

REPRESENTATIVENESS OF PETIT JURIES

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This study examined the representativeness of juries in Montgomery County, TX. The purpose of this study was to identify whether the venire was representative of the community and whether juries were representative of both the venire and the community. The participants in this study consisted of residents of Montgomery County. Demographic information was obtained through an official jury questionnaire designed by the courts and completed when prospective jurors answered the summons. Hispanics were significantly under-represented both in venires and in petit juries relative to their proportion in the county, but it is not clear what proportion of Hispanics are actually eligible for jury service. A binary logistic regression was conducted in order to determine which variables had an impact on jury selection. It was found that females were more likely to be selected as were prospective jurors who had no prior involvement with civil lawsuits.

A jury of one's peers is a cornerstone of the American legal system. In 1789 Thomas Jefferson said, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution" (Washington, 1861). Our adversarial criminal justice system pits vast government resources against individuals with juries serving as a key check on the government power of prosecution. The system is premised on the notion that impartial jurors will consider the evidence presented to them and make factual determinations that arrive at the truth:

For more than six hundred-years—that is, since Magna Carta, in 1215, there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is ... the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused...." (Spooner, 1852, p. 11)

This ideal view of our system leaves little room for the influence of extra-legal considerations beyond the facts of the case.

Despite this idyllic view, research has emerged suggesting that a host of factors may influence jurors. Defendant race, for example, may play a role in juror determinations of culpability (e.g., Albonetti, 1998; Bodenhausen, 1990; Daudistel, Hosch, Holmes, & Graves, 1999; Espinoza & Willis-Esqueda, 2008; Mazzella & Feingold, 1994; Sommers &

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Ellsworth, 2000; Sunnafrank & Fontes, 1983). Although most of this research has focused on persons pretending to be jurors, as opposed to actual jurors, some of the findings do involve real juror decisions (e.g., Albonetti, 1998; Daudistel et al., 1999), raising genuine concern about the extent to which defendant race may play a role in jury decision making.

Defendant race cannot be considered in isolation. Instead, it must be viewed relative to the race of the jurors. Social psychological findings have shown consistently for some time that people tend to identify with particular group affiliations and view persons outside their group as different in ways that are at least inaccurate, if not unfavorable (see Allport, 1954). The in-group/out-group bias, for example, involves the tendency to treat members of one's own group more favorably than members of groups to which one does not belong (e.g., Tajfel, 1970; 1982). In order to minimize the impact of this bias, juries should be representative of the communities wherein defendants live as this increases the probability that at least some jurors will be members of the same racial group as the defendant. Although such representativeness is ideal, there is reason to believe it has not been realized.

Doubts about the representativeness of juries date back several decades. Alker, Hosticka, and Mitchell (1976) hypothesized that juries are not representative of their communities in that there are biases against: a) minorities, b) women, c) those who are undereducated, d) those who have advanced degrees, and e) persons of lower socio-economic status. The biases, the authors assert, originate with the selection process, specifically "in the use of outdated voter registration lists, unreturned jury qualification questionnaires, and the excuse process" (Alker et al., 1976, p. 9). Similarly, Kairys, Kadane, and Lehoczky (1977) opined juries are not representative of their communities because of the unrepresentativeness of the source lists. They argued the source lists, which were taken strictly from voter registration lists, needed to be broadened in order to increase the standard of representativeness.

Jury Selection

Some of the concerns raised by Kairys et al. have been addressed in the intervening decades by efforts to increase the number of people on the list from which jurors are selected (Munsterman & Munsterman, 1986). This has not been easy. Selecting a jury is a complicated process. In Texas, for example, jury summonses are generated by what is known as the "jury wheel" which draws names from both licensed drivers (or state identification card holders) in the county and from registered voters. These two lists are believed to be the best option for achieving representativeness. However, because of the diversity across jurisdictions in the quality of the various source lists available for use in selecting prospective jurors, no universally applicable list or list combination exists.

