under I-Jury. Their questionnaires were reviewed to determine each juror's race/ethnicity, gender, and choice of impaneling (via I-Jury or the impaneling session).

Racial/ethnic and gender profiles of each venire were compiled along with a hypothetical dataset to control for the disproportional impact of undeliverable summonses to Hispanics. For the fair cross-section benchmark, census data was compiled with the assistance of Dr. Mary Rose based on the following criteria: at least eighteen years old, U.S. citizens, not living in an institutionalized setting. Adjustments were made for felony convictions and racial groups comprising less than one percent of the population.

Each of the three jury datasets was compared to the benchmark to determine fair cross-section compliance. The datasets were cross-compared to determine the impact of I-Jury on demographics.

Several conclusions can be drawn: (1) For each cognizable group, absolute and comparative disparity measurements for 2002 juries were higher (less compliant) than those for 2006 juries. (2) Applying court standards of 7.7% and 50% for absolute and comparative disparity, respectively, 2006 jury venires are compliant with the fair cross-section standard. (3) Minorities use I-Jury; the lowest level of use is among Blacks, with a January-February 2006 participation rate of 67.8% and August-October rate of 74.2%. (4) I-Jury produces jury venires that meet the fair cross-section standard and are more representative of the community than those established prior to I-Jury.

Census data alone cannot establish the benchmark as it does not correlate to all the filters that cause persons to be excused from jury service. A secondary source for filter adjustment is needed. The author recommends the jury management system used to send summonses and track their disposition be that source. A system that captures excused juror demographics should provide reliable data for making filter adjustments to the census and result in a better fair cross-section benchmark.

I. INTRODUCTION

In March, 2002, Travis County, Texas initiated the I-Jury program. With I-Jury, persons who receive a jury summons may elect to use the Internet and email for all jury processes preliminary to courtroom jury selection, or *voir dire*. Jurors who do not elect to use the Internet attend juror orientation and impaneling sessions conducted once each month.

Members of the local bar, particularly the criminal defense bar, have expressed concern that use of the Internet for impaneling would lead to jury panels that are less ethnically diverse than those created through the traditional, in-person impaneling process. Since the inception of the program, there have been four (unsuccessful) challenges to jury panels. To determine whether those concerns are warranted, a formal evaluation of the demographic diversity of the jury venire created under the I-Jury process is needed.

The evaluation serves several purposes:

- Determines whether I-Jury produces venires that meet the constitutional test of fair cross-section representation.
- Measures what impact, if any, I-Jury has had on minority representation within the venire.
- Tests the validity of the assumption that minorities do not have sufficient Internet access to use I-Jury and, as a result, are less likely to respond to a summons because of the burden of having to personally appear at impaneling.

- Establishes a benchmark for fair cross-section representation that considers legal and practical *filters* (statutory qualifications and exemptions, hardship excuses, and logistical issues) that keep individuals out of jury service.
- Identifies opportunities for improvement in both jury management and in gathering data that can be used to fine-tune the benchmark.

Even though juries are not used in every trial, each juror plays a vital role in the justice system, contributing his or her perspective, experience, and knowledge so that, collectively, the jury can speak for the community in a clear voice, expressing its wisdom, compassion, ethics, and sense of right and wrong. If any group within the community is systematically left out of this process, then the clarity of that voice is diminished, to the detriment of the justice system.

The following is a discussion of the historical and legal basis for fair cross-section representation on juries, a description of the Travis County jury process, a discussion of the data compiled to determine if Travis County juries meet the constitutional standard, and recommendations for improving the process of establishing the proper benchmark against which a fair cross-section determination can be made.

II. LITERATURE REVIEW

A. Constitutional Basis for Representation from Community

The Sixth Amendment of the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have

compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. [1]

The Sixth Amendment of the Bill of Rights is generally understood with respect to the rights of the accused, especially a trial by an *impartial* jury that comes from the *district* where the crime occurred.

A jury that is both impartial and comprised of persons from the community balances the interests of both the accused and the people. Even though now, in the 21st century, less than two percent of court cases are heard by juries, [2] the influence of juries is profound. Juries set the community standard for sentencing and civil awards so judges can establish the "value of the case," the community's sense of what constitutes justice based upon certain circumstances, when conducting bench trials or approving pleas or settlements. [3]

In the early days of the United States, constituting a jury – including a grand jury under the Fifth Amendment – that represented the State and district was relatively simple. The jury-eligible population was virtually homogenous as to race (non-property owning persons and slaves were legally excluded), and gender (women were not allowed the right to vote or serve on juries). Today, the jury-eligible population is far more racially diverse, and women are not only allowed but expected to serve as jurors. Constituting juries that reflect this diversity can be challenging.

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[1] Sixth Amendment, Bill of Rights, U.S. Constitution

[2] Schauffler, Richard Y, Robert C. LaFountain, William E. Rafferty, Shauna M. Strickland, and Brenda G. Otto, "Court Statistics Project," National Center for State Courts website: http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html. Accessed December, 2006.

[3] Wisser, Jon N., Judge, 299th District Court. Interview conducted by Michelle Brinkman. (Austin, Texas November 27, 2006)

Accordingly, Trial Court Performance Standard 3.2 was established. [4] It measures three crucial steps in the jury process that, when performed in accordance with the standards, will maximize the probability that the jury venire within a court's system will reflect the demographics of that court's community and therefore comply with the Fifth and Sixth Amendments.

Measure 3.2.1 addresses the source lists used to create the database from which jurors are summonsed. This standard recommends source lists that are not only representative of the community but large in number so that the burden of jury service is distributed among the population.

Measure 3.2.2 establishes randomness within every step of the selection procedures while recognizing that certain nonrandom processes, such as exclusions for disqualification or deferrals of service dates, are necessary and permissible.

Measure 3.2.3 looks at the final result of the process: the jury pool. Just as source lists should be compared to the jury-eligible profile of the community to determine their usefulness in achieving fair cross-section representation, the jury pool should likewise be compared to determine whether that fair cross-section representation has been achieved.

When a court jurisdiction applies these measures from Court Performance Standard 3.2 to its jury process on a regular basis, it can proactively determine whether and what adjustments should be made to ensure its jury system meets constitutional tests established by the court decisions based on the Fifth, Sixth and Fourteenth Amendments to the Constitution. These amendments require juries to be representative of the

[4] "Trial Court Performance Standards and Measurement System, Standard 3.2 Juries," National Center for State Courts website: http://www.ncsconline.org/D_Research/TCPS/Standards/stan_3.2.htm. Accessed February, 2007.

community from which they are drawn. [5] There are two rationales for these court decisions:

1. Equal protection under the Fifth and Fourteenth Amendments. The Fifth Amendment requires that criminal accusations be presented by a Grand Jury and also provides due process of law protection. The Fourteenth Amendment extends Fifth Amendment protection to States.
2. A fair cross-section of the community under the Sixth Amendment, which guarantees the right to a criminal trial by an impartial jury of the district and State where the crime was allegedly committed.

Equal Protection

Peter A. Detre summarizes the criteria for equal protection violations as follows:

> In *Castaneda v. Partida,* the Court established the test for equal protection challenges. Although the language of *Castaneda* is not entirely clear, later decisions have interpreted it as a three-pronged test which, if satisfied, creates a presumption of intentional discrimination in equal protection cases. In order to make out a prima facie case, the defendant must prove:
>
> (1) that the group to which he belongs "is a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied";
>
> (2) that "the degree of under-representation [is substantial] by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors, over a significant period of time"; and
>
> (3) that the "selection procedure . . . is susceptible of abuse or is not racially neutral," which the Court stated, "supports the presumption of discrimination raised by the statistical showing." (citations omitted) [6]

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[5] Glasser v. U.S., 315 U.S. 60 (1942)

[6] Detre, Peter A., "A Proposal for Measuring Underrepresentation in the Composition of the Jury Wheel," *Yale Law Journal 103: 1913.* (1994): p. 2.

Each test under the *Castaneda* standards poses more stringent criteria for equal protection challenges than under the Sixth Amendment. The first test not only requires a group be distinctive but subject to different treatment; one could infer that this means detrimentally different treatment. Under the second test, equal protection challenges not only require discrimination but also require that the distinctive group must be under-represented in a substantial and systematic manner. The *Castaneda* standard would preclude challenges based upon a single jury panel since a single instance could not be deemed systematic. Finally, the method of selection must be vulnerable to challenges of bias or discrimination. To illustrate how a method of selection can be biased or discriminatory, Seltzer, Copacino, and Donahoe examined a previously used key-man jury selection system in Maryland, where they report that "Under this system, prospective jurors were chosen by prominent members of the community who formed a jury commission and collectively chose people known to be reputable."[7] A selection method such as this could easily be challenged under *Castaneda*.

Fair Cross Section

Detre also describes the criteria for a fair cross-section:

> In Duren v. Missouri, the Supreme Court stated a similar three-pronged test to establish prima facie violations to the composition of a jury wheel under the Sixth Amendment's fair cross-section guarantee, holding that the defendant must prove:
>
> (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venire from which juries are selected is not fair and reasonable in relation to the number of

[7] Seltzer, Richard, John M. Copacino, and Diana Roberto Donahoe, "Fair Cross-Section Challenges in Maryland: An Analysis and Proposal," *University of Baltimore Law Review* 25: 129-167. (1996): p. 2.

> such persons in the community; and (3) that this under-representation is due to systematic exclusion of the group in the jury-selection process. (citations omitted) [8]

Compared to the stringent standards for equal protection challenges, the fair cross-section test does not require a discrimination test; it merely requires a showing of a distinctive group and the systematic exclusion of a distinctive group. Data need only demonstrate a disparity between the venire and the community without any reason or motive. Conceptually, a key man selection system may be ideal for remedying disparities under fair cross-section caused by lack of summons compliance within a distinctive group. Under this type of key man system, the selectors could establish quotas designed to eliminate under-representation. Such a key man approach would vary from earlier key man systems based on a personal acquaintance with the selector(s).

There is one important similarity between equal protection and fair cross-section standards. In jury challenges, both require the challenging party establish only a prima facie case. Once the prima facie case is established, the burden is on the other party to disprove under-representation or provide a compelling justification for the policy that excused a cognizable group.

B. Why Fair Cross-Section is Important to the Jury Process

Susanne H. Vikoren outlines in detail why juries that are representative of the community are critical to the justice system. First, exclusion of minorities from the jury system fosters a belief among defendants, citizens, and communities that the system is

[8] *Op. Cit.*

biased and undermines their confidence that justice will be served. [9] Vikoren observed that the U.S. House of Representatives noted this when reporting on the Jury Selection and Service Act:

> It must be remembered that the jury is designed not only to understand the case, but also to reflect the community's sense of justice in deciding it. As long as there are significant departures from the cross sectional goal, biased juries are the result–biased in the sense that they reflect a slanted view of the community they are supposed to represent. (citations omitted) [10]

Vikoren goes on to cite a National Law Journal/Lexis poll that indicated blacks believed all minorities were likely to be treated unfairly by the courts and that they were likely to be treated with unfair discrimination in both criminal and civil trials. Essentially, blacks feel alienated from the process. The theme of alienation [11] is common in discussions this author had with leaders in the black community on how to increase African-American participation in jury trials.

Even in instances where black are selected as jurors, this alienation carries over into the jury room. Vikoren describes the work of New York University Professor of Law Peggy Davis in describing the phenomenon of microaggression in the trial of New York v. Chambers:

> These jurors experienced microaggression on two levels. In the context of the deliberations, a message of inferiority and subordination was delivered as their views were disregarded. . . . As a result, the black jurors were rendered ineffective in the deliberative process. . . . At a more general

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[9] Vikoren, Susanne H., "Justice or Jurymander? Confronting the Underrepresentation of Racial Groups in the Jury Pool of New York's Eastern District," *Columbia Human Rights Law Review 27: 605.* (1996): p. 5-6.

[10] *Ibid,* p. 6.

[11] *Loc. Cit.*

> level, a social message of inferiority and subordination was delivered. The black jurors were struck not only by their own isolation and ineffectiveness in the factfinding process, but also by the racialist character of the process. . . . It said to the black jurors that they, as black people, could not expect impartial consideration were they before the court as defendants or complainants. (citations omitted) [12]

Vikoren concludes that these beliefs and experiences of minorities become a self-fulfilling prophecy; minorities are less likely to comply with jury summonses and are more likely to request an excuse, exacerbating the problem of under-representation. [13]

The benefits of minority representation on juries extend beyond the perception of fairness within the justice system. A study reported by Bailey in *Monitor on Psychology* describes how the presence of minorities on a jury panel can impact the behavior of whites on the same panel:

> The diverse groups deliberated for longer than the all-white juries and discussed significantly more case facts—largely because white members raised more case facts in these groups than white participants in the homogeneous groups. The white participants in the diverse groups also made fewer inaccurate statements about the case than their peers in the all-white groups. [14]

Romero in *Scienceline* confirms these conclusions:

> In a study of mock juries, published in the April issue of the *Journal of Personality and Social Psychology*, researchers found that both black and white jurors in racially mixed juries performed better than members of all-white juries. Jurors in the diverse jury raised more facts about the case,

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[12] *Op. Cit.*

[13] *Op. Cit.*

[14] Bailey, Deborah Smith., "Diversity's Dividends: Diversity enhances group decision making in unexpected ways, study finds," *Monitor on Psychology* Vol. 37 No. 5. (May 2006): http://www.apa.org/monitor/may06/dividends.html. Accessed November, 2006.

> made fewer factual mistakes, and acknowledged the role of race more often than jurors in the all white jury. [15]

Based on these studies and many others with similar results, diversity in juries results in better justice.

C. Definition of Distinctive (Cognizable) Groups

Through legislation and court decisions, redefinition of what is representative continues, both from the standpoint of distinctive (or cognizable) groups and the measurement methodology for comparing each distinctive group as to its population within a community and its representation on juries. In determining what is distinctive, Seltzer reports:

> Although courts define 'cognizable' slightly differently, the term is generally used to focus on a group's distinctive characteristics and the unique nature of prejudice afflicting a group. In Maryland, the courts use a three-prong test to define cognizability. First, there must be some factor that defines and limits the group. Second, the group must have cohesion, a common thread or basic similarity in attitudes, ideas or experience. Third, the group must have a community of interest that cannot be adequately protected by the rest of the populace. (citations omitted) [16]

Typically, courts have recognized three criteria for distinctive groups: race, ethnicity and gender. Race was the first of the criteria to be recognized in Strauder v. West Virginia.[17] The concept was expanded to ethnicity in Hernandez v. Texas[18] and then to women in Taylor v. Louisiana.[19]

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[15] Romero, Joshua J., "Racial Diversity, A Matter of "Survival" Racially diverse groups make better decisions," *Scienceline of New York University*: http://scienceline.org/2006/12/04/bio_romero_race/print/. Accessed November, 2006.

[16] See Note 7, supra, p. 6.

[17] Strauder v. West Virginia 100 U.S. 303 (1879).

Arguments have been made in favor of establishing other distinctive groups, such as age and economic class, and even eliminating race/ethnicity. Despite a decision to the contrary in United States v. McDaniels, [20] Mitchell S. Zuklie argues for this:

> [T]he United States District Court for the Eastern District of Louisiana held that "food stamp recipients" and "the poor" were not cognizable groups. Although these groups were clearly definable, the court rejected the claim that members shared common qualities or outlooks. The court held that our nation "has an almost infinite number of gradations in income and net worth," such that there is no clear "standard of who is poor and who is not poor." "There can be little doubt," the court argued, that a married couple that nearly qualified for food stamps, but had an annual income just barely too high, "would consider themselves "poor.' " Therefore, while "the classification of persons by a specific dollar income ... serves a useful function to determine who may be eligible for a public benefit, ... it is entirely arbitrary if used as the sole criterion of economic status or of poverty, for jury purposes." The court also stated that "unlike race, religion, sex or national origin, which are determinable binarially," a person's economic status "might well change from one year to the next." The court thus concluded that any attempt to define a group "with respect to its presumed qualities or outlook" stemming from income or economic status "would be entirely artificial." Similarly, courts have rejected the notion that persons of low economic status share a "community of interest" that other segments of society cannot adequately represent. (citations omitted) [21]

So far, the courts have rejected expanding distinctive groups with regard to age and economic criteria based on two lines of reasoning: 1) age and economic circumstances are subject to change and are therefore not immutable characteristics; and 2) each criteria is represented by a continuum of numbers that are not easily stratified into meaningful distinctions (e.g., if one were to divide age into groups based on each decade, such as 20-29, 30-39, etc., would there really be a meaningful difference between some

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[18] Hernandez v. Texas 347 U.S. 475 (1954).

[19] Taylor v. Louisiana, 419 U.S. 522 (1975).