Obviously, even if prospective jurors make the list, they cannot be selected for jury service unless they respond to the summons. The failure to respond to a summons can result in a fine being levied against the person summoned (Montgomery County District Clerk's Office, n.d.). When answering the summonses, respondents are placed into the venire, or jury pool, unless they are ineligible to serve, qualify for an exemption, or have a hardship that results in an excuse. Once in the venire, there are various reasons why people

may be struck from the jury, including peremptory challenges and challenges for cause, among others (Sommers and Norton, 2008).

Fukurai, Butler, and Krooth (1991) studied the representativeness of African-Americans, Hispanics, and other minorities in jury pools. Their findings suggest myriad reasons why juries are not representative of their communities, including faulty jury lists, ready acceptance of excuses to be excused from jury duty, and disqualifications. This is consistent with other findings that minorities fail to respond to the jury summonses, and, when they do respond, are more likely to be excluded via a challenge from attorneys (Rose, 1999). As noted previously, however, many people never make it into the venire because they do not respond to the summons in the first place.

This begs the question, “Why do citizens fail to respond to jury summonses?” Schwartz, Behrens, and Silverman (2003) cite the automatic exemptions for those engaged in certain occupations or those who meet particular criteria (full-time college student, age, etc.), yet many people who do not qualify for these exemptions are summoned but fail to respond to the summons. There are many reasons: low compensation, indeterminate service time, and inflexible scheduling deter many potential jurors from responding. In addition to the aforementioned reasons, Seltzer (1999) states prospective jurors do not show because they believe they will not be punished for failing to appear. A fuller explication of the reasons underlying refusals to respond to summonses is beyond the scope of this article and, for present purposes it should suffice to know that people’s ignoring of summonses contributes substantially to the ultimate composition of juries. It is also worth noting that the numbers of so-called “no-shows” is not trivial; in a 2000 study of Dallas County Juries researchers found that 84% of the persons summoned for jury duty were no-shows (Eades, 2001).

Jury verdicts are directly impacted by the racial composition of the jury, according to Ellis and Diamond (2003). The authors state that a heterogeneous jury is ideal for promoting jury impartiality while meeting constitutional and statutory requirements. Diverse juries are more likely than homogeneous ones to make informed decisions (Sommers, 2006). Brewer (2004) found that race of persons imagining themselves to be jurors played a significant role in mitigation in capital cases they were pretending to decide. Although having representative juries appears to be important, assessing jury representativeness is elusive.

Assessing Jury Representativeness

Gauging the representativeness of juries is a complex issue. The Sixth Amendment of the Bill of Rights guarantees an impartial jury. A variety of Supreme Court decisions have held that this guarantee includes a “fair cross-section” requirement (see e.g., *Taylor v. Louisiana*, 1975 and its progeny). Since *Taylor*, numerous cases have addressed the issue in a variety of different ways. Detre (1994) argues that the methods used by the courts to measure whether there is under-representation in jury pools substantially fail to determine the chances of having a jury that is representative of the community. Although a detailed discussion of the statistical operationalization of the fair cross-section requirement is beyond the scope of this article, the reader should know that court determination of jury representativeness is not straightforward.

Research Questions

The research questions explored in the current study were as follows:

- Are there differences in the racial composition of juries as compared with the racial composition of the venire?
- Are there differences in the racial composition of juries as compared with the racial composition of the county?
- Are there differences in the racial composition of venires as compared with the racial composition of the county?
- Are there differences in the demographic variables between those prospective jurors selected to serve and those not selected?

METHODOLOGY

The subjects of this study were residents of Montgomery County, Texas. The population of the county at the time of this study was 412,638 (U.S. Census Bureau, n.d.b.). The potential jurors are summoned based on the jury wheel. In Texas, the jury wheel is updated annually, and names of persons to be summoned are randomly drawn from the list. However, potential jurors who are under the age of 18, but are nevertheless licensed drivers or possess a Texas Identification card, are excluded from being selected.

The potential jurors included in the study were those who answered the summonses and were directed to the 359th District Court. This court oversees criminal and civil trials, both of which are conducted regularly. For the purposes of this study, there was no differentiation between criminal and civil trials. Assignment of prospective jurors to individual courts and types of cases is random. Therefore, for statistical analytical purposes, the persons comprising the venires for trials in the 359th District Court are presumed to be representative of the population from which they are drawn, namely, all persons comprising venires from which Montgomery County, Texas juries are selected.

Measures

Data were collected over a period of nine months. When answering the summons, the prospective jurors were asked to complete an official Juror Questionnaire. This questionnaire has been in use by all the courts in Montgomery County since 2000. It is completed by the prospective juror under the supervision of the County Clerk's office.

A total of 716 prospective and actual jurors answered the questionnaire (n=716). Of the total number, 553 of these potential jurors (those who answered the jury summons) were not selected and 163 were selected to serve on a jury. Demographic information was collected on the entire sample. This information is provided in Table 1.

The mean age of the venire-persons was 47.80 (SD=11.66). Males comprised 49.2% (n=352) of the sample, whereas females (n=364) comprised slightly more than half (50.8%). When divided by group (Not Selected to Serve on a Jury and Selected to Serve on a Jury), 65 males were selected to serve on a jury as compared to 98 female selected jurors. Whites (n=655) were the majority of the respondents. This was true for both Not Selected to Serve on a Jury (n=506) and Selected to Serve on a Jury (n=149) groups.

Table 1
Age, Race, Gender, and Level of Education Statistics for Complete Sample and Respondents by Group

	Total (N=716)	Not Selected to Serve on a Jury (n=553)	Selected to Serve on a Jury (n=163)
Age: Mean (SD)	47.80 (11.66)	47.82 (11.41)	47.74 (12.50)
Gender: N (percent)			
Male	352 (49.2)	287 (51.9)	65 (39.9)
Female	364 (50.8)	266 (48.1)	98 (60.1)
Race			
Caucasian	655 (91.5)	506 (91.5)	149 (91.4)
African-American	20 (2.8)	14 (2.5)	6 (3.7)
Hispanic	31 (4.3)	25 (4.5)	6 (3.7)
Asian/Pacific	9 (1.3)	7 (1.3)	2 (1.2)
Islander			
Native American	1 (0.1)	1 (0.2)	0 (0.0)
Level of Education			
No High School			
Diploma/GED	29 (4.1)	26 (4.7)	3 (1.8)
High School			
Graduate	297 (41.5)	235 (42.5)	62 (38.0)
At Least Some			
College/Technical			
School	390 (54.5)	292 (52.8)	98 (60.1)

As shown in Table 2, the majority of those who answered the jury summons were employed ($n=601$) either part-time or full-time. In addition, the majority of respondents were married ($n=539$) and had a religious preference ($n=526$). In fact, those respondents who indicated they were religious in both groups (Not Selected to Serve on a Jury and Selected to Serve on a Jury) were the majority with 72 percent and 78.5 percent, respectively. All of those who answered the summons were U.S. citizens ($n=715$), except for one respondent.

As reported in Table 3, the majority of those who responded to the jury summons had previously served on neither a civil jury ($n=561$), nor a criminal jury ($n=622$). Similarly, the majority of the respondents had never been an accused, complainant, nor a witness in a criminal case ($n=661$). Many of those who answered the summons had also never been the subject of a lawsuit ($n=559$). This can be seen in both groups: Not Selected to Serve on a Jury (75.8%) and Selected to Serve on a Jury (85.9%).

Not all of the variables within the questionnaire were examined. For example, name, Texas driver license number (or state identification card number), home/ mailing address, date of birth, number of children, and whether the respondent had suffered accidental

Table 2.
Employment Status, Marital Status, Citizenship, and Religion

	Total (N=716)	Not Selected to Serve on a Jury (n=553)	Selected to Serve on a Jury (n=163)
Employment Status: N (percent)			
Unemployed	115 (16.1)	87 (15.7)	28 (17.2)
Employed	601 (83.9)	466 (84.3)	135 (82.8)
Marital Status			
Single	97 (13.5)	75 (13.6)	22 (13.5)
Married	539 (75.3)	414 (74.9)	125 (76.7)
Widowed	10 (1.4)	9 (1.6)	1 (0.6)
Divorced	70 (9.8)	55 (9.9)	15 (9.2)
U.S. Citizen			
No	1 (0.1)	0 (0.0)	1 (0.6)
Yes	715 (99.9)	553 (100.0)	162 (99.4)
Religion			
No Religion	190 (26.5)	155 (28.0)	35 (21.5)
Religious	526 (73.5)	398 (72.0)	128 (78.5)