[20] .United States v. McDaniels, 370 F. Supp. 298 (E.D. La. 1973)

[21] Zuklie, Mitchell S., "Rethinking the Fair Cross-Section Requirement," *California Law Review* 84 Calif. L. Rev. 101. (January, 1996): p. 7.

who is 38 and someone who is 41?). Weeks has observed this reluctance to expand the number of distinctive groups:

> Age, education, socioeconomic status, and sex have been the characteristics most often put forward as candidates for this designation, but the courts have consistently resisted the arguments for all but sex. [22]

Finally, some courts have taken the position that a distinctive group must be subject to prejudice or discrimination to be included. According to Zulkie,

> In Anaya v. Hansen, the First Circuit argued that this requirement was necessary to distinguish the distinctive groups that matter for jury selection purposes from the "literally thousands of "cognizable groups' " present in society, including "barbers, overweight persons, Red Sox fans, scoutmasters, Marine veterans, radio amateurs, and so on, ad infinitum." (citations omitted) [23]

Based on this logic, Zulkie counters the exclusion of the poor from classification as a distinct group:

> Some courts have concluded that the poor have not suffered societal discrimination. Yet under almost any objective definition of the term, the poor are victims of societal prejudice. For example, Americans frequently characterize the poor as "lazy and shiftless" or as "patently immoral or socially deviant." Society accuses them of embracing poverty by choice, and they have become "an underclass, dehumanized and demonized in the public's mind." Increasingly, we identify the poor as the source of our nation's problems, as well as their own. Professor Thomas Ross suggests that American culture has succumbed to a "rhetoric of poverty": we assert that the poor are conceptually different from other citizens and conclude that society cannot solve the problems that spring from the poor's own moral degeneracy. (citations omitted) [24]

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[22] Weeks, John. R., International Population Center, San Diego State; Walter F. Abbott and John Batt, eds., "Jury Representativeness: Challenging the Array; A Handbook of Jury Research," American Law Institute/American Bar Association, Committee on Continuing Professional Education (Philadelphia PA, 1999, reprint 2001): p. #7-4.

[23] See Note 21, supra, p. 7.

[24] See Note 21, supra, p. 11-12.

However, as to whether the poor should be recognized as a distinctive group or not may be moot as there is wide-held belief and substantial evidence that the incidence of poverty is higher for racial/ethnic minorities; therefore, many of the remedies for addressing under-representation discussed in Section II-D below would be relevant to the poor, whether minority – and a distinctive group – or not.

D. Methods for Measuring Under-Representation

While courts have not altered the definition of what constitutes a distinctive group since Taylor v. Louisiana in 1975, the standards for measurement of these distinctive groups vary. The following table summarizes methods for measuring disparity of a distinctive group between community population and its representation on juries:

METHODS FOR MEASURING DISPARITY		
Type of Measurement	Description	Formula Used
Absolute disparity	With regard to a distinctive group, the difference between the percentage of that group within the community and the percentage of that group within a jury venire, expressed as an absolute value.	% in Community - % in Juries
Absolute impact	A numeric expression of the impact a disparity has on the entire jury venire by taking the absolute disparity, expressed as a percentage, and multiplying by the total number of jurors in the venire. The purpose is to show how many jurors of a disparate group are lacking within the venire.	Standard method: % in Community - % in Juries x venire size Alternative method: % in Community x venire size - # disparate group jurors in venire
Comparative disparity	The disparity between the percentage of a group within a community and the percentage of that group within a jury venire, expressed as a percentage. The purpose is to show – as a percentage – how many jurors of a disparate group are lacking within the venire.	% in Community - % in Juries / % in Community

Statistical decision theory (disparity of risk)	A binomial calculation that expresses the probability of variation between the percentage of a group within a community and the percentage of that group within a jury venire. The purpose is to eliminate any differences that can be attributed to statistical tolerance	A complex statistical calculation contingent of several variables depending on the demographics of a population and the size of the venire.

Table 1

Understanding the differences among the methods used to measure disparity requires distinguishing between the concepts of magnitude and significance. Magnitude is the size of a number, such as small, medium, or large. Significance involves viewing that number with respect to its context or relationships. To illustrate this concept, consider this question: Would you prefer to have 90% of a thousand dollars, or 1% of a million dollars? 90% is the lion's share; 1% is a drop in the bucket. However, in this case 90% = $900, but 1% = $10,000. When evaluating number, consider its context.

Each of the disparity measurement methods listed in Table 1 and discussed below provide a perspective but not a determination of disparity. For example, consider the data for Groups A and B:

	A	B	A-B = C	D = C/A
	Community %	**Venire %**	**Absolute Disparity** **(What is the difference between A and B)**	**Comparative Disparity** **(What proportion of the Community % is "C")**
Group A	67.7%	72.2%	4.5%	6.6%
Group B	7.7%	6.1%	1.6%	20.8%

For Group A, a difference of 4.5% actually represents only 6.6% of *their* community, while for Group B, a smaller difference of 1.6% actually represents a much larger 20.8% of *their* community. 4.5% is larger in magnitude than 1.6%, but 20.8% is much more significant than 6.6%.

This example clearly demonstrates why *magnitude* can skew the perception of what is *significant.* The following discussion of measurement methods demonstrate how absolute disparity and absolute impact measure magnitude while comparative disparity and statistical decision theory measure significance.

Absolute disparity: Many courts still use this calculation as the preferred test for under-representation, using a threshold that establishes a relatively high standard, according to Weeks:

> [T]he U.S. District Court upheld its decision in these previous cases by stating: "This court has consistently held that absolute disparities below 7.7% are insubstantial and constitutionally permissible." United States v. Cannady, D.C. No. CR-93-00071-AH5 (95 Daily Journal D.A.R. 4559) [25]

Use of this standard can be problematic if the percentage of a distinctive group within a community is less than seven percent. For example, census data indicates that the percentage of Group Z in a community is 6% and sample data indicate no members of Group Z have ever been placed on a jury panel. The absolute disparity measurement of six would be compliant with the standard prescribed by the court, even with no Group Z jurors ever serving!

Absolute impact: According to Detre, the use of the absolute impact measurement is also widely accepted by court:

> The majority of courts have looked to absolute disparity or absolute impact standards to determine whether under-representation of a group is substantial for purposes of the fair cross-section guarantee. In United States v. Jenkins, the Second Circuit summed up the rationale behind this choice. African-Americans made up 5.45% of the community but only 3.3% of the jury wheel. The court found that the resulting absolute disparity of 2.15 percentage points did not amount to substantial under-representation. Adopting the absolute impact test, the court noted that correcting for an absolute disparity of 2.15 percentage points would

[25] See Note 22, supra, p. #7-26.

> amount to an addition of only one African-American to an average venire of sixty persons. As the court stated, "a difference of one (1) Negro in a panel of 60 jurors is not substantial." (citations omitted) [26]

The example cited by the Second Circuit points to the problem with use of absolute impact. When the absolute disparity percentage is applied to the size of a trial panel, rather than the entire venire, the absolute impact appears insignificant. Using Detre's example, if these percentages are applied to a venire of 320, the absolute impact of 7 (rounded from 6.88) appears problematic, even though the number is small in proportion to the venire size. Difficulties with the use of absolute impact such as these are the reason no court has adopted it as a standard to evaluate jury representation. [27]

Comparative disparity: According to Detre, many advocates who raise jury composition challenges recommend the use of comparative disparity to rectify the problems of absolute disparity and impact. However, he notes that "Courts have been reluctant to adopt the comparative disparity standard, mainly because it can seem to overstate the degree of under representation the case of a very small minority." (citations omitted) [28]

Detre observes that this reluctance is not universal:

> Despite the difficulties with comparative disparity, some courts have been persuaded that the use of absolute disparity or absolute impact is unfair when the underrepresented group comprises a small percentage of the population. One court has advocated "a flexible use" of the absolute and comparative disparity measures, noting that each may lead to unfair results in certain cases. But this seems to require that courts decide what the "fair" outcome is in advance and then choose the test which will dictate

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[26] See Note 6, supra, p. 4.

[27] Hannaford-Agor, Paula, email to Michelle Brinkman, (February 13, 2007)

[28] *Op. Cit.*

> this result – hardly the way such tests are supposed to operate. In fact, one of the few courts to apply the comparative disparity measure did so not to a case involving a small minority as one might expect, but to a case involving a large minority. The rationale was that absolute disparity overstated the under-representation. (citations omitted) [29]

The concerns of the court as to the potential for overstating under-representation through comparative disparity in individual cases can be valid; individual panels are typically too small to represent a statistically valid sample. When the measurement is used to evaluate larger numbers, such as the jury venire, that are more statistically valid, the risk of overstatement diminishes; however, it should still be viewed for significance with respect to the size of the venire.

Statistical decision theory: While this is the most sophisticated methodology for evaluating under-representation of distinctive groups within a jury panel or an entire venire, Detre states that no federal court has applied this standard in a fair cross-section challenge, though it has been applied in equal protection challenges. [30] Detre argues that this would make sense in equal protection challenges because:

> It seems intuitively appropriate to use SDT in the context of equal protection challenges, since "intent" is of primary importance in such cases. If one can show that the under-representation of a group is unlikely to be due to chance, in the absence of an alternative explanation, a fair presumption is that the disparity is due to discrimination. Commentators in favor of SDT have therefore generally advocated its use in equal protection challenges. (citations omitted) [31]

Weeks, supports use of statistical decision theory to further evaluate absolute and comparative (relative) disparity:

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[29] See Note 6, supra, p. 5.

[30] *Loc. Cit.*

[31] *Op. Cit.*

> A jury array can be challenged in a pretrial motion to quash the jury venire if it is believed that a defendant's fifth or sixth amendment rights are being violated by the exclusion or significant under representation of one or more cognizable groups. The challenge requires an empirical comparison of the demographics of the jury array (usually based on a jury survey or an analysis of the jury master wheel) with the demographics of the community from which the jurors are drawn (usually based on census data). A disparity exists if the absolute and relative disparities are sufficiently large and *statistically significant*. (emphasis added) [32]

Because of its sophisticated application of statistical methodology, statistical decision theory offers a more detailed, scientific analysis of jury panel and venire demographics. However, this author believes it has two disadvantages: 1) the calculations require someone versed in statistical methodology, and many defendants or litigants lack the resources to hire such a statistician as an expert witness; and 2) the method is more sophisticated and not as likely to be readily understood or carefully scrutinized by a lay person.

Another drawback to the use of statistical decision theory is the potential for overstating a problem. Results are statistically significant if they cross the threshold of a commonly-accepted value (typically, a probability of 1 in 20, or five percent) that a difference as large as the one observed would have occurred when, in fact, the true difference is zero. A number of tests for statistical significance are sensitive to the size of the sample being measured. Thus, if statistical methodology is collectively applied to all jury panels formed in a calendar year, even a small discrepancy between the panels and the jury-eligible population would be "significant." However, statistical decision theory does not provide any practical guidance as to whether the magnitude of the difference (absolute disparity), is substantively significant.

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[32] See Note 22, supra, p. #7-1.

E. Use of Measurements in Jury Challenges

Weeks has observed that "If a cognizable group is identified *and a claim made* that this group is underrepresented, the issue then becomes one of how to measure this disparity." (emphasis added) [33]

That courts have not adopted a universal standard to use in considering jury challenges has been previously noted. Much of the reason for this can be found in the advantages and disadvantages of the four methods described above. However, courts have also recognized that, while the methodologies can produce precise measurements, strict application of those measurements in determining whether under-representation exists may not be appropriate:

> Courts have typically ruled that the Constitution does not guarantee a jury pool that exactly mirrors the community. (See, e.g., People v. Williams, 525 N.W. 2d 538 (Minn. 1994); United States v. Irutia-Ramirez, 838 F. Supp. 1385 (C.D. Cal 1993) [34]

The dilemma for the courts is to determine how much leeway to allow when reviewing data that support under-representation. Seltzer describes the problem in an analysis of statistical decision theory:

> To use a test of significance, one must first determine a decision rule or a "criterion of significance." As an example, a decision rule might state that if there is a 5% probability or greater that the results could have occurred by chance, one would conclude that the results did in fact occur by chance. Applied to the jury selection context, this rule would state that if there is a 5% probability or greater that the disparity in a specific case could have occurred by chance, one would decide that the result could be caused by the sampling process. Accordingly, one would conclude that a fair cross-section violation had not been proven. [35]

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[33] See Note 22, supra, p. #7-5.

[34] See Note 22, supra, p. #7-3.

[35] See Note 7, supra, p. 5.

Seltzer goes on to state that," Statisticians have no hard-and-fast rule for deciding what the criterion of significance level should be." [36] Accordingly, he concludes that statistical decision theory should not be relied upon by the courts as the sole method of measurement but should be combined with the other methods. There is evidence that courts are using multiple methods of measurement, as described by Detre when describing the decision in *United States v. Jenkins* in the previous section; the court's use of absolute impact quantified the magnitude of a 2.15 percent absolute disparity, which was equivalent to one African-American in a venire of sixty. [37]

Use of multiple methods becomes even more crucial in challenges as they typically are focused on the composition of a single jury panel whose numbers are not sufficient to be statistically significant. This author believes that several different measurements are required for the court to make an informed decision as to under-representation.

F. Causes of Under-Representation

To truly understand the causes of under-representation of a distinctive group within a jury venire or jury panel, an examination of the jury management process is necessary to identify risk potential for such under-representation. Fukurai et al have identified eight stages of this process, [38] each of which poses risk:

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[36] *Loc. Cit.*

[37] See Note 6, supra, p. 4.

[38] Fukurai, Hiroshi, Edgar W. Butler, and Richard Krooth, *Race and the Jury: Racial Disenfranchisement and the Search for Justic*e, (New York: Plenum Press, 1993): p. 39.

Stage one: Geographic areas and population. When the jury wheel is comprised of all persons within a judicial district, then there is little risk of creating under-representation. However, certain districts have multiple courthouse locations and divide the judicial district into subgroups of population from whom jurors are drawn for each courthouse. How this is done may result in under-representation if geographic areas with a high percentage of a distinctive group are be excluded from one of the courthouse locations in favor of another courthouse location. Fukurai et al also notes this method tends to exclude rural jurors. [39]

Stage two: Source lists. Inclusion on a source list can be a matter of individual choice. If there is a high prevalence among any racial/ethnic group or gender to opt out of a source list, under-representation of that group can occur. For example, there is a clear difference in the demographics of the most commonly used source list – voter registration rolls – from the general population.[40] Fukurai et al note that voter registration lists exclude a third of the population and tend to exclude minorities and women. [41] Detre has devoted an entire paper to under-representation in the jury wheel, much of which is because of limitations of source lists. [42]

Stage three: Master file. A master file that is not properly merged or maintained with address updates can result in under-representation. With an incomplete or improper merge among two or more source lists, persons who are on multiple lists are subject to a

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[39] *Loc. Cit.*

[40] This practice is rare among State courts but often occurs in Federal courts with their large geographic jurisdictions.

[41] *Op. Cit.*

[42] See Note 6, supra, p. 2.

higher probability of receiving a jury summons since they appear on the list in duplicate. To the extent that persons who are not minorities tend to appear on multiple source lists, they have a greater chance of being summonsed. Further, a master file is useful only to the extent it contains sufficient information to deliver a summons. If the list does not receive periodic updates of address changes, distinctive groups that have a high rate of mobility are less likely to be summonsed.

Stage four: Qualified juror files. While some of the criteria for qualification are objective, such as age or citizenship, others are subjective, such as literacy, mental soundness, and moral turpitude. [43] With this element of subjectivity both in the eye of the person reviewing a qualification questionnaire and the person completing it, under-representation can occur. [44]

Stage five: Jury impanelment lists. In some court systems, the task of assigning geographic areas to specific court locations occurs at this stage, raising the same risks of under-representation as Stage one.

Stage six: Jury panels. At this stage, the granting or denying of non-statutory excuses at the discretion of the judge or authorized court staff can have significant impact on the panel composition. To the extent that the five excuse factors – economic, child care, age, transportation availability, and illness – disproportionately impact a distinctive group, under-representation can occur. Author's note: a juror's decision whether to request an excuse or even whether to ignore a summons can impact panel composition.

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[43] See Note 38, supra p. 43.

[44] There are objective criteria that can correlate to certain subjective qualifications, such as adjudicated non compos mentis (mental soundness) and felony or theft conviction (moral turpitude).

Stage seven : *Voir dire* (courtroom jury selection). At this stage, the greatest risk of under-representation lies in peremptory challenges, which attorneys or parties may use to eliminate members of a distinctive group.