Table 3
Prior Jury Service, Criminal Case Involvement, and Law Suit Involvement

	Total (N=716)	Not Selected to Serve on a Jury (n=553)	Selected to Serve on a Jury (n=163)
Previously Served on a Civil Jury: N (percent)			
No	561 (78.4)	428 (77.4)	133 (81.6)
Yes	155 (21.6)	125 (22.6)	30 (18.4)
Previously Served on a Criminal Jury: N (percent)			
No	622 (86.9)	483 (87.3)	139 (85.3)
Yes	94 (13.1)	70 (12.7)	24 (14.7)
Accused, Complainant, or Witness in a Criminal Case: N (percent)			
No	661 (92.3)	506 (91.5)	155 (95.1)
Yes	55 (7.7)	47 (8.5)	8 (4.9)
Party to a Lawsuit: N (percent)			
No	559 (78.1)	419 (75.8)	140 (85.9)
Yes	157 (21.9)	134 (24.2)	23 (14.1)

bodily injury requiring medical attention are questions asked on the questionnaire, but not considered in this study. This was to maintain anonymity by preventing deductive disclosures. The Number of Children variable was excluded primarily because of the 70% non-response rate to this query. Due to the difficulties associated with so much missing data on this variable, it was not included in the current study. This is unfortunate because it may well be that parents with small children may be more likely to be excused from service, especially as the numbers of those small children increase.

To answer the research questions, the independent variables in this study included the following: age, race, gender, level of education, marital status, religious affiliation, employment status, U.S. citizenship, prior civil case service, prior criminal case service, prior involvement in a criminal case, and prior involvement in a civil case. The dependent variable was whether the respondent was selected to serve on the jury. Examination of these variables sought to determine not only if the juries were representative of the community, but also if the venires were representative of the community, and the juries were representative of the venire.

RESULTS

In order to answer the research questions, Chi-Square analyses were performed. First, however, an observational comparison of the racial composition of the following groups was warranted: those who were selected to serve on the jury, the venire, and the population of Montgomery County. These percentages are presented in Table 4. There were approximately 4 percentage points more Caucasians in both the venire and jury selection than the county. Hispanics had the largest decrease in representativeness from county-to-venire-to-jury of all the racial groups. They are the second largest group in Montgomery County, yet only 3.7% and 4.3% were represented in the jury selection group and the venire, respectively. This means there were about 27% as many Hispanics as one would expect if there had been full representation of the County on the venires and 23% of the number Hispanics that would be expected if there had been full representation of the County on the juries.

Table 4
Comparison of Race by Selected to Serve on the Jury, the Venire, and Population in the County

	Caucasian	African American	Hispanic	Asian/Pacific Islander	Native American
Jury: N (percent)	149 (91.4)	6 (3.7)	6 (3.7)	2 (1.2)	0 (0.0)
Venire (percent)	655 (91.5)	20 (2.8)	31 (4.3)	9 (1.3)	1 (0.1)
County (percentage)	328,145 (87.3)	14,563 (3.9)	60,325 (16.0)	6,064 (1.6)	2,943 (0.8)

Results of the Chi-Square test for the first research question were not significant, indicating that there is no statistically significant difference between the racial composition of the jury and the racial composition of the venire. Results of the Chi-Square tests for the second and third research questions were not significant for any racial groups, except Hispanic. Results of the Chi-Square tests for research questions two and three are presented in Tables 5 and 6, respectively.

Table 5.
Chi-Square Test Results Comparing the Racial Composition of the Jury to the County

	Jury (%)	County (%)	Chi-Square	p
Race				
Caucasian	91.4	87.4	0.17	NS
African-American	3.7	3.80	.02	NS
Hispanic	3.7	16	14.97*	<.001
Asian/Pacific Islander	1.2	1.61	0.15	NS
Native American	0.0	.78	1.28	NS

Note: *Indicates significance, exceeds critical Chi-Square value of 3.84 for 0.05 probability level.

Table 6
Chi Square Test Results Comparing the Racial Composition of the Venire to the County

	Venire (%)	County (%)	Chi-Square	p
Race				
Caucasian	655 (91.5)	87.4	0.76	NS
African-American	20 (2.8)	3.8	2.09	NS
Hispanic	31 (4.3)	16	58.64*	<.001
Asian/Pacific Islander	9 (1.3)	1.61	0.55	NS
Native American	1 (0.1)	.78	3.78	NS

Note: *Indicates significance, exceeds critical Chi-Square value of 3.84 for 0.05 probability level.

The Chi-Square critical value (χ^2) with one degree of freedom and an alpha level of 0.05 is 3.418. For the second and third research questions, the Chi-Square statistic for Hispanic was 14.971 and 58.643, respectively. Thus, both Chi-Square statistics for Hispanic exceed the critical value, indicating that a significant difference exists between the racial composition of the jury and the county and the racial composition of the venire and the county for the Hispanic group.

Separate Chi-Square tests were conducted with Race to determine whether the sample was representative of the population. The results indicated that the proportion of Hispanics serving on juries was significantly different from the proportion that would be expected given their prevalence in the county. In addition, when dichotomized as white/non-white, the venire was significantly different from the population of Montgomery County ($\chi^2= 4537.583$ at $p<.001$). Because the dichotomization of the other groups did not yield significant Chi-Square results, it can be assumed that the differences found when dichotomizing white/non-white are largely accounted for by the apparent under-representation of Hispanics.

For the current study, a binary logistic regression using the forward stepwise method was conducted to answer the research question of whether race significantly predicts the likelihood of selection as a juror. After the regression analysis was completed, the final model indicated that race was not a significant predictor; however, two other independent variables, gender and party to a lawsuit, were statistically significant in predicting who is selected to serve as a juror. Table 7 presents the regression coefficients for the two-variable logistic regression.

Table 7
Logistic Regression Predicting Juror Selection

B	Wald	df	p	Odds	Ratio
Gender	.45	6.20	1	.01	1.57
Party to a Lawsuit	-.63	6.45	1	.01	.53
Constant	-1.44	134.78	1	<.001	.24

The regression coefficient for Gender was $B=.454$, and the regression coefficient for Party to a Lawsuit was $B=-.627$. An examination of the *Wald* statistics for the variables entered into the final model indicated that both gender and party to a lawsuit significantly predicted juror selection. Additionally, odds ratios for gender ($e^B=1.574$) and party to a lawsuit ($e^B=.534$) showed that females are 1.574 times as likely as males to be selected to serve as a juror, and those who have been party to a lawsuit are .534 times as likely to be selected to serve as a juror.

DISCUSSION

As a preliminary matter, it is worth remembering that there are numerous approaches courts have taken to determining representativeness. The statistical significance testing of differences in expected ratios is by no means universal. Nevertheless, the approach employed here is one that has been championed for more than half a century (Finkelstein, 1966). Moreover, the United States Supreme Court has suggested, albeit by way of dicta, that statistical significance testing can be a factor in determining underrepresentation (*Castaneda v. Partida*, 1977).

Regarding the first research question, a Chi-Square test was conducted, and the results indicated that the racial composition of the jury and the venire did not differ significantly. For the second and third research questions, the numbers of Hispanics in the venires and on juries were found to be significantly different from what one would expect in light of the racial composition of the county. However, determining the actual expected number of persons of Hispanic descent on either the juries or the venires is problematic. This is so for a number of reasons. First, Texas has a very substantial population of unauthorized migrants who are ineligible for jury service, but who are, nevertheless, included in census data (U.S. Census Bureau, n.d.a.)¹. Second, it is likely that even some persons of Hispanic descent who *are* citizens lack the kind of facility with English that would be required for jury service. Accordingly, they may be struck from such service. Finally, even if they are facile with English, attorneys may assume otherwise and strike them for that reason.