Stage eight: The jury box. Even if members of a distinctive group make it into the jury box to hear evidence, a well-educated fellow juror or two can exercise inordinate influence on a less-educated juror, reducing the input that juror has into the decision, thus reducing the perspective of the distinctive group that that juror represents.[45]

Bates offers his perspective on the causes of under-representation: 1) mobility among the less-wealthy; 2) the population that is eligible to serve; 3) method of selection and summons; 4) sanctions for evading jury duty; 5) excusals and exemptions; and 6) court rules and customs as exercised by the judge and attorneys. [46] Writing further on the impact of the "no-show problem," Bates contends:

> For all the concern about it, the no-show problem must be seen in context. In all jurisdictions, people can be excused from serving on a jury for illness, inability to speak English, and other reasons . . . . Some data indicate that many no-shows would qualify for excusal if they did come to court. By making additional efforts to reach people who did not respond to an initial summons . . . . six counties in New York raised their response rate by 80 percent, but the rate of people qualified to sit on juries rose by only 10 percent. Efforts that significantly increase the response rate thus may have a relatively small impact on the number of would-be jurors. [47]

Boatright's observations on the various socio-economic factors that impact juror participation change over time are consistent with Bates' conclusion:

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[45] Stages seven and eight occur after jury panels are assigned to courts. Any jury panel composition or jury behaviors at these stages do not reflect on the jury management system's competence in producing representative panels.

[46] Bates, Stephen, "The American Jury System," Cantigny Conference Series Special Report, Robert R. McCormick Tribune Foundation (2000): p. 16.

[47] *Ibid.* p. 19

> Among other determinates, the need for child care is clearly linked to age, while geographic mobility (which decreases with age) may be linked to failure to receive a summons but not necessarily to willful nonresponse. [48]

This author's experience and observations in jury management indicate that the majority of jurors who fail to respond do so due to oversight or forgetfulness and respond to second notices. Jurors who elect not to respond after second notice are unlikely to be required to serve due to disqualification or statutory exemption.

Most of the causes of under-representation detailed above are included because of their disproportionate impact on distinctive groups. There is little that can be done on some of them, such as statutory qualifications for jury duty. However, others can be eliminated or mitigated through process changes.

G. Methods Used to Correct Under-Representation

Since under-representation can occur, resulting in judicial scrutiny through jury panel challenges, various techniques have been developed to reduce under-representation and impanel juries that are a fair cross-section of the community.

One of the most important techniques universally recommended is the expansion of source lists. As noted by Fukurai et al above, voter registration lists, one of the most common source lists, often exclude one-third of the population. [49] To remedy this, Fukurai et al recommend using multiple sources. Among those sources are driver's licenses, utility customers, tax rolls, welfare rolls, and vehicle registrations. [50] Zuklie

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[48] Boatright, Robert G., *Improving Citizen Response to Jury Summonses: A Report with Recommendation*,. American Judicature Society Special Report (1998): p. 15

[49] See Note 38, supra p. 39.

[50] *Loc. Cit.*

observes "the statute [Jury Selection and Services Act] expressly provides that the District of Columbia may use the city telephone directory, rather than voter lists, as the source list for potential jurors." [51]

Update of the data in jury wheel or master files is also crucial to address mobility, as noted previously by Fukurai et al. [52] There are several update techniques that can be used, such as routinely updating from source lists and using the U.S. Postal Service's National Change of Address registry before mailing summonses.

Follow up on summons non-response is generally held to be appropriate despite the observations of Bates and Boatright (as discussed above) that they are ineffective in significantly increasing participation of members of distinctive groups that are historically under-represented.

Some courts have made inroads into making jury service easier. According to Schwartz et al, this strategy is recommended by the American Legislative Exchange Council through their Jury Patriotism Act. [53] For example, Travis County and the City of Austin, in a joint project, instituted online impaneling in 2002. [54] The online system eliminates the need for personal attendance at jury impaneling and provides a method for jurors to coordinate their service dates with personal schedules. According to Assistant

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[51] See Note 21, supra p. 3.

[52] See Note 38, supra, p. 43.

[53] Schwartz, Vistor, Mark A. Behrens, and Cary Silverman, "Safeguarding the Right to a Representative Jury: The Need for Improved Jury Service Laws," *Perspectives on Legislation, Regulation, and Litigation*, National Legal Center for the Public Interest, ISSN 1089-9820, ISBN 1-930742-31-2, (January, 2003): p. 29.

[54] Gamble-Risley, Michelle,"I-Jury Simplifies Summons Process," *Government Technology* (http://www.govtech.net/news/news.php?id=72960, October 14, 2003).

Sociology Professor Mary Rose of the University of Texas is a particularly significant signal to jurors that the courts respect and will attempt to accommodate personal barriers to service that they may face. [55] This online impaneling (I-Jury) system's compliance with court performance standard 3.2 is the subject of this research paper.

These methods of correcting under-representation are neutral as they apply uniformly to all jurors regardless of membership within a distinctive group. Some experts advocate for corrective measures that target these distinctive groups.

The State of Georgia requires source lists be balanced according to race and gender so that the jury wheel is representative of the community. [56] Doing this balancing requires source lists to contain necessary race and gender data so that randomly selected names can be eliminated from the lists to achieve this balance.

Boatright describes a method developed for targeting minorities for jury selection though he is skeptical of its legal viability:

> Fukurai et al have been instrumental in devising means of stratified or cluster sampling that target poor or minority neighborhoods for juror selection (Fukurai, Butler, and Krooth 1991b). This type of research has been conducted since the 1960s (see Vanderzell 1966; Alker, Hosticka, and Mitchell 1976). It has been subject to debate because of its impact on public confidence (King 1994), its effect upon the quality of juries (Detre 1994), and the appearance of a racial quota system. It does, however, hold promise as a means of ensuring that at least some of the more obvious biases in jury selection could be reduced. Its legal prospects, however, are dim. The Eastern District of Michigan's stratified selection plan was found to be invalid in 1996 in United States. V. Ovalle et al. [57]

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[55] Rose, Mary, Assistant Professor of Sociology and Law, University of Texas at Austin. Interview conducted by Michelle Brinkman, (Austin, Texas July 14, 2006)

[56] Judicial Council of Georgia, Administrative Office of the Courts, *Georgia Jury Commissioner's Handbook,* (State of Georgia, December, 2005): p. 14.

[57] See Note 48, supra p. 15.

Fukurai observes that this method is unlikely to comply with standards:

> While many courts have begun to experiment with race-conscious jury selection methods to increase minority participation, the Supreme Court's recent jury selection decisions suggest that the law currently does not provide any affirmative mechanism for ensuring that racial minorities are included as jury members, even in those cases that involve unmistakable elements of racism. [58]

Fukurai goes on to note that Hennepin County Minnesota is the only jurisdiction to establish racial quotas, making note of the practice of jury wheel balancing in Georgia and the proposal of the Arizona Bar to establish racial juror classifications. [59]

In reviewing the proposed plan for jury districts in New York's Eastern District, Vikoren expressed skepticism about systems based on racial classification. [60]

The impetus to deviate from the randomness currently found in most jury management procedures will grow as jury managers struggle to create venires that meet the fair cross-section standard. Throughout the process, there are legal and practical *filters* that eliminate individuals from jury service. Factoring in legal filters, such as statutory disqualifications and exemptions, when establishing a standard is generally supported. However, there are also practical filters, such as incomplete source lists, out-of-date addresses, and juror transportation needs, which cannot as easily be factored into establishing the standard. As demonstrated in Section IV-C and Section IV-D. of this report, these practical filters can have a greater impact on jury demographic composition that legal filters.

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[58] Fukurai, Hiroshi, ""Race, Social Class, and Jury Participation: New Dimensions for Evaluating Discrimination in Jury Service and Jury Selection," *Journal of Criminal Justice* 24/1: 78-88 (1996): p. 63.

[59] *Loc. Cit.*

[60] See Note 9, supra p. 3.

Given current case law, techniques to address under-representation that are race or gender distinctive should be carefully scrutinized to ensure they comply with that law.

H. Establishing Proper Benchmarks for Fair Cross-Section

Experts generally acknowledge that raw census data is not the proper benchmark for fair cross-section as it does not account for juror qualification, statutory exemptions, and to some extent other practical factors such as mobility, morbidity rates, and economic hardship. According to Weeks, "Courts have typically (although not universally) required that adjustments for these characteristics of 'jury-eligibility' be made prior to comparing the community data within the array." [61] Weeks goes on to identify sources of census data that can be used to make adjustments for jury eligibility and criticizes the use of raw census data as not holding up to social science methodology. [62]

Bates concurs that legitimate factors can skew the results of a comparison of a venire to actual census data. "In light of these factors, the venire (the group from which individual juries are selected) may not fully represent the community." [63] Fukurai et al provide a more practical perspective:

> Jury qualification criteria, such as U.S. citizenship, language proficiency, residency requirement, and no prior felony conviction, would have eliminated a large number of minority individuals and may have affected overall representation on jury impanelment lists. [64]

Virtually all the literature on jury demographics and compliance with court performance standard 3.2 is limited to measurement and evaluation of jury data. Missing

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[61] See Note 22, supra p. #7-6.

[62] See Note 22, supra p. #7-12.

[63] See Note 46, supra p. 15.

[64] See Note 38, supra p. 33.

is a standard, established by the courts, of what comprises a fair cross-section and how to establish this benchmark by factoring in statutory qualifications and exemptions plus other impediments to jury service not be fully mitigated by process changes.

As stated, this research and report are based on the jury venire of Travis County, Texas courts as to whether they represent a fair cross-section of that community. This process involves two measurements. The first is the calculation of the demographics for the jury venire, which includes all jury panels assigned and sent to courts. The second adjusts the community's census data for legitimate factors (or filters) impacting jury participation in order to establish a fair cross-section benchmark to which the actual venire demographics can be compared. Without court guidance on standards for the benchmark, evaluations such as this one are subject to the researcher's opinion and perspective, even if well-informed and well-intended, of what constitutes an appropriate adjustment for jury service filters. If there is to be uniformity in challenges to jury panels, it is imperative that courts, which have given guidance on jury panel and venire composition, establish proper standards and methodology for benchmarking a fair cross-section based upon these filters.

I. History and Description of I-Jury Process

The State of Texas has three levels of trial court:

- District Court: General jurisdiction to hear all civil matters, most family law jurisdiction, and felony jurisdiction.
- County Court: Limited jurisdiction in civil and family matters and Class A and Class B misdemeanors that carry a potential jail sentence.

- Justice and Municipal Court: Limited jurisdiction including small claims, evictions, truancy, Class C misdemeanors that are punishable by fine only, and in the case of Municipal Courts, exclusive jurisdiction over any civil and criminal ordinances exacted by the governing body of the municipality.

The law governing juries is found in the Texas Government Code and applies to all levels of trial court. Generally, the code provides:

Summary of Law Governing Texas Juries	
Jury Wheel	The list from which names are selected for a jury summons must be comprised of a combined list of the jurisdiction's registered voters plus persons within the jurisdiction who has a driver's license or identification card issued by the Texas Department of Public Safety [65]
Updates to Jury Wheel	New names cannot be added to the Jury Wheel until the list is depleted or recreated but addresses on existing names can be updated during the time the list is in use [66]
Qualifications	A person is disqualified to serve as a petit juror unless the person: (1) is at least 18 years of age; (2) is a citizen of this state and of the county in which the person is to serve as a juror; (3) is qualified under the constitution and laws to vote in the county in which the person is to serve as a juror; (4) is of sound mind and good moral character; (5) is able to read and write; (6) has not served as a petit juror for six days during the preceding three months in the county court or during the preceding six months in the district court; (7) has not been convicted of misdemeanor theft or a felony; and (8) is not under indictment or other legal accusation for misdemeanor theft or a felony. [67]
Legal exemptions	A person qualified to serve as a petit juror may establish an exemption from jury service if the person: (1) is over 70 years of age; (2) has legal custody of a child younger than 10 years of age and the person's service on the jury requires leaving the child without adequate supervision; (3) is a student of a public or private secondary school; (4) is a person enrolled and in actual attendance at an institution of higher

[65] Texas Gov. Code Ch. 62.001(a)

[66] Texas Gov. Code Ch. 62.001 (i)

[67] Texas Gov. Code Ch. 62.102

Legal exemptions	education; (5) is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government; (6) is summoned for service in a county with a population of at least 200,000, unless that county uses a jury plan under Section 62.011 and the period authorized under Section 62.011(b)(5) exceeds two years, and the person has served as a petit juror in the county during the 24-month period preceding the date the person is to appear for jury service; (7) is the primary caretaker of a person who is an invalid unable to care for himself; (8) except as provided by Subsection (b), is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service; or (9) is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence. Subsection (a)(8) does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror. [68]
Judicial excuse	A judge may consider reasonable excuses in additional to the statutory qualifications and exemptions and release the juror from service. However, excuse requests on economic grounds must be presented with the parties to the case present and require the concurrence of the judge and all parties to be granted. [69]

Table 2

Chapter 62 of the Government Code specifies in detail how the names in the jury wheel are to be stored, selected, and summonsed but allows individual jurisdictions to develop their own manner of storage, selection, and procedure through the adoption of jury plans. [70]

For over twenty-five years, jury management in Travis County and the Municipal Courts of the City of Austin has operated under an adopted jury plan, which includes the one day-one trial method of jury administration. The method provides for jurors to be summonsed to report on a particular day, during which they are screened for

[68] Texas Gov. Code Ch. 62.106

[69] Texas Gov. Code Ch. 62. 110

[70] Texas Gov. Code Ch. 62. 011

qualifications and excused according to statutory exemptions or for personal hardship. Each are then provided an orientation to jury service, and then assigned to a particular court for jury selection, a process known as *voir dire*. Jurors who are not selected during *voir dire* are generally released from service; under rare circumstances, such as a last-minute need for additional jurors in a different court, they may be reassigned to another court for another *voir dire*.

Until 1994, the Travis County District Courts, Travis County Courts, and City of Austin Municipal Court administered juries separately under separate plans; the only arrangement for multiple jurisdiction jury administration was at the County level.

In an effort to streamline and align jury processes, the District Clerk of Travis County assumed jury administration responsibility for all Travis County courts in 1994. At that time, the location of the jury impaneling was moved to a larger facility away from the courthouse that allowed (1) more jurors to be accommodated at one time, and (2) freed up use of the courtroom, which had previously been used 3 days a month for jury assembly.

About a year after the consolidation of jury administration for Travis County courts was finalized, an Interlocal Agreement between Travis County and the City of Austin was negotiated, which allowed the District Clerk to also assume jury administration for the Austin Municipal Court.

The consolidation of jury administration offered several advantages:

(1) a single jury wheel would serve all jurisdictions, eliminating instances where different jurisdictions would send a jury summons to the same juror for the same timeframe;

(2) a single administrative office handled juror inquiries for all jurisdictions, simplifying the process for jurors who often failed to distinguish among jurisdictions upon receiving a summons;

(3) administrative costs could be shared proportionately among the jurisdictions, offering cost savings; and

(4) The City of Austin Municipal Court was able to eliminate its automated jury management system entirely rather than incur the cost of an anticipated replacement.

However, jury administration among multiple jurisdictions presents risk for maintaining demographic balance of jury panels among those jurisdictions if proper procedures are not put in place, especially if the demographic make-ups of the respective jurisdictions are dissimilar due to differing geographic boundaries. The District Clerk adopted those procedures, a recommended best practice in jury management to ensure that jury requests from the courts of Travis County, especially the general jurisdiction courts, were filled prior to filling requests from limited jurisdiction courts of Austin. [71]

From 1996 through 2001, the District Clerk instituted other changes to its jury administration, including:

(1) ongoing jury wheel updates based on data obtained from the U.S. Postal Service, driver's license renewals, voter registration renewals, felony convictions, and death records, and

(2) providing a method by which a juror could coordinate actual days of jury service with personal commitments in order to avoid conflicts that create personal hardship or require the juror to present a special excuse request at *voir dire*.

[71] Munsterman, G. Thomas and Sherry Carabello Dorfman, National Center for State Courts Jury Management Seminar, (December, 2003, San Diego)

In 1998, the District Clerk began exploration of the feasibility of offering the Internet as an option for jury impaneling and court assignment; Travis County was assumed to be a good location for a pilot project for Internet impaneling and assignment since the Austin metro area consistently appears near the top of lists for high levels of Internet access and use [72] most recently topping the list compiled by Forrester Research. [73] Among the criteria for such a system (named I-Jury) were:

(1) trial judges must concur in the initiation of the I-Jury pilot,

(2) the system was optional; jurors could elect to use I-Jury or attend impaneling in person;

(3) summonses would continue to be delivered via first-class mail;

(4) all accommodations offered during the impaneling session, such a schedule coordination, would be available through I-Jury;

(5) the website would provide all the information presented during the juror orientation portion of the impaneling session;

(6) an outreach program to provide Internet access through local churches and libraries would be in place at start-up;

(7) because of the possibility of demographic differences among those jurors who elect to use I-Jury and those who elect to attend impaneling personally, the ratio of I-Jury

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[72] Evans, Blanche, "The Most Wired Cities," *Realty Times*, http://realtytimes.com/ Accessed December 27, 2006.

[73] Charron, Chris, "The Top Ten Most Wired American Cities," *Forrester Research,* http://www.forrester.com, July 5, 2005.

and personal impaneling use would be tracked, so each panel sent to a court could reflect that ratio as to its composition of I-Jury users and personal impaneling attendees; [74] and

(8) the amount spent on the technology must be kept low until such time as the I-Jury adoption rate reached a level that justified more robust, and costlier, system programming.

I-Jury was first made available to jurors as a pilot program on March 5, 2002. At the time it was implemented, only the impaneling portion of the process was completed on the Internet; actual trial assignments or excuse notifications (in the event a juror was disqualified or exempt from service) were communicated to jurors through a reply email or through first class mail if a juror did not provide a valid e-mail address.

All jurors, whether impaneling through I-Jury or in person, are provided the opportunity to list important schedule conflicts on the impaneling form. Those conflicts are considered when selecting a service period for each juror; however, each juror is required to have at least one full week free of schedule conflicts to be assigned. Jurors who fail to meet this criterion are postponed for three months and instructed as to the need to clear their respective schedules when returning in three months to repeat impaneling.

The level of I-Jury use by those jurors who were qualified and assigned to a court panel started at approximately 70% and has grown to a level of around 87% as of 2006.

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[74] This method of assignment is a deviation from Court Performance Standard Measurement 3.2.2 on randomness; however, it is a necessary deviation. Jurors who elect to use I-Jury may do so at any time during a three week timeframe starting when the summons is delivered and ending on the deadline specified on the summons. These jurors are being assigned to panels continuously during this timeframe. Jurors who elect to attend the impaneling session do so at a scheduled date and are all assigned on that date. Data discussed in Section IV-C. indicate significant percentage differences among cognizable groups for jurors who elect to use the Internet and those who elect to attend the impaneling session. Therefore, randomly assigning jurors to available trials as they complete impaneling would likely result in significant demographic variations among panels.

Therefore, at present, jury panels assigned to courts are presently comprised of 85% - 90% I-Jury users and 10%-15% personal impaneling attendees.

Just as the Travis County/City of Austin consolidated jury administration process with its mix of different jurisdictions and geographic boundaries poses a risk of demographic imbalance if procedures that safeguard against this result are not properly planned and implemented, I-Jury increases the risk by mixing jurors from the two impaneling processes into court panels. Whether or not I-Jury has no impact, a detrimental impact, or a positive impact on the demographic composition of jury panels in Travis County courts can only be determined by a thorough analysis of the resulting jury venire to determine the degree of compliance with Court Performance Standard 3.2. The results of such an analysis should prove useful in answering these questions, identifying methods that improve compliance, and instilling confidence in the jury administration process among the Travis County Bar and the community as a whole.

III. METHODOLOGY

A. Questions to be Researched

To perform this analysis, data will be compiled to answer four basic questions:

1. What is the fair cross-section benchmark profile for the Travis County jury venire (all jurors available for panel assignment)?
2. How closely do the actual demographic profiles of the Travis County jury venire formed prior to and under I-Jury match the benchmark?
3. Has I-Jury had a detrimental, a beneficial, or no impact on representativeness?
4. Are there any factors outside of I-Jury that may be impacting the demographic profile of the jury venire?

B. Fair Cross-Section Benchmark

The fair cross-section benchmark is the expected demographic profile of juries, based upon the cognizable groups of race/ethnicity and gender, for the population that resides within the court's jurisdiction. This benchmark is not calculated solely on the jurisdiction's raw census data; some adjustments to each cognizable group's population are needed to factor in *filters* that impede jury service. Filters include statutory qualifications and exemptions (See Table 2) plus practical considerations such as personal hardship, incorrect mailing addresses, extended periods of absence from legal residence, and failure to appear on the source lists for the Jury Wheel.

The adjustments made for filters must take into consideration correlation, or the likelihood that a particular combination of filters may occur together in numbers that deviate from what would be expected from random distribution within the population. For example, there is evidence of a high positive correlation between the disqualifying filters of illiteracy and felony conviction; the Center on Training and Education for Employment of Ohio State University states, "Newman et al. (1993) suggest that, by a 12th-grade standard, 75% of inmates are illiterate and that prisoners have a higher proportion of learning disabilities than the general population." [75] Adjusting separately for any cognizable group's incidence of illiteracy and felony conviction would result in over-adjustment, as many of same individuals are involved.

Adjustments for filters were made to the extent any correlation could be reliably quantified from the census or other data available. If a correlation between two filters

[75] Kerka, Sandra, "Prison Literacy Programs," Center for Training and Education for Employment, Ohio State University website, http://www.cete.org/default.asp, ERIC Digest No. 159, 1995

could not be quantified, then one of the filters was eliminated from the adjustment. More information as to census adjustments is provided in Section IV-E. Data Limitations and Conflicts.

Once all filter adjustments based on the census data were completed, a table was created based on the four cognizable groups in Travis County – White, Black, Hispanic, and Asian – which showed their proportions in relation to each other. This table represents the fair cross-section benchmark for the Travis County jury venire.

The fair cross-section benchmark used in this research was established with the assistance of Mary Rose, Ph.D., Assistant Professor of Sociology and Law at the University of Texas at Austin. It was based upon online census data published by the U.S. Census Bureau from the 2000 Decennial Census and the 2005 American Community Survey. [76]

Because the census data lists Hispanic origin as a subset within each racial group, the first step in establishing the benchmark population was to calculate the number of Hispanics across all racial groups. This was necessary as Hispanics are considered a cognizable group prevalent within Travis County.

The next step was to calculate the number of non-Hispanics within each racial group. The census data contains specific figures for non-Hispanic whites and other race; however, this level of detail was not available for blacks or Asians. As a result, Hispanics were assumed unlikely to report black or Asian as their race. This assumption is supported by the fact that 98.8% of persons selecting "Other" race were of Hispanic origin.

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[76] Census data published at: http://factfinder.census.gov/home/saff/main.html?_lang=en

Further adjustment for felony conviction was made based on data supplied by the Texas Department of Criminal Justice. [77]

C. Demographic Profile of Travis County Venire Under I-Jury

Juror questionnaires that include questions on "Race" and "Sex" were the source for establishing the current jury venire demographic profile. Jurors were allowed to respond to the "Race" question in any manner they elected; the questionnaire did not present racial categories from which jurors would choose. As a result, there were variations in responses requiring interpretation.

100% of the questionnaires from August – October, 2006 were reviewed to extract the race/sex data; over 7000 questionnaires comprised this data set, which was selected since it reflects the most recent jurors serving in Travis County.

A sample of over 2300 questionnaires from the January – February, 2006 jury panels were also reviewed. This data set was included as a seasonal control in the event there was a difference in juror summons response rate or postponements due to the start of the school year; this time period also provided more accurate comparison data for the pre I-Jury data set described below.

To compile data from the juror questionnaires, reviewers, working either singly or in pairs, examined each questionnaire to determine the juror's response to the questions on race and gender or then recorded the response for each questionnaire on an Excel spreadsheet. Because juror questionnaire responses are confidential but juror numbers

[77] Letter from Alicia Frezia-King, Open Records Act Coordinator, TDCJ - Executive Services, (March 7, 2007). The felony adjustment performed did not include felon citizenship status. Data from the Texas Department of Criminal Justice (TDCJ)) is based on inmates self-reporting citizenship status. Because deportation proceedings can stem from felony convictions, the author could not assume that self-reporting would produce accurate data. If the TDCJ data is accurate, the fair cross-section benchmark used in this research overstates the number of Whites by .1% and understates the number of Hispanics by .1%.

and names are not, the juror number and name were not tracked. The method by which each juror elected to impanel, either through I-Jury or by attending the scheduled impaneling session in person was also tracked; the reviewer could make this determination because the I-Jury questionnaires were printed from the computer system and the jurors who attended impaneling in person completed the questionnaires by hand.

The Excel spreadsheets used to record the questionnaire responses were saved redundantly using both a computer internal hard drive and an external storage device. There were no incidents where the two files representing the same questionnaire sets were not kept in sync.

As previously stated, the review process required some level of interpretation of juror responses, especially as to race, because the questionnaire forms do not contain selections; responses are freeform. Therefore, the reviewers had to agree upon standard terminology for recording responses and establish response equivalencies. For example, the responses of Anglo, Caucasian, various European ancestries, and White were recorded as "White," and responses of Mexican, Mexican-American, Chicano, Latino, and Hispanic were recorded as "Hispanic."

The impact of this interpretative process, along with the freeform response format of the jurors, is discussed in detail in Section IV-E. Data Limitations and Conflicts.

The use of Excel spreadsheets for data capture facilitated the creation of tables that calculated juror demographics according to race/ethnicity, gender, and chosen method of impaneling.

D. Control Demographic Profile (Pre-I-Jury)

To the extent that the actual demographic profile of the Travis County jury venire does not match the benchmark based on census data, the cause cannot be presumptively attributed to the I-Jury process. To help make that determination, and to ascertain the impact of I-Jury on the composition of the venire, a demographic profile of the jury venire prior to the implementation of I-Jury was developed.

This profile was based on a review of all juror questionnaires for panels formed in January and February, 2002. This time period was the only timeframe prior to I-Jury where the race question appears on the questionnaire. [78]

The method for developing the 2002 jury venire demographic profile was generally the same as used to develop the two 2006 profiles. The sole exception was the elimination of recording the method of impaneling since I-Jury was not an option; all jurors in January and February, 2002 attended impaneling sessions personally.

The 2002 jury venire demographic profile served two purposes: (1) to serve as an indication of whether factors other than I-Jury contribute to any variation between the 2006 jury venire profile and the fair cross-section benchmark; and (2) to gauge whether there has been an improvement in meeting the fair cross-section standard since I-Jury was implemented.

[78] Texas Government Code Section 63.0132 (c) (1) requiring race as a part of the juror questionnaire was effective September 1, 1999, however the Office of Court Administration for the State of Texas did not promulgate the standard juror summons for use by the courts until the end of 2001 with an effective date of January 1, 2002.

E. Adjusting the Fair Cross-Section Target Using Other Data Sources

The information available directly through the Census Bureau's website did not contain sufficient detail to adjust for most of the jury service filters.

Using data from the Travis County Community Supervision and Corrections Department and from published reports of the Texas Department of Criminal Justice, the number of non-institutionalized persons with felony convictions living in Travis County was calculated. Using the same data sources, this number was allocated among the four cognizable groups to adjust the census data. The result was a target fair cross-section benchmark that adjusted for age, citizenship, institutionalization, and felony conviction. There was insufficient demographic data on the other filters to allow them to be incorporated into the target benchmark.

To help identify the level of impact of insufficient demographic data for the other filters, a profile of the various resolutions of jury summonses was created using the data from the Travis County jury management system. This profile, based upon all summonses sent in 2005 that did not result in a jury panel assignment, was then used to identify the most common reasons why a summonsed juror did not receive a jury panel assignment.

The profile, represented by the following graph, illustrates how undelivered mail represents 41.5% of all filters from jury service: [79]

[79] The four main categories of juror filters comprise around 55% of all summonses sent; approximately 45% of summonses result in an actual panel assignment.

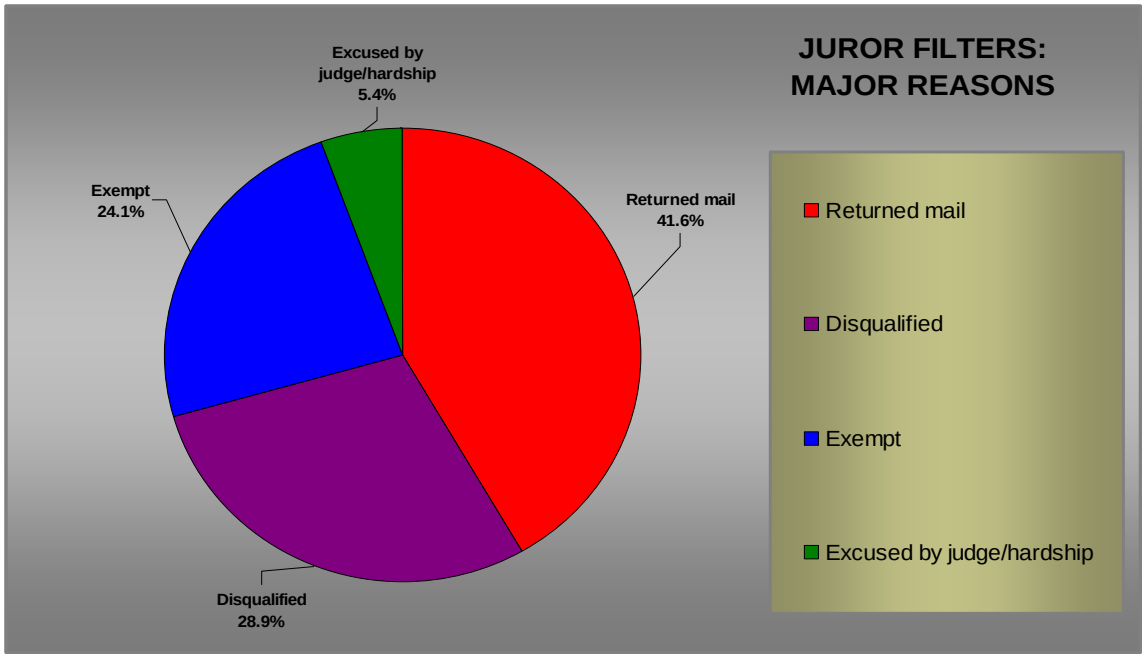

Chart 1

The next step was to analyze the undelivered summonses. To do this, the list of names of jurors whose summonsed was returned by the Post Office during 2004 and 2005 was extracted from the Jury Wheel database. While the Jury Wheel does not contain race and gender information from which to develop a complete demographic profile for the undelivered summonses, the names were useful in identifying those of likely Hispanic heritage. The entire list of over 60,000 names was alphabetized and then reviewed so that the Hispanic names could be identified. [80]

After the review was completed, the percentage of Hispanic names on the list was calculated and then compared to the census-based fair cross-section percentage of Hispanics to determine if mobility (a change of address after the juror's name was placed in the Jury Wheel source list) had a disproportionate impact on Hispanics. The

[80] Most of the Hispanic names were commonly known (Martinez, Garcia, Hernandez, Rodriguez, etc.). Other were identified through common Hispanic surname letter combinations (Tamez, Yanez, Santos, Cavazos).

comparison indicated that, while Hispanics comprise 21.5% of the Travis County jury-available population (18 and 69 years old, U.S. citizen, and not institutionalized), they comprise 26% of the summonses that go undelivered – a net difference (absolute disparity) of four and one-half percentage points and a 21% increase (comparative disparity) over their proportion within the jury-available population.

No adjustment was made to the fair cross-section target benchmark for undelivered summonses, but an alternate analysis for the purpose of fair cross-section representation was performed using this information. Calculations were performed using the jury yield formula developed by the National Center for State Courts for its Jury Management Seminar to project the number of Hispanics that would have been included in the jury venire if the disproportional impact of undelivered summonses did not exist. This projection was added to the number of actual Hispanics within the venire, and new percentage calculations were performed. The purpose of this alternate analysis was to gauge the impact of the higher incidence of Hispanic mobility on the venire.

IV. FINDINGS

The following findings directly answer the questions previously posed at the beginning of Section III. Methodology:

1. Subsection A portrays the community picture as to the racial/ethnic and gender composition.
2. The jury venire demographics from 2002 and 2006 are in Subsections B and C, where a determination as to fair cross-section compliance is made.
3. The question of the impact of I-Jury is discussed in Subsection D, where all the data discussed in Subsections A-C are compared.

4. Finally, Subsection E, an extensive discussion of data limitations and conflicts, identifies some of the challenges in performing these measurements, which form the basis for much of Section V. Conclusions and Recommendations.

A. Fair Cross-Section Demographics

With the assistance of Dr. Mary Rose, Assistant Profession of Sociology and Law at the University of Texas at Austin, a basic profile derived from census data was formulated. The basic profile adjusted each racial/ethnic and gender count for the following filters:

1. Age: the profile was restricted to persons between the ages of 18 and 69 (tied to both a qualification and exemption).
2. Citizenship: persons who were not U.S. citizens were not included (tied to a qualification).
3. Institutionalization: persons living in an institutional group facility were not included. This would encompass those who were incarcerated in prison or jail or who were in an institutional health care facility (tied to qualification and typically granted hardship excuse requests).