Limitations and Policy Recommendations

A limitation of the current study relates to the failure to document exemptions. For example, if someone is exempt because she is a full-time college student, her exemption (if she responds) is noted, and she is stricken from the list of potential jurors. However, these responses are not kept and, accordingly, it is not possible to differentiate between those who received the jury summons and chose not to respond from those who did not receive the summons at all. Absent these data, it is impossible to know how much of the proportion of members of different racial and ethnic groups “fall out” of the process and at which stage.

1. According to the Pew Hispanic Center (Passel, 2008), there are some 11.9 million unauthorized migrants in the United States, about 78% of whom are Hispanic. The Pew Hispanic Center (2005) also reports that approximately 14% of unauthorized migrants reside in Texas. According to the most recent census data, approximately 1.69% of Texans reside in Montgomery County. Considering that the number of unauthorized immigrants in the United States who are Hispanic is around 8,970,000 (11.5 million x .78) and 14% of them reside in Texas, that means Texas has approximately 1,255,800 unauthorized Hispanic migrants. Because Montgomery County has approximately 1.69% of the state's population, that means more than 20,000 Hispanics in Montgomery County likely are unauthorized migrants and, thus, are ineligible to serve on juries (assuming such migrants are distributed across the state according to the same pattern as other groups). This figure is roughly one-third of the census estimates for Hispanics in the county. Obviously, if up to one-third of the number of people expected to be on juries are ineligible for service, the estimates are very unstable.

A similar limitation inheres in the number of respondents who did not answer the summons. The no-show rate in Montgomery County, as elsewhere in Texas, is known to be quite high. Unfortunately, there is no way of knowing whether the rates of not showing are consistent across racial groups. The Eades study (2001) reported above hints at disparities in no-show rates, but he does not report the data. Again, there is no way of knowing who falls out when.

A final limitation along these lines pertains to the absence of race data on who is summoned. Absent these data, we do not know whether the process even *begins* with a chance of a representative jury by summoning proportionally. Representativeness could be better assessed if this step is taken before the jury summonses are sent out. By altering current policy to record demographic information prior to sending the summons to each potential juror, it would provide a clearer picture of who is not responding to the jury summons, and therefore aid future researchers in determining the representativeness of juries.

Directions for Future Research and Conclusion

The process culminating in service as a juror involves satisfaction of a number of criteria and a series of steps: a) being a resident of the county at issue, b) being a citizen of the United States, c) being otherwise eligible for service (e.g., no disenfranchisement of rights to service), d) inclusion on one of the lists used for summonses (voter registration and driver's license or state identification cards in Texas), e) selection from that list, f) receipt of the summons, g) responding to the summons, h) not availing oneself of automatic excuses from service, (i) not securing a discretionary excuse from service, and finally, j) being chosen (or not being struck) from the venire. In this study, census data informed our understanding of the county's composition of residents (i.e., a), above), but no data were available on any of the other steps or criteria leading up to the composition of the venire as that might relate to racial composition.

Are racial minorities more likely to be non-citizens? Are racial minorities more likely to be rendered ineligible for jury service due to disenfranchisement as felons? Are they less likely than their non-minority counterparts to register to vote and/or obtain a state-issued driver's license or state identification card? Are they less likely to receive the summons because they have moved to a new address (frequent moves are common among the poor who are disproportionately minority)? Are they less likely to respond to the summons because of a lack of confidence in the institutions of justice in this country? Are they more likely to be entitled to automatic excuses (e.g., with a higher frequency of single-parent homes)? Are they more likely to be given a discretionary excuse because the nature of their jobs incurs greater hardship for missed work (as is common among those of lower socioeconomic status)?

These and other questions were beyond the scope of the current study, but must be addressed in order to flesh out fully our understanding of jury representativeness. Future studies should examine these issues. Exploring which summonses are returned or tracking who receives excuses (automatic or otherwise) and why, for example, would be major steps

in addressing representativeness issues within the jury selection system, and could serve as a call to make changes addressed in the literature.

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