In addition, population groups (1) who were not Hispanic and (2) whose numbers were not available from the census due to the small size of the sample (Native American and Pacific Islander), or (3) whose numbers were negligible (Mixed Race, and Other-Non Hispanic) were removed from the profile in order to obtain a clear demographic picture of the remaining cognizable groups. The result is as follows:

Fair Cross-Section Using Census Data		
RACE/ETHNICITY	NUMBER	%
White	326804	66.2%
Black	45353	9.2%
Hispanic	106164	21.5%
Asian	15298	3.1%
TOTAL JURY POPULATION	493619	

Table 3

An additional adjustment for felony conviction was made to finalize the fair cross-section benchmark; the adjustment was made by subtracting the projected number of felons for each race from its respective population figure and then recalculating the percentages:

Fair cross-section-cognizable groups [81]				
Adjusted for felony conviction				
RACE	#	FELONS	ADJ #	%
White	326804	11874	314930	67.9%
Black	45353	9202	36151	7.8%
Hispanic	106164	8499	97665	21.1%
Asian	15298	298	15000	3.2%
TOTAL JURY-ELIGIBLE	493619	29873	463746	

Table 4

The percentages are the key numbers as they represent the target mix of cognizable racial/ethnic groups within the jury venire; these percentages can be used to evaluate the jury venire by calculating absolute disparity, absolute impact, and comparative disparity as described in Section II-D. Methods for Measuring Under-Representation.

B. Jury Venire Demographics Prior to I-Jury

I-Jury was implemented in March, 2002, giving jurors the option of completing all preliminary processes, qualification and exemption screening, schedule coordination,

[81] See Note 77, supra.

questionnaire completion, orientation, and court assignment on the Internet. The option to attend an impaneling session, where these processes are completed, was preserved for those jurors who preferred that method.

Measuring the demographic composition of the jury venire prior to 2002 was problematic as the race/ethnicity of jurors was not available. The question was simply not asked during impaneling and *voir dire*, and no data on juror race/ethnicity was received from the providers of the source lists for the Jury Wheel.

However, effective January 2002, the Texas Legislature authorized a standard juror questionnaire for all courts in the State and required that race be one of the questions included. Therefore, the jury panels formed in January and February 2002 represent the only opportunity to measure the demographics of the jury venire prior to the inception of I-Jury.

The table below represents the results of the review of the January and February 2002 questionnaires and includes the following:

1. The actual number and percentage of jurors within each of the seven measured ethnicities, including those that are not part of the cognizable groups that reside within Travis County.

2. A recalculation of the percentages by eliminating the ethnicities of negligible numbers; this expresses the mix of jurors within the cognizable groups. Note that the group of jurors who did not respond was high enough to be included in the calculations, necessitating additional data analysis.

3. Calculation of absolute disparity:

$$\text{Cognizable group \%} - \text{Target \%} = \text{Absolute disparity \%}$$

4. Calculation of absolute impact: [82]

Absolute disparity % x Total cognizable jurors = # of jurors over/under

5. Calculation of comparative disparity:

Absolute disparity % ÷ Cognizable group target % = Comparative disparity %

JURY PANELS JAN-FEB 2002 ASSIGNED [83] Racial/Ethnic Profile and Evaluation							
Race/Ethnicity	# Jurors	Venire %	Cogniz. Group %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	86	1.39%	1.60%	3.20%	-1.60%	-85	-49.95%
BLACK	339	5.47%	6.31%	7.80%	-1.49%	-80	-19.07%
DID NOT ANSWER	824	13.30%					
HISPANIC	661	10.67%	13.58%	21.10%	-7.52%	-404	-35.66%
MIXED	0	0.00%					
NATIVE AMERICAN	2	0.03%					
OTHER	68	1.10%					
WHITE	4216	68.04%	78.51%	67.90%	10.61%	570	15.63%
Grand Total	6196						
Total cognizable	**5370**						

Table 5

The data for the January – February, 2002 juror venire contains one significant problem: the number of jurors who did not answer the question on race, comprising the second highest percentage on the table and distorting the calculations, even for calculations based on cognizable groups. To resolve this problem, these jurors were proportionately allocated among racial and ethnic groups with the following result:

[82] Hannaford, Paula, memorandum to Tom Munsterman (June 23, 1997): No court has adopted the absolute impact method as a measure of jury representation. This measure is included to demonstrate disparity in terms of actual number of jurors rather than as a percentage, which for some may be a more concrete way of understanding the issue. The implications of the use of absolute impact have been previously discussed along with its limitations in making a determination of whether a jury panel represents a fair cross-section of the community.

[83] Due to the high correlation between selection of "Other" race and being of Hispanic origin, the cognizable group calculations include the "Other" with Hispanic. This methodology will be repeated for all subsequent tables.

JURY PANELS JAN-FEB 2002 ASSIGNED ADJUSTED FOR "DID NOT ANSWER"							
(assumes proportional distribution among *all* racial/ethnic groups)							
Racial/Ethnic Profile							
Ethnicity	# Jurors	Venire %	Cogniz group %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	99	1.60%	1.60%	3.20%	-1.60%	-99	-49.95%
BLACK	391	6.31%	6.31%	7.80%	-1.49%	-92	-19.07%
DID NOT ANSWER		0.00%					
HISPANIC	762	12.31%	13.58%	21.10%	-7.52%	-466	-35.66%
MIXED	0	0.00%					
NATIVE AMERICAN	2	0.04%					
OTHER	78	1.27%					
WHITE	4863	78.48%	78.51%	67.90%	10.61%	657	15.63%
Grand Total	6196						
Total cognizable	**6194**						

Table 6

Using the threshold measurements of 7.7% for absolute disparity [84] and 50% for comparative disparity, [85] analysis demonstrates the demographic composition of the 2002 jury panels fails the absolute disparity test for fair cross-section representation as to Whites (assuming over-representation is an issue). The comparative disparity measurement for Asians and Hispanics indicate significant under-representation in the jury venire, approaching the 50% threshold.

The gender analysis was simple since the number of persons who failed to respond to the question was inconsequential. The following depicts the gender of the jury venire along with the calculations of absolute disparity, absolute impact, and comparative disparity.

[84] See Note 22, supra, p. #7-26.

[85] See Note 82, supra, p. 1.

JURY PANELS JAN-FEB 2002 ASSIGNED Gender Profile and Evaluation						
Gender	# Jurors	Venire %	Target %	Absolute disparity	Absolute impact	Comparative disparity
FEMALE	2968	48.1%	51.1%	-2.97%	-182	-5.8%
MALE	3198	51.9%	48.9%	2.97%	183	6.1%
Grand Total	6166					

Table 7

When working with only two variants within a cognizable group, notice how the absolute disparity and impact measurements relate: the numbers are the same except that one is negative and one is positive. In this instance, the fair cross-section representation of jury panels as to gender is not perfect but still reasonable, especially considering that no adjustment was made for the exemption of caring for a child under the age of ten, which is almost exclusively claimed by females.

C. Jury Venire Demographics Under I-Jury Process

I-Jury, the program that allows summonsed jurors the option of using the Internet to complete the impaneling process, was implemented March, 2002. Although half the jurors assigned to jury panels were expected to use the program, initial use rate was an exceptionally high seventy percent and is presently approaching ninety percent.

The program is very popular and well known having earned State and National awards. Detractors, particularly among the criminal defense bar, believed I-Jury would result in more affluent and technologically savvy juries. They also feared that minority representation would decrease as few minorities had Internet access. Statistics gathered for this study indicate the impact of I-Jury on minority representation was not as significant as assumed. The current I-Jury use rate is reflected in the following tables:

Impaneling Choice by Race/Ethnicity					
		Jan-Feb 2006		Aug-Oct 2006	
Race/Ethnicity	**Choice**	**Jurors**	**%**	**Jurors**	**%**
ASIAN	INTERNET	48	91%	164	90%
	SESSION	5	9%	19	10%
BLACK	INTERNET	122	68%	362	74%
	SESSION	58	32%	126	26%
DID NOT ANSWER	INTERNET	24	67%	84	73%
	SESSION	12	33%	31	27%
HISPANIC	INTERNET	271	75%	828	77%
	SESSION	90	25%	250	23%
MIXED	INTERNET	12	92%	35	80%
	SESSION	1	8%	9	20%
NATIVE AMERICAN	INTERNET	6	75%	24	89%
	SESSION	2	25%	3	11%
OTHER	INTERNET	4	100%	25	100%
WHITE	INTERNET	1428	86%	4581	89%
	SESSION	225	14%	566	11%
TOTAL SELECTING INTERNET		**1915**	**83%**	**6103**	**86%**
TOTAL SELECTING SESSION		**393**	**17%**	**1004**	**14%**

Table 8

While the percentages of Blacks and Hispanics electing to use I-Jury is below that of Asians and Whites, use of I-Jury is high among all racial groups, with blacks favoring it for impaneling by 3:1 and Hispanics by 4:1. Overall, jurors prefer to use the Internet for impaneling by 7:1.

A more relevant measurement, however, is how well the jury venire under I-Jury meets Court Performance Standard 3.2 on fair cross-section and community representation. The tables below represents the results of the review of the January – February 2006 and August – October 2006 questionnaires. The same analytical methodology used for the 2002 data was used for the 2006 data (see Section IV-B. Jury Venire Demographics Prior to I-Jury for a description of methodology).

JURY PANELS JAN-FEB 2006 SAMPLE OF ASSIGNED Racial/Ethnic Profile							
Race/Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	53	2.30%	2.35%	3.20%	-0.85%	-19	-26.56%
BLACK	180	7.80%	8.00%	7.80%	0.20%	5	2.56%
DID NOT ANSWER	36	1.56%					
HISPANIC	361	15.64%	16.22%	21.10%	-4.88%	-110	-23.13%
MIXED	13	0.56%					
NATIVE AMERICAN	8	0.35%					
OTHER	4	0.17%					
WHITE	1653	71.62%	73.43%	67.90%	5.53%	125	8.14%
Grand Total	2308						
Total cognizable	2251						

Table 9

JURY PANELS AUG-OCT 2006 ASSIGNED Racial/Ethnic Profile							
Race/Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	183	2.57%	2.64%	3.20%	-0.56%	-39	-17.37%
BLACK	488	6.87%	7.05%	7.80%	-0.75%	-52	-9.60%
DID NOT ANSWER	115	1.62%					
HISPANIC	1078	15.17%	15.94%	21.10%	-5.16%	-357	-24.47%
MIXED	44	0.62%					
NATIVE AMERICAN	27	0.38%					
OTHER	25	0.35%					
WHITE	5147	72.42%	74.37%	67.90%	6.47%	448	9.53%
Grand Total	7107						
Total cognizable	6921						

Table 10

JURY PANELS JAN-FEB, AUG-OCT 2006 COMBINED Gender Profile						
Gender	Jurors	Venire %	Target %	Absolute disparity	Absolute impact	Comparative disparity
FEMALE	4600	48.8%	51.1%	-2.3%	-217	-4.8%
MALE	4815	51.2%	48.9%	2.3%	217	5.0%
Grand Total	9415					

Table 11

As was the case with the 2002 data, the numbers for absolute disparity and absolute impact found in Table 11 mirror each other in the positive-negative sense. Also,

while the number of females is below the target, the comparative disparity is still small, and the difference could possibility be attributed to the exemption for child care.

While the numbers indicate reasonable representation for Blacks and Whites, the number of Hispanics on the panels is low, though within court standards. Part of this may be attributed to lack of adjustment for literacy and mobility in the Fair Cross-Section Benchmark; these were filters that were identified as having high probability of disproportional impact on certain racial/ethnic groups (See Section IV-E. Data Limitations and Conflicts).

That same section displays a pie chart indicating the impact of each type of juror excusal. Literacy, which comprises only four percent of all juror excusals, cannot fully explain the low number of Hispanics within the jury venire; however, Mobility, which represents 43% of all excusals, may have a substantial disproportional impact. Mobility significantly eclipses all other juror excusals even though Travis County performs address updates from the Postal Service's National Change of Address database before mailing summonses.

To determine whether Mobility factors into the demographic profile of the Travis County jury venire, an analysis of the juror names whose summonses were returned undelivered was performed; this analysis identified the number of Hispanic names and calculated what percentage of returned summonses were sent to Hispanics. While Hispanics comprise only 21.5% of the fair cross-section benchmark (unadjusted for felons), the review showed that 26% of all returned summonses were issued to a person with a Hispanic name, a comparative disparity factor of +29.11%. The method used to adjust this disparity factor is discussed in Appendix B.

The following tables hypothetically represent the demographics of the Travis County jury venire if there was no disproportional impact of Mobility on Hispanics; in preparing these tables, the number of Hispanic jurors was adjusted upward by 29.11% to reflect the assumption that, if Mobility did not have a disproportional impact, the number of Hispanic jurors within the jury venire would increase by that percentage. After the adjustment was made, the percentages were recalculated:

JURY PANELS JAN-FEB 2006 ADJUSTED FOR DISPROPORTIONAL IMPACT OF MOBILITY ON HISPANICS Racial/Ethnic Profile							
Race/Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	53	2.20%	2.25%	3.20%	-0.95%	-22	-29.70%
BLACK	180	7.46%	7.64%	7.80%	-0.16%	-4	-2.05%
DID NOT ANSWER	36	1.49%					
HISPANIC	466	19.31%	19.95%	21.10%	-1.15%	-27	-5.44%
MIXED	13	0.54%					
NATIVE AMERICAN	8	0.33%					
OTHER	4	0.17%					
WHITE	1653	68.50%	70.16%	67.90%	2.26%	53	3.33%
Grand Total	2413						
Total cognizable	2356						

Table 12

JURY PANELS AUG-OCT 2006 ADJUSTED FOR DISPROPORTIONAL IMPACT OF MOBILITY ON HISPANICS Racial/Ethnic Profile							
Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	183	2.47%	2.53%	3.20%	-0.67%	-49	-20.96%
BLACK	488	6.58%	6.75%	7.80%	-1.05%	-76	-13.52%
DID NOT ANSWER	115	1.55%					
HISPANIC	1392	18.76%	19.58%	21.10%	-1.52%	-110	-7.19%
MIXED	44	0.69%					
NATIVE AMERICAN	27	0.36%					
OTHER	25	0.34%					
WHITE	5147	69.36%	71.14%	67.90%	3.24%	235	4.77%
Grand Total	7421						
Total cognizable	7235						

Table 13

Comparison between Tables 9 and 12 and between Tables 10 and 13 indicates that Mobility can have a profound impact on the jury venire demographics. Because of data limitations, the adjustments in this study were limited to Hispanics. More detailed data should be obtained so an analysis can be performed for all racial and ethnic groups to fully determine the impact of mobility on the composition of the jury venire.

Whether this is an appropriate filter to consider in establishing a fair cross-section benchmark is a matter for the courts to determine; however, this exercise does provide useful insight for jury managers on how to strive toward more representative jury venires.

This analysis looks at the profile of the jury venire with respect to the fair cross-section benchmark; to determine any impact I-Jury is having on the demographics of the jury venire, a comparison to the January – February, 2002 data set is required.

D. Jury Venire Demographics Comparison: Before and After I-Jury

The following table compares the demographics of jury venires against the fair cross-section benchmark for each of three data sets:

1. A control data set from January – February, 2002 (adjusted for the "Did Not Answer" responses with the assumption that the non-responders were distributed proportionally among all racial/ethnic groups).
2. A random sample data set from January – February, 2006, which by matching the months of the 2002 data set serves as a control for any seasonal fluctuations in juror response and postponement requests,
3. A full data set from August – October, 2006, representing the most recent jury venire demographics.

The table displays:

- nThe target percentage for fair cross-section representation,
- The actual percentages of each venire,
- the cognizable groups relative to each other,
- absolute disparity, and
- comparative disparity.

Absolute impact, which was calculated for each data set and displayed in previous tables, was eliminated from this comparison since it is expressed in terms of jurors and not percentages.

COMPARISON OF JURY VENIRES BEFORE AND AFTER I-JURY IMPLEMENTATION
NO ADJUSTMENT FOR MOBILITY ON HISPANICS

Race/ Ethnicity	Target %	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity
		Jan-Feb 2002				Jan-Feb 2006				Aug-Oct 2006			
ASIAN	3.2%	1.4%	1.6%	-1.6%	-50.0%	2.3%	2.4%	-0.8%	-26.4%	2.6%	2.6%	**-0.6%**	-17.4%
BLACK	7.8%	5.5%	6.3%	-1.5%	-19.1%	7.8%	8.0%	**0.2%**	2.5%	6.9%	7.1%	-0.7%	-9.6%
DID NOT ANS		13.3%				1.6%				1.6%			
HISP	21.1%	10.7%	13.6%	-7.5%	-35.7%	15.6%	16.2%	**-4.9%**	-23.2%	15.2%	15.9%	-5.2%	-24.5%
MIXED		0.0%				0.6%				0.6%			
NATIVE AMER.		0.0%				0.3%				0.4%			
OTHER		1.1%				0.2%				0.4%			
WHITE	67.9%	68.0%	78.5%	10.6%	15.6%	71.6%	73.4%	**5.5%**	8.2%	72.4%	74.4%	6.5%	9.5%

Table 14

When evaluating Absolute and Comparative Disparity for purposes of meeting the fair cross-section benchmark, the lower the percentage, the better the outcome. For each racial/ethnic group, the **bold percentage** represents the best measurement for Absolute Disparity and the highlighted percentage represents the best measurement for Comparative Disparity.

In this comparison, the demographic profile of the jury venire under the I-Jury process more closely matches the benchmark than the profile of jurors prior to

implementation of I-Jury. While this study could not determine whether I-Jury was the cause of this improvement, the scenario does demonstrate that I-Jury has not had a detrimental impact on jury venire demographics.

The percentage of Hispanics in the jury venire both prior to and four years after implementation of I-Jury are significantly different from the census-based benchmark. However, when the percentages are adjusted in a hypothetical exercise to reflect a disproportionate impact of mobility on summonses sent to Hispanic jurors, the percentage of Hispanics in the jury venire more closely matches the benchmark. In this table, the 2002 data set was also adjusted for Mobility in order to perform a more accurate comparison.

MOBILITY ADJUSTED COMPARISON OF JURY VENIRES BEFORE AND AFTER I-JURY

Race/ Ethnicity	Target %	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity
		Jan-Feb 2002				Jan-Feb 2006				Aug-Oct 2006			
ASIAN	3.2%	1.3%	1.6%	-1.7%	-51.7%	2.3%	2.2%	-1.0%	-29.7%	2.5%	2.5%	**-0.7%**	-21.0%
BLACK	7.8%	5.3%	6.1%	-1.7%	-21.9%	7.8%	7.6%	**-0.2%**	-2.1%	6.6%	6.7%	-1.1%	-13.5%
DID NOT ANS		12.9%				1.6%				1.5%			
HISP	21.1%	13.4%	16.6%	-4.5%	-21.5%	15.6%	20.0%	**-1.1%**	-5.4%	18.8%	19.6%	-1.5%	-7.2%
MIXED		0.0%				0.6%				0.6%			
NATIVE AMER.		0.0%				0.3%				0.4%			
OTHER		1.1%				0.2%				0.3%			
WHITE	67.9%	66.0%	75.8%	7.9%	11.6%	71.6%	70.2%	**2.3%**	3.3%	69.4%	71.1%	3.2%	4.8%

Table 15

The hypothetical adjustment for mobility does not change the rankings but again indicates that mobility has a profound impact on the number of Hispanics in the jury venire based upon the assumption that mobility occurs independently of those other factors that filter persons out of jury service. Accordingly, the hypothetical model represents a best case scenario.

A final review of the data indicates that the sample data set from January – February, 2006 has better representation for Blacks and Hispanics than does the August – October, 2006 data set. The reason for this disparity was not within the scope of this study. Additional research is planned to pinpoint the reason for this difference and determine what, if any, measures can be taken to address any issue that might arise from this research.

E. Data Limitations and Conflicts

Preliminary Data

Fair cross-section target data was based upon census data for Travis County, Texas. Seven census racial/ethnic categories were selected for measurement: Asian, Black, Hispanic, Mixed, Native American (including Pacific Islanders), Other, or White. The population numbers for other census categories were negligible and thus eliminated. In the opinion of the author, the racial groups eliminated contained populations so small that they did not skew the results.

Adjustments for Cognizable Groups

Detailed census data exists for the following groups: White, Hispanic, Black, Asian, Mixed race, and Other. There was no detailed census data for Native American, and Pacific Islanders, so those groups were eliminated from the jury panel demographics. Further, because census data demonstrate that almost 99% of persons selecting "Other" as race are Hispanic, that demographic group was added into the Hispanic totals for purposes of analysis. The fair cross-section analysis was based solely on the cognizable groups (Asian, Black, Hispanic, and White).

Perceptions About Race and Impact on Juror Questionnaire and Census Response

The form of the race question on the juror questionnaire was open-ended and did not offer response selections. The responses were, therefore, not of consistent format and, as a result, the responsibility for interpreting and categorizing the responses fell to the questionnaire reviewer compiling the data for the venire demographics. This situation poses risk for a juror misunderstanding the meaning of the question and additional risk for misinterpretation of the juror's answer by the reviewer.

As noted above, census questionnaires distinguish between race and ethnicity. This separation has a profound impact on jurors of Hispanic origin. A highly significant number of Hispanics view their ethnicity as a separate race; the term *La Raza* (translation: The Race) is often used to refer to Hispanics or Latinos. This viewpoint is validated through data from the 2000 census for Travis County, which demonstrates a very high correlation (98.8%) between selection of "some other race" and "Hispanic or Latino."

HISPANIC/LATINO AS A SUBSET OF RACE					
RACE	TOTAL	NOT HISPANIC/LATINO		HISPANIC/LATINO	
	Number	Number	%	Number	%
WHITE	554,058	457,817	82.7%	96,241	17.3%
BLACK	75,247	73,252	97.3%	2005	2.7%
AMERICAN INDIAN/ALASKA NATIVE	4,684	2,261	48.3%	2,423	51.7%
ASIAN	36,286	35,842	98.8%	444	1.2%
NATIVE HAWAIIAN/PACIFIC ISLANDER	559	390	69.8%	169	30.2%
SOME OTHER RACE	118,294	1,429	1.2%	116,865	98.8%
MULTI-RACIAL	23,152	12,251	52.9%	10,901	47.1%

NOTE: Data reflects total population and is not adjusted for age, citizenship, or institutionalization.

Table 16 [86]

The extent to which the census data structure impacted juror questionnaire responses is unknown. While the large majority of Hispanics responded to the question

[86] See Note 76, supra.

of race with terms such as Hispanic, Latino, Mexican-American, Chicano, or Mexican, the questionnaire reviewers noted instances where persons with Hispanic names listed "White (or equivalent)" or "Other" in response to the question on race; however, there was no way to differentiate between persons of Hispanic origin responding to the race question in the same manner as they would a census questionnaire and those persons who were not Hispanic but acquired a Hispanic name through marriage or some other means. As a result, there is a potential for a slight undercount of Hispanics with regard to the jury venire demographics.

There is a possibility that the blending of race and ethnicity impacted more than just the Hispanic juror responses. A small number of non-Hispanic jurors elected to respond to the race question in terms of ethnicity or nationality, entering terms such as Chinese, Indian, Vietnamese, Irish, Scot, German, Slavic, or Italian. Whenever feasible, the reviewer matched the response to one of the racial/ethnic groups identified for measurement. Failure to follow this method of interpretative categorization would have invalidated the data since responses of this type occurred frequently enough to impact the results.

A small percentage of jurors (1.6%) from the 2006 data either declined to answer the question on race or responded in a manner that could not be matched with one of the categories selected for measurement. Answers provided to the race question that were deemed non-responsive by the reviewer included: American, no, Human, N/A, none of your business, and Homo Sapien.

A much higher percentage of jurors (13.3%) from the 2002 data did not provide a response or provided a response to the race question that could not be coded. The reason

for this is not known; the fact that 2002 was the first year the question of race was asked on juror questionnaires, and the early date of the questionnaires reviewed (January – February) may have contributed to the lack of response. The high percentage of non-responders complicated the review of data with regard to determining the impact I-Jury has had on jury venire demographics; this impact is discussed more fully in Section IV-D. Jury Venire Demographic Comparison.

Lack of Data Available on Summonsed Jurors Who Were Not Assigned to a Panel

The jury wheel (the database comprised of the source lists used to generate summonses) does not import data on juror race/ethnicity or gender from the voter registration or driver's license source lists. Therefore, no in depth analysis on gender or race could be performed on excused juror. This prevented a full analysis on the various filters from jury service to determine whether those filters had a disproportional impact on any of the cognizable groups.

One analysis as to disproportional impact was performed. The names of the excused jurors were analyzed to estimate the percentage of Hispanics among those excused for disqualification, exemption, hardship, or inability to deliver summons. In addition to the interpretative nature of this review and the dependency of the reviewer's knowledge of Hispanic names, the risks inherent in this method are (1) the inability to identify Hispanics with a non-Hispanic surname, thus under-counting Hispanics, and (2) including non-Hispanics with a Hispanic surname, thus over-counting Hispanics. For purposes of the analysis using this data, the reviewer assumed the under-count and over-count compensated for each other.

Census Data

Online census data was not formatted in a manner that allowed a detailed drill down based on the various filters or combinations of filters from jury service. The chart below displays the significant legal filters. The only filters that were available from the census were for non-citizens and persons over seventy years of age; these filters were used to establish the unadjusted Fair Cross-Section Benchmark in Table 3. The Adjusted Fair Cross-Section Benchmark in Table 4 was created based on data external to the census, specifically felony conviction data from state and local criminal justice agencies. There was insufficient correlated data on the remaining ten filters to allow further benchmark adjustments.

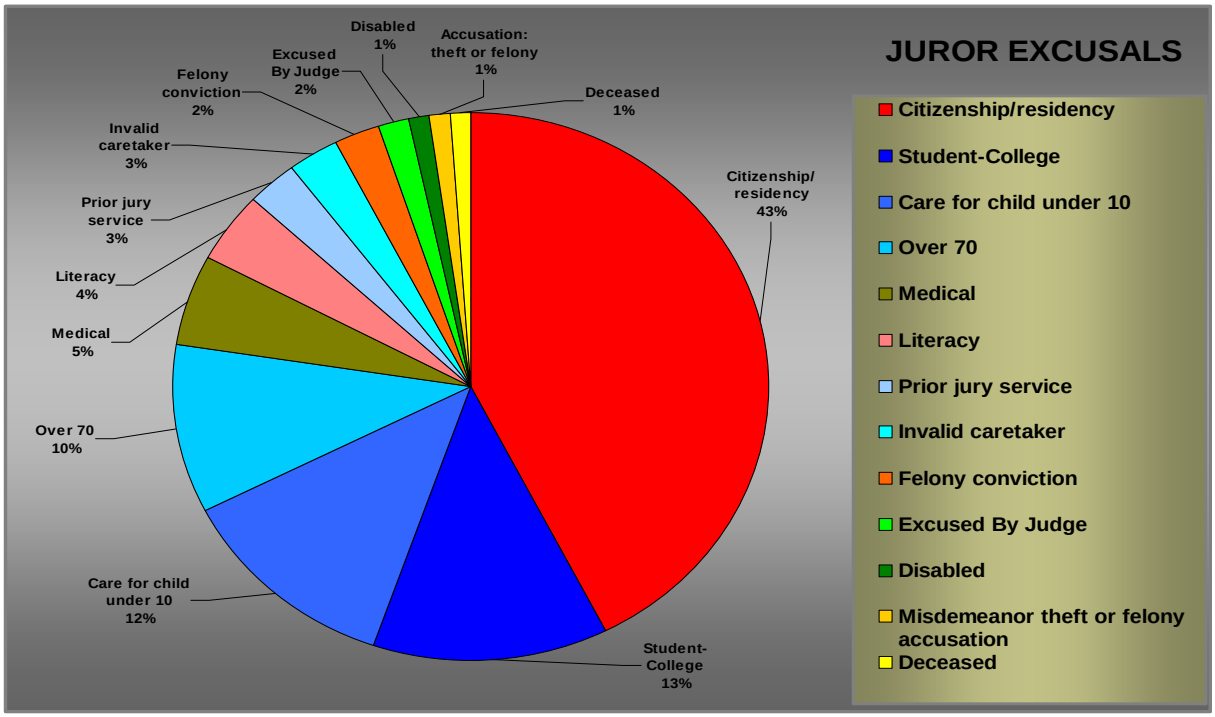

Chart 2

The following table lists all filters, including the likelihood of disproportional impact on one or more cognizable groups and the extent to which each filter was included in calculating the fair cross-section benchmark:

SUMMARY OF ADJUSTMENTS TO ESTABLISH FAIR CROSS-SECTION BENCHMARK			
TYPE	**DESCRIPTION**	**POSSIBLE DISPRO IMPACT**	**TYPE OF ADJUSTMENT**
Mobility	Summons returned or not delivered	High	None
Disqualification/ mobility	Non-citizen of the U.S. or non-resident of jurisdiction	High (as to citizenship)	For disqualification of citizenship only
Exemption	Person enrolled and in actual attendance at an institution of higher education	Medium	None
Exemption	Legal custody of a child younger than 10 years of age and service requires leaving the child without adequate supervision	Medium	None
Exemption	Over 70 years of age	Low	Adjusted by estimate
Hardship	Medical	Low	None
Disqualification	Illiterate	High	None
Exemption	Juror in the county during the preceding 24-month period	Low	None
Exemption	is the primary caretaker of a person who is an invalid unable to care for himself	Low	None
Disqualification	misdemeanor theft or felony conviction	High	Adjusted for felony conviction only
Hardship	Hardship determined by judge	Low	None
Hardship	Disability	Low	None
Disqualification	under indictment or other legal accusation for misdemeanor theft or a felony	High	For institutional status
All the above !	Deceased	Low	None; assume that the census does not include the deceased

Table 17 Information for chart and table based on Travis County Jury Management system data.

As indicated by the highlighted fields on the table, there are four filters, based on a high probability of disproportional impact on one or more of the cognizable groups, for which adjustments to the census data was not made or not fully made:

Mobility – summons returned or not delivered: For purposes of analyzing whether jury panels represent a fair cross-section of the community, an adjustment for mobility (moving to a new address) was performed based on data from the jury

management system. Such an adjustment from sources outside a jurisdiction's jury management system is problematic for several reasons.

First, the impact of mobility can be mitigated through registering a new address with the Post Office for purposes of forwarding mail.

Second, additional mitigation occurs when the new address is registered with the two Jury Wheel source lists: voter registration and driver's licenses.

Third, although the census data contains information on length of time at present address, determining which time period to use for defining mobility is problematic. Each of the three data sets: the two source lists and the Jury Wheel itself, has a different renewal period. In Travis County, the Jury Wheel has a two year life cycle, but it contains data from voter registration, which has a one to 23 month life cycle depending on when a voter was registered, and driver's licenses, which renew each license every six years. Defining mobility as "less than two years at the present address" would exclude from the definition those who moved in year three of their six-year driver's license period, yet defining mobility as "less than six years at the present address" would include within the definition those whose voter registration was renewed within the last two years. As long as the source lists used to create the Jury Wheel and the Wheel itself have different renewal periods, using a census-based definition of mobility to adjust for the fair cross-section benchmark is impractical. Yet not adjusting for mobility increases the chances of overstating the presence of a cognizable group within the benchmark.

Additionally, there is risk in using internal data to measure mobility rates among cognizable groups: the data may be distorted if a source list used is disproportionately high or low with regard to a cognizable group or if imperfect source list merging

techniques result in a predominance of dual records for a cognizable group. However, to the extent these variables can be controlled or measured, internal data can be useful.

Disqualification – Illiteracy: The definition of illiteracy for purposes of jury service is tied to English proficiency (at a minimal level); the definition of illiteracy within the census data is not tied to any language. Therefore, a person who cannot read English but who can read another language is not qualified to be a juror but is considered literate according to the census. Adjustment for literacy based on census data would overstate the number of qualified jurors within a community.

Disqualification – felony or misdemeanor theft conviction or accusation: Not all persons who have such a conviction or a pending criminal charge are institutionalized; some are on parole or awaiting release from the conviction pending completion of a probationary period. Others are released on bail pending trial. Census data does not track conviction or criminal accusation rates; it identifies only those persons who are presently incarcerated. As statistical reports from the Texas Department of Criminal Justice reveal, persons involved in the criminal justice system are disproportionately black and Hispanic; therefore, failure to fully adjust for convictions will result in overstating the number of black and Hispanics in the fair cross-section benchmark. [87] The actual adjustment was based on data from criminal justice sources limited to felony convictions; no adjustment was made for misdemeanor theft convictions or for those accused of misdemeanor theft or felony who have been released on bail.

[87] Texas Department of Criminal Justice 2005 Statistical Report.

Studies indicate a high correlation between felony conviction and illiteracy. [88] An adjustment was made for felony convictions, but no adjustment was made for illiteracy because the extent of this correlation for Travis County was unknown. As a result, there is a possibility of under-adjustment and over-counting of certain cognizable groups within the fair cross-section benchmark.

The decision to make felony conviction adjustments from data sources other than the jury management system was based on the fact that convicted felons are excluded from voter registration lists and may be subject to exclusion from the driver's license lists, the two source lists for the Jury Wheel.

Exemptions

While exemptions represent significant filters from jury service, they are optional to the juror and are not always claimed. Using census or any other external data to adjust the fair cross-section benchmark for exemptions would likely result in an over-adjustment and an understatement of any cognizable group disproportionately represented within an exemption category. Internal data, which would reflect the rate at which an exemption is claimed, would be a better source of data for any adjustment that would be made.

Co-occurring Filters

There is a high probability that certain filters (example: non-citizenship and literacy; literacy and criminal conviction) have a high correlation rate. Adjusting gender and racial/ethnic data for each filter individually without considering whether such a high correlation exists with another filter is likely to result in over-adjustment. Unless there is

[88] See Note 75, supra.

sufficient data readily available to reliably determine the impact of co-occurring filters by gender and race/ethnicity or circumstances that reduce the risk of over-adjustment, adjusting for co-occurring filters is problematic.

V. CONCLUSIONS AND RECOMMENDATIONS

In striving to meet Court Performance Standard 3.2, one encounters a difficult challenge: creating jury panels from a venire that represents a fair cross-section of the community while maintaining a jury system that is random at every step of the process. While this is a simple concept, it is hard to achieve; law is an abstraction until it comes in contact with people.

The process of sending a group of jurors to a courtroom for *voir dire* involves several steps, starting with the actions of individual citizens when they register (or elect not to register) for a voter registration card or driver's license and ending with the actual court assignment given to a summonsed and impaneled juror. At any point among the numerous steps in this process there is risk that the demographics of the jury venire can be impacted, not by design but by the simple decisions and actions of people living, working, and moving about within a diverse society. The goal of the jury manager is to ensure that, within the confines of the law of the State, the process limits this risk and produces panels that reflect the demographics of the community as much as possible.

The best barometer of success in achieving this goal is measurement of the demographics of the jury venire and comparing that measurement to the demographics of the local community. Measuring the demographics can be relatively simple; a more difficult task is to profile the local community in consideration of the *legal and practical filters* that cause individuals to be removed from a jury venire.

Legal filters would involve the juror qualifications and exemptions as defined by State law plus any laws relating to the source lists from which the jury summonses are sent. *Practical filters* involve the quality and age of data within the source lists and personal hardships that prevent an otherwise qualified, non-exempt citizen from serving as a juror. Quantifying these legal and practical filters, particularly those for which a disproportional impact among cognizable groups exists, is essential to achieving a proper profile.

Most likely, a jury manager will not find a single data source from which to properly quantify the filters, especially a source that includes data for the local community. Relying on disparate sources for the data poses its own problems as these sources tend to focus on a single filter and do not correlate the data with other filters. Without correlation, a cumulative over-adjustment for the various filters will occur.

This researcher encountered these problems in preparing a fair cross-section benchmark by which the jury venire for Travis County, Texas could be evaluated. Accurate and correlated data for many of the juror filters could not be identified; particularly problematic was quantifying the impact of juror exemptions, which by law are optional. As a result, the resulting benchmark likely overstates the population for certain cognizable groups, thus presenting a higher standard against which actual jury venire demographics were evaluated.

Nonetheless, the results of the Travis County jury venire data indicate:

Jury panels in Travis County reasonably reflect the community for Whites and Blacks; the number of Asians and Hispanics are low when compared to the benchmark but still within the standards established by the courts for fair cross-section compliance.

The number of Asians in Travis County is relatively small but growing; this group comprises less than four percent of the jury-eligible population but a little over 2.5% of the jury venire. With percentages this small, the under-representation is not having a significant impact at the individual jury panel level.

There is a significant Hispanic population in Travis County that comprises over 21% of the jury-eligible population but only 15.5%-16% of the cognizable groups within the jury venire. Further study of the juror excusals indicated a 29.11% disproportional impact of Mobility (defined as not having a current address to which a summons can be delivered) on the Hispanic population. Hypothetical models adjusting for Mobility demonstrate the extent of this impact; the jury venire percentage for Hispanics under this hypothetical model increased to 19.3%-19.8%, much closer to the benchmark.

At 43%, Mobility represents the largest filter from jury service. Its impact on Hispanics was determined by a name analysis with the results describe above; any impact on Blacks could not be determined from the available data.

The I-Jury program has not had a detrimental impact on venire demographics; in fact, under I-Jury, the presence of Blacks in the venire is slightly higher and the presence of Hispanics is modestly higher. Whether I-Jury has contributed to this increase cannot be determined, but it is the only change in jury procedures that has been made over the last five years, and no other reason for the improvement can be identified. As a result, I-Jury holds promise as a model that encourages citizens to respond to a jury summons and participate in the justice system as envisioned in the Constitution.

Equally important as the validation of I-Jury as an alternative to traditional jury impaneling, the following observations are made with regard to the process of performing this research and especially in attempting to establish the fair cross-section benchmark:

The census works well as a starting point for establishing benchmarks for jury venire race/ethnicity and age demographics and will allow incorporation of filters for age, citizenship, and incarceration into this benchmarking. The census data is not reliable for benchmarking adjustments due to:

Mobility: (1) The impact of mobility on the successful delivery of a jury summons can be mitigated by use of the Post Office's National Change of Address (NCOA) data. NCOA data, when used prior to mailing a summons, will update a potential juror's address and increase the chances of successful delivery in the event the juror moved. However, only those potential jurors who elected to use NCOA for mail forwarding will have their addresses updated; summonses sent to persons who moved but did not use NCOA will be returned. (2) Use of multiple juror source lists, especially if those source lists have different renewal periods, render a reliable definition of mobility, in terms of time at current residence, a problem. In Texas, county voter registration records and the State's driver's license/ID card records are the source lists for the juror database. Voter registrations expire at the beginning of even-numbered years. They are automatically renewed for persons who have not changed address since their last registration but are cancelled for those who no longer reside at the address on file with the voter registrar. On the other hand State drivers/ID records expire after six years and cannot be automatically renewed. Further, provisions in State law requiring persons register address changes for licenses are rarely enforced, so delays in updating these

addresses are common. With the juror database reflecting such a wide disparity as to age of data (two to six years), developing a definition for mobility to be used to for benchmarking is problematic.

Literacy: The census definition of literacy is not language-specific, but the general application of this juror qualification is English-specific. Census data could understate literacy from a juror perspective. Further, the census data includes primary language spoken at home but does not include whether each resident has English proficiency. Internal data could be configured to capture demographic information on jurors who are excused for illiteracy; this would prove a more reliable source for adjustments based on lack of literacy.

Felony conviction: The census includes demographic data on those persons who are incarcerated but does not identify those who are serving probated sentences or who have been released from prison. Any adjustment to the benchmark for felony conviction based on census data reflects this limitation. A better source for adjustment would come from criminal justice agencies who track this information in detail. Internal data cannot be deemed a reliable source for felony conviction adjustments since the law prevents certain felons from being placed on source lists. Using internal data to measure felony conviction adjustments would understate the impact since a significant number of felons never receive a summons although they are included within the local population by the census.

Felony or theft charge pending: This is not measured by the census. A reliable source for this adjustment would come from criminal justice agencies, such as a Sheriff or local Pre-Trial Services, who track this information in detail.

Exemptions in general: Since exemptions are optional, a reliable adjustment cannot always be made from census data. In this study, census data was used to adjust for persons over 70 years of age since virtually all persons over age 70 claim the exemption. For other exemptions, the level of benchmark adjustment should be based on the prevalence with which that exemption is claimed; this could be made available from internal data.

Hardship excuses: The same methodology for exemptions generally apply to hardship excuses since they are individual to each juror. Internal data would be the best source for this information.

The best data source for benchmark adjustments not available from the census or criminal justice system would be internal data, but jury management systems often lack data fields for demographic information, especially race/ethnicity. The following data structure changes are recommended:

1. *Create key demographic fields to be included in the juror database, particularly race, ethnicity, and age.* The data in these fields provide a legitimate source for benchmark adjustments and will be specific to the jurisdiction.
2. *Gather demographic information on excused jurors as well as jurors who serve.* If possible, this information should be imported from source lists. If demographic information is not available from those lists, the impaneling process should include a method by which this information can be gathered from summonsed jurors who are requesting excuse. Care should be taken in gathering this information to reassure jurors that their responses to demographic questions are not a factor in considering their request for excuse.

3. *Use internal data to further refine the fair cross-section benchmark derived from external sources.* The concepts of absolute disparity, absolute impact, and comparative disparity can be used to evaluate the excused juror population for each cognitive group. If an absolute disparity number is negative, a disproportionate impact is assumed. Comparative disparity percentage is then used to refine the fair cross-section benchmark for that cognitive group. The following table summarizes the data sources used to establish a fair cross-section benchmark through this methodology:

DATA SOURCES USED TO ESTABLISH FAIR CROSS-SECTION BENCHMARK			
DATA SOURCE	FILTER	LIMITATION	ALTERNATIVE SOURCES
Census	Disqualification: under 18 Exemption: over 70	Data presented in age bracket of 65-75 requires estimation of portion over 70	Unlikely, source lists omit names of those under 18
Census	Disqualification: Non-citizen	None	Unlikely, juror source lists may omit non-citizens
Census	Disqualifications: felony conviction and felony or misdemeanor theft charge	Available for incarcerated; does not report those discharged from prison or jail due to bail, probation, parole, or sentence completion	Unlikely, juror source lists may omit this population
Census	Disqualification: not of sound mind	Available for institutionalized; does not report those successfully living in the community	Unlikely due to laws safeguarding mental health information
Criminal Justice Agencies	Disqualifications: felony conviction and felony or misdemeanor theft charge	Dependent upon data quality of agencies	Sociological and demographic studies of this population
Jury System	Disqualifications: not of sound mind or good moral character; illiteracy; ineligible voter; prior jury service Exemptions: all except over 70 years of age Hardship: all	Internal data may be dependent on how well juror source lists reflect the population. Dependent upon integrity of summonsed juror responses, Jury Wheel may prohibit addition of new names until replaced	Unlikely due to lack of data correlation among filters

Table 18

The Census data forms the core of the fair cross-section benchmark not only because it provides information on cognitive groups but also incorporates filters that are unlikely to appear in the internal data: age, citizenship status, institutionalized

incompetents, and institutionalized felons along with felony and theft defendants. However, the Census data does not provide data on non-institutionalized felons and felony and theft defendants on bail; therefore, data from criminal justice agencies is required to further adjust the baseline Census data for these groups. Because no reliable external source is available to refine the Census data for the remaining filters, any further adjustments must be calculated using internal data to identify and quantify any disproportional impact of those remaining filters on any cognitive groups. The measurements to quantify any disproportional impact are the same as used to evaluate community representation: absolute disparity, absolute impact, and comparative disparity.

To incorporate these data structure changes, the table below details the calculations which should be used to establish the fair cross-section benchmark. Note the similarity in terminology and calculations for the Internal Data on Excused Jurors to the method by which the jury venire was evaluated. This formula relies upon the availability of demographic information on excused jurors from the jury management system.

Formula for Calculating Fair Cross-Section Benchmark			
	Calculation Description	**Formula**	**Terminology for Cog-Group**
EXTERNAL DATA	Cog-Group's number of jury age who are citizens and not institutionalized	CAP	Census Adjusted Population (CAP)
	Cog-Group's number with felony conviction or felony/theft charge pending	FIE	Felony Impact Estimate (FIE)
	Subtract felony/theft # from Census Adjusted Population #	CAP - FIE = PPE	Preliminary Population Estimate (PPE)
	Divide Cog-Group's PPE by Total of all PPE's for all Cog-Groups	CGPPE / TotPPE = PPP%	Preliminary Population Percentage (PPP)

INTERNAL DATA	Cog-Group's number excused (other than for age/citizenship/criminal record)	ExJ	Excused Jurors (ExJ)
	Divide Cog-Group's ExJ by total number excused	ExJ / TotExc = ExR%	Excuse Rate (ExR)
	Subtract Cog-Groups Excuse Rate from Cog-Group's PPP	PPP% - ExR% = ExAD%	Absolute Disparity (ExAD) Continue with calculations if ExAD # negative
	Total # Excused x ExAD	TotEX x ExAD% = ExAI	Absolute Impact (ExAI)
	# of Cog-Group assigned to panel during time period measured	CGA	Cog-Group's Assigned Jurors (CGA)
	Add ExAI and CGA	ExAI + CGA = IAE	Impact-Adjusted Estimate (IAE)
	ExAI divided by IAE	ExAI / IAE = ExCD%	Comparative Disparity (ExCD)
	Multiple PPP% by sum of 100% and ExCD (ExCD is negative #)	PPP% x (100% +ExCD)	Benchmark Population Percentage (BPP)

Table 19

The following flowchart shows this process. Note how the left side of the chart, which depicts the use of external data, results in population numbers and percentages of the non-excluded, or unfiltered juror population. Conversely, the right side of the chart measures excused, or filtered, jurors. By comparing the demographic make-up, in percentages, between the unfiltered juror population from external sources and the filtered juror population from internal sources, any disproportionate impact of the filters can be detected, measured, and then used to refine the external demographic percentages.

Fair Cross-Section Benchmark Calculation Process

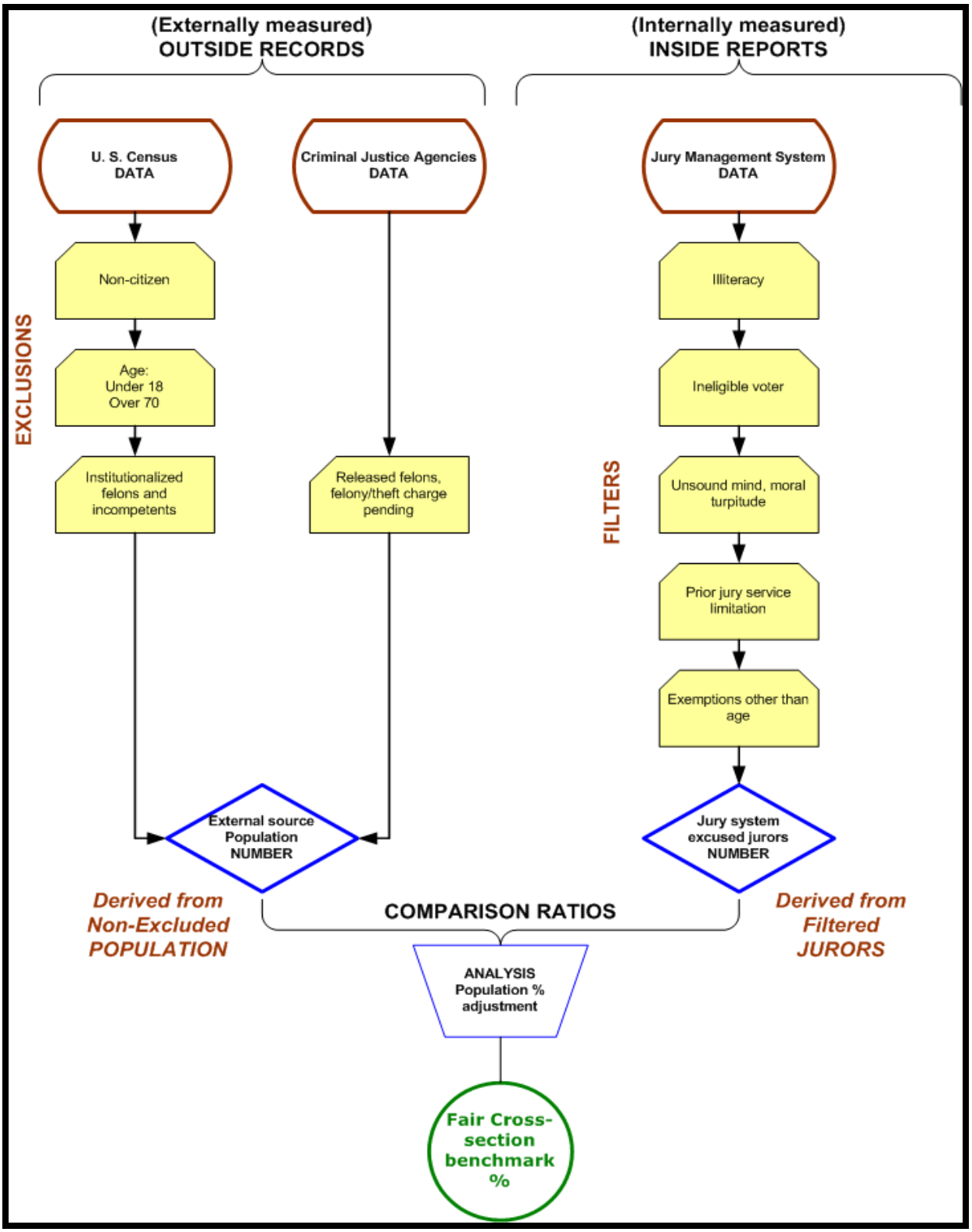

Chart 3

The process of gathering demographic information on all summonsed jurors might present a workload challenge if this information is not available from the source data used to create the Jury Wheel. However, with the I-Jury system used in Travis County, the responsibility of entering this information on most of the juror records can be passed on to the juror during the completion of online impaneling. Jurors who eschew the online system can be given forms configured to optical readers that can compile the data. Such forms would be a means for counties that do not offer online impaneling to easily compile this data.

With evermore sophisticated technologies and information available to attorneys and trial consultants in an effort to gain an upper hand during trials, every jury manager will, from time to time, be called upon to defend their system and process against jury venire challenges. **The key to a successful defense is to be equally sophisticated in use of technology and information and to know through continuous measurement and evaluation of jury venires and the community demographics whether the requirements of Court Performance Standard 3.2 are being met. Use of a system such as I-Jury can facilitate the capture of the information needed alongside the added benefit of facilitating jury service for citizens.** Armed with this information and technology, a jury manager can approach the witness stand with confidence. More importantly, it allows the jury manager to assemble jury panels that meet constitutional standards and are worthy of the community's trust and respect.

Appendix A
Validation of Impact of I-Jury Due to Large Number of Jurors Who Did Not Respond to Race Question from 2002 Data

One of the questions asked by the author is whether the hypothesis, that I-Jury has had a positive impact on how well Travis County jury panels meet the fair cross-section test, is valid. To answer that question, a comparison of panels created under I-Jury to those panels created prior to I-Jury must be made.

The only source data to serve as a baseline for testing the impact of I-Jury was from panels created in January and February 2002 since these were the only panels created before I-Jury where data on race was available. However, there is a high level of non-response to the race question within the 2002 juror questionnaires which complicates the testing of I-Jury.

There is insufficient data to accurately correct for this high non-response rate, so the data must be analyzed according to three scenarios based on the following assumptions:

Scenario 1: Persons of one racial or ethnic group are as likely as persons from other racial or ethnic groups to not respond to the race question; i.e., race and ethnicity was not a factor for failure to answer this question.

Scenario 2: The non-responders were primarily from the *minority* racial/ethnic groups, and race was a primary factor for failure to answer this question.

Scenario 3: The non-responders were primarily *white*.

The following three tables reflect, for each of the three scenarios, the distribution of jurors who did not answer the race question:

Scenario 1:

JURY PANELS JAN-MAR 2002 ASSIGNED ADJUSTED FOR "DID NOT ANSWER"							
(assumes proportional distribution among *all* racial/ethnic groups)							
Racial/Ethnic Profile							
Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	99	1.60%	1.60%	3.20%	-1.60%	-79	-49.95%
BLACK	391	6.31%	6.31%	7.80%	-1.49%	-43	-19.07%
DID NOT ANSWER		0.00%					
HISPANIC	762	12.31%	13.58%	21.10%	-7.52%	-411	-35.66%
MIXED	0	0.00%					
NATIVE AMERICAN	2	0.04%					
OTHER	78	1.27%					
WHITE	4863	78.48%	78.51%	67.90%	10.61%	1086	15.63%
Grand Total	6196						
Total cognizable	6194						

Table 20

Since there is no data to indicate that failure to answer the race question correlates to any particular racial group, this scenario is considered the most likely to occur.

Scenario 2:

JURY PANELS JAN-MAR 2002 ASSIGNED ADJUSTED FOR "DID NOT ANSWER"							
(assumes distribution among *minority* racial/ethnic groups)							
Racial/Ethnic Profile							
Ethnicity	# Jurors	Venire %	Cogniz %	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	151	2.44%	2.44%	3.20%	-0.76%	-47	-23.69%
BLACK	596	9.62%	9.63%	7.80%	1.83%	113	23.41%
DID NOT ANSWER							
HISPANIC	1163	18.76%	19.87%	21.10%	-1.23%	-144	-5.85%
MIXED	0	0.00%					
NATIVE AMERICAN	2	0.03%					
OTHER	68	1.10%					
WHITE	4216	68.04%	68.07%	67.90%	0.17%	10	0.24%
Grand Total	6196						
Total cognizable	6194						

Table 21

For purposes of testing the hypothesis that I-Jury has had a positive impact on fair cross-section representation on jury panels, this scenario represents the most difficult test for I-Jury because it results in the best minority representation of the three scenarios.

Scenario 3:

JURY PANELS JAN-MAR 2002 ASSIGNED ADJUSTED FOR "DID NOT ANSWER"							
(assumes all non-responders *white*)							
Racial/Ethnic Profile							
Ethnicity	# Jurors	Venire %	Cogniz%	Target %	Absolute disparity	Absolute impact	Comparative disparity
ASIAN	86	1.39%	1.39%	3.20%	-1.81%	-112	-56.61%
BLACK	339	5.47%	5.47%	7.80%	-2.33%	-144	-29.83%
DID NOT ANSWER							
HISPANIC	661	10.67%	10.67%	21.10%	-10.43%	-646	-49.42%
MIXED	0	0.00%					
NATIVE AMERICAN	2	0.03%					
OTHER	68	1.10%					
WHITE	5040	81.34%	81.37%	67.90%	13.47%	834	19.84%
Grand Total	6196						
Total cognizable	6194						

Table 22

This scenario produces the poorest result for fair cross-section representation and therefore is the easiest test to prove that I-Jury results in jury venires that better meet the fair cross-section standard.

The comparison of jury venires in Section IV-D. indicates that panels created under I-Jury are more representative of the community; therefore, the final test of this hypothesis will use Scenario 2, the most difficult test, for purposes of comparison.

HYPOTHESIS TEST:
COMPARISON OF JURY VENIRES BEFORE AND AFTER I-JURY IMPLEMENTATION
NO ADJUSTMENT FOR MOBILITY ON HISPANICS, ASSUMES ALL 2002 JURORS WHO DID NOT RESPOND TO THE QUESTION ON RACE WERE MINORITY JURORS

Race/Ethnicity	Target %	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity	Venire %	Cogniz %	Abs disparity	Comp disparity
		Jan-Feb 2002				Jan-Feb 2006				Aug-Oct 2006			
ASIAN	3.2%	2.4%	2.4%	-0.8%	-23.7%	2.3%	2.4%	-0.8%	-26.4%	2.6%	2.6%	**-0.6%**	-17.4%
BLACK	7.8%	9.6%	9.6%	1.8%	23.4%	7.8%	8.0%	**0.2%**	2.5%	6.9%	7.1%	-0.7%	-9.6%
DID NOT ANSWER						1.6%				1.6%			
HISPANIC	21.1%	18.8%	19.9%	**-1.2%**	-5.8%	15.6%	16.2%	-4.9%	-23.2%	15.2%	15.9%	-5.2%	-24.5%
MIXED		0.0%				0.6%				0.6%			
NATIVE AMERICAN		0.0%				0.3%				0.4%			
OTHER		1.1%				0.2%				0.4%			
WHITE	67.9%	68.0%	68.1%	**0.2%**	0.2%	71.6%	73.4%	5.5%	8.2%	72.4%	74.4%	6.5%	9.5%

Table 23

Under an analysis using this hypothesis, Hispanics and Whites are the racial groups from the 2002 (prior to I-Jury) venire that achieved a result closer to the benchmark. Asians and Blacks achieved measurements closer to the benchmark under I-Jury. Since Scenario 2 is unlikely to represent the actual demographic distribution of jury panels prior to I-Jury, the conclusion from this test is that jury panels formed under I-Jury are as representative of the community than those formed prior to I-Jury as a worst case but are likely to be more representative based on the most-likely scenario analysis performed in Section IV-D.

Appendix B
Adjustment for Disproportionate Impact of Mobility on Hispanics

As previously discussed, mobility – the resulting inability to successfully deliver a jury summons – results in the most summons excusals. Analysis of the data on returned summons indicates that 26% of all returned summonses were issued to a person with a Hispanic name, even though Hispanics comprise only 21.5% of the fair cross-section benchmark (prior to adjusting for felony convictions).

Accurately adjusting the fair cross-section benchmark for this disproportionate impact on Hispanics was not possible; no data was available to distinguish mobility from statutory disqualifications and exemptions as the sole factor resulting in the excuse of a summons. Instead, a hypothetical model was created based on an adjustment to the number of Hispanic jurors assigned to jury panels by posing the question, "If mobility did not have a disproportionate impact on Hispanics, how many additional Hispanic jurors, as a percentage, could be expected to respond to a summons and be assigned to a panel?"

The initial analysis of fair cross-section compliance involved a comparison of each of the actual jury venire datasets to the fair cross-section benchmark to calculate absolute and comparative disparity. Then to illustrate the impact that mobility has on Travis County jury demographics, the hypothetical model was created by first adjusting the number of Hispanic jurors upward by 26.11% to reflect the number of Hispanic jurors that would be expected if mobility were not a disproportionate factor.

The following table demonstrates the calculations used to create the hypothetical model:

Comparative Disparity Calculation of Impact of Mobility on Hispanic Jurors		
Step	**Calculation Description**	**Calc**
Step 1	# of returned summonses per year	28770
Step 2	% of returned summonses sent to Hispanic person	26.00%
Step 3	% of Hispanics in fair cross-section benchmark (unadjusted for felons)	21.50%
Step 4	Absolute disparity of returned summonses on Hispanics	-4.50%
Step 5	Absolute impact of returned summonses on Hispanics	-1295
Step 6	% of summonses disqualified other than for citizenship that are Hispanic	1.60%
Step 7	% of summonses exempt that are Hispanic	1.08%
Step 8	% of summonses released for hardship that are Hispanic	0.37%
Step 9	Total % of summonses excused that are Hispanic	3.05%
Step 10	Of absolute impact # (Step 5), # that are expected to be excused	40
Step 11	Additional Hispanic jurors expected annually if not for disproportional impact of mobility	1255
Step 12	Additional Hispanic jurors expected monthly if not for disproportional impact of mobility	105
Step 13	Additional Hispanic jurors expected for 3 month period of Aug-Oct	314
Step 14	# Hispanics actually assigned Aug-Oct	1078
Step 15	% increase in Hispanic jurors to be expected if returned summonses were delivered	29.11%

Table 24

Once the adjustment was made, the hypothetical model was completed by recalculating the overall percentages for each of the four cognizable groups and calculating the absolute and comparative disparities for the hypothetical demographic.

A comparison of the actual data to the hypothetical model illustrates that mobility has a significant impact on the number of Hispanics in the jury venire; the hypothetical models shows improvement in absolute disparity of 3.5 percentage points and comparative disparity of 16.4 percentage points.

APPENDIX C
DATA SETS

RACE/ETHNIC AND GENDER PROFILES OF TRAVIS COUNTY JURIES

Racial/Ethnic Profile-Jan-Feb 2006			
Race/Ethnicity	Jurors	%	% cog
ASIAN	53	2.30%	2.35%
BLACK	180	7.80%	8.00%
DID NOT ANS	36	1.56%	
HISP.	361	15.64 %	16.22 %
MIXED	13	0.56%	
NATIVE AMER.	8	0.35%	
OTHER	4	0.17%	
WHITE	1,653	71.62 %	73.43 %
Grand Total	2,308		
Total cognizable	2,251		

Racial/Ethnic Profile-Aug-Oct 2006			
Ethnicity	Jurors	%	% cog
ASIAN	183	2.57%	2.64%
BLACK	488	6.87%	7.05%
DID NOT ANS	115	1.62%	
HISP.	1,078	15.17 %	15.94 %
MIXED	44	0.62%	
NATIVE AMER.	27	0.38%	
OTHER	25	0.35%	
WHITE	5,147	72.42 %	74.37 %
Grand Total	7,107		
Total cognizable	6,921		

Racial/Ethnic Profile-Jan-Feb 2002			
Ethnicity	Jurors	%	% cog
ASIAN	86	1.39%	1.60%
BLACK	339	5.47%	6.31%
DID NOT ANS	824	13.30 %	
HISP.	661	10.67 %	13.58 %
MIXED	-	0.00%	
NATIVE AMER.	2	0.03%	
OTHER	68	1.10%	
WHITE	4,216	68.04 %	78.51 %
Grand Total	6,196		
Total cognizable	5,370		

Gender Profile-Jan-Feb 2006		
Gender	Jurors	%
FEMALE	1,143	49.52%
MALE	1,165	50.48%
Grand Total	2,308	

Gender Profile-Aug-Oct 2006		
Gender	Jurors	%
FEMALE	3,457	48.64%
MALE	3,650	51.36%
Grand Total	7,107	

Gender Profile-Jan-Feb 2002		
Gender	Jurors	%
FEMALE	2,968	47.90 %
MALE	3,198	51.61 %
NO RESPONSE	30	0.48%
Grand Total	6,196	

Racial/Ethnic + Gender Profile-Jan-Feb 2006				
Race/Ethnicity	Gender	Jurors	%	% cog
ASIAN	FEMALE	23	1.00%	1.02%
	MALE	30	1.30%	1.33%
BLACK	FEMALE	98	4.25%	4.35%
	MALE	82	3.55%	3.64%
DID NOT ANS	FEMALE	13	0.56%	
	MALE	23	1.00%	
HISP.	FEMALE	185	8.02%	8.35%
	MALE	176	7.63%	7.86%
MIXED	FEMALE	4	0.17%	
	MALE	9	0.39%	
NATI.	FEMALE	5	0.22%	
	MALE	3	0.13%	
OTHER	FEMALE	3	0.13%	
	MALE	1	0.04%	
WHITE	FEMALE	812	35.18%	36.07%
	MALE	841	36.44%	37.36%
Grand Total		2,308		
Total cognizable		2,251		

Racial/Ethnic + Gender Profile-Aug-Oct 2006				
Race/Ethnicity	Gender	Jurors	%	% cog
ASIAN	FEMALE	83	1.17%	1.20%
ASIAN	MALE	100	1.41%	1.44%
BLACK	FEMALE	267	3.76%	3.81%
	MALE	221	3.11%	3.16%
DID NOT ANS	FEMALE	28	0.39%	
	MALE	87	1.22%	
HISP.	FEMALE	560	7.88%	8.15%
	MALE	518	7.29%	7.60%
MIXED	FEMALE	24	0.34%	
	MALE	20	0.28%	
NATIVE AMER.	FEMALE	10	0.14%	
	MALE	17	0.24%	
OTHER	FEMALE	11	0.15%	
	MALE	14	0.20%	
WHITE	FEMALE	2,474	34.81%	35.32%
	MALE	2,673	37.61%	38.16%
Grand Total		7,107		
Total cognizable		6,921		

Racial/Ethnic + Gender Profile-Jan-Feb 2002				
Race/Ethnicity	Gender	Jurors	%	% cog
ASIAN	FEMALE	45	0.73%	0.84%
	MALE	41	0.66%	0.76%
BLACK	FEMALE	188	3.03%	3.50%
	MALE	150	2.42%	2.79%
	N/A	1	0.02%	0.02%
DID NOT ANS	FEMALE	363	5.86%	
	MALE	445	7.18%	
	N/A	16	0.26%	
HISP.	FEMALE	366	5.91%	7.34%
	MALE	294	4.74%	6.22%
	N/A	1	0.02%	0.02%
NATIVE AMER.	MALE	2	0.03%	
OTHER	FEMALE	28	0.45%	
	MALE	40	0.65%	
WHITE	FEMALE	1,978	31.92%	36.84%
	MALE	2,226	35.93%	41.46%
	N/A	12	0.19%	0.22%
Grand Total		6,196		
Total cognizable		5,370		

Race/Ethnic Impaneling Choice-Jan-Mar 2006			
Race/Ethnicity	Choice	Total	%
ASIAN	INTERNET	48	90.57%
	SESSION	5	9.43%
BLACK	INTERNET	122	67.78%
	SESSION	58	32.22%
DID NOT ANS	INTERNET	24	66.67%
	SESSION	12	33.33%
HISP.	INTERNET	271	75.07%
	SESSION	90	24.93%
MIXED	INTERNET	12	92.31%
	SESSION	1	7.69%
NATIVE AMER.	INTERNET	6	75.00%
	SESSION	2	25.00%
OTHER	INTERNET	4	100.00%
WHITE	INTERNET	1,428	86.39%
	SESSION	225	13.61%

Race/Ethnic Impaneling Choice-Aug-Oct 2006			
Race/Ethnicity	Choice	Total	%
ASIAN	INTERNET	164	89.62%
	SESSION	19	10.38%
BLACK	INTERNET	362	74.18%
	SESSION	126	25.82%
DID NOT ANS	INTERNET	84	73.04%
	SESSION	31	26.96%
HISP.	INTERNET	828	76.81%
	SESSION	250	23.19%
MIXED	INTERNET	35	79.55%
	SESSION	9	20.45%
NATIVE AMER.	INTERNET	24	88.89%
	SESSION	3	11.11%
OTHER	INTERNET	25	100.00%
WHITE	INTERNET	4,581	89.00%
	SESSION	566	11.00%

Jurors from January-February 2002 did not have an impaneling choice

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