Jury selection and representation: a jury composition study of Charlotte-Mecklenburg County, North Carolina from 1976-77 compared to 1980-81

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ABSTRACT
POLITICAL SCIENCE

SMITH, NORMAN       B.S., N. C. A & T State University, 1976
                    M.S.L.S., Atlanta University, 1986

JURY SELECTION AND REPRESENTATION: A JURY COMPOSITION
STUDY OF CHARLOTTE-MECKLENBURG COUNTY, NORTH CAROLINA FROM
1976-77 COMPARED TO 1980-81

Advisor: Professor Lawrence E. Noble, Jr.
Thesis dated May, 1990

The main objective of this thesis theme is to examine
a facet of the political science discipline, viz., judicial
process and its relationship to the trial by jury concept,
i.e., jury selection and representation in a particular
locale. Thus, the locus for this intricate project will
be a jury composition study of the Charlotte-Mecklenburg
County, North Carolina jury pool for two biennium periods,
1976-77 and 1980-81, at the Twenty-Sixth Judicial District
for the State of North Carolina. That is, to compare the
socio-demographic characteristics of the total population
of Charlotte-Mecklenburg to those persons who served in
the jury pool in Charlotte-Mecklenburg for the years,
1976-77 and 1980-81, to evaluate fair and equitable jury
representation.

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The method and technique(s) employed to accomplish the objective of the thesis theme can be compartmentalized into two parts, viz., empirical and non-empirical. In the latter situation, the information will be of a secondary nature and discerned from a content analysis approach. In the empirical phase, data was collected from a jury composition study and survey sampling methodology. And, of course, the data was analyzed by way of statistical hypothesis testing and mathematical probability.

The conclusion to be drawn from the empirical dimension of this study is that of eight socio-demographic variables examined in this study to determine fair jury representation, for race, for 1976-77, the alternative hypothesis of a difference was confirmed; but for 1980-81, the null hypothesis of no difference was confirmed. For gender, in both periods, the hypothesis of no difference would stand. For the other categories as income, occupation, age and education, for 1976-77, the alternative hypothesis of difference would stand. Thus, there was not wholesale underrepresentation in the jury pools of Charlotte-Mecklenburg for Bienniums 1976-77 and 1980-81. In the nonempirical phase, it has to be concluded that within all judicial territories and districts across the nation, in order to make concrete and practical the abstract idea of trial by jury in Anglo-American law, a
jury selection system framework is established and regulated by constitutional and statutory enactment. In order to make this scheme workable, source(s) or list of eligible persons is sine qua non to its existence; but to ensure that such source(s) reflect adequately and appropriately the community from which they are drawn, certain constitutional standards and mathematical or quantitative tools are often employed to ensure compliance.

The management of public affairs is no less poignant in the judicial arena, i.e., judicial process, than, say, in the executive or legislative branches of government. For this reason alone, knowledge of jury selection processes and procedure, and, in turn, jury representation warrants serious attention as it affects and effects the citizenry at large and public policy, to bridge the gap of the ideal versus the reality.
ACKNOWLEDGEMENTS

I wish to thank my advisor, Larry Noble, for his patience and guidance. In addition, I wish to express my appreciation to my second reader and other committee member Dr. William Boone. Also, I would like to extend my gratitude to those institutions and agencies which assisted me in this project, particularly Thomas and Janice Munstermann of the Center for National State Courts.

And lastly, I would like to express my appreciation to the following persons: Ms. Melvina Bynum, Dr. James O'Reilly of Duke University, Mary Tyson, Curtis Andrew Barksdale, Lesley Smart and Cary Bernard Watts for their assistance in compiling the empirical data.
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CHAPTER I
INTRODUCTION

The jury is the most democratic of our institutions. The idea itself that ordinary citizens without experience in judicial decision-making should be impaneled to decide issues of great importance—is an unusual one in the world today. The jury developed as part of a long struggle against centralized power in Britain and later in those countries that inherited the British tradition of justice. But the jury is unusual even in democracies. Most institutions of democratic government draw their power from the people who elect their representative to the decision-making bodies, but in the courtroom it is the people themselves, as jurors, who make the decisions. No wonder, then, that the jury continues to be the object of controversy.

Jon M. Van Dyke
"Jury Selection Procedures: Our Uncertain Commitment to Representative Panels"

Statement of the Problem

Over the last two decades or more, there has been a great amount of research done on juries and the American jury system. The studies have been conducted by lawyers and legal researchers, and also by psychologists, political scientists, economists, sociologists, and journalists.¹

Given the preceding trend, therefore, this study on jury selection and representation (i.e., source list) is in apt order.

However, before adventuring into the specifics of the study, three salient concerns will be highlighted. Firstly, a general discussion on the trial by jury will be stated; secondly, the utility of jury selection and representation (i.e., source list) as a thesis theme and its relatedness to the academic area of political science will be addressed; and thirdly, the political ramifications that jury selection and representation poses.

The following section will explore and examine the trial by jury as it has evolved from the beginning of Western Civilization until modern times. Thus, the jury as a conflict-resolution instrument can be glanced at from three perspectives and epochs: antiquity, the middle ages, and modernity.

Since ancient times, the "jury" or judicial bodies have existed in some form or frame and have been empowered to discern facts or issues in disputes. In fact, the early Greeks maintained a list of six thousand citizens from which two hundred were drawn to hear evidence of misfeasance and advise the government. The Romans modeled after this citizen-juror concept by establishing a judge-jury system which was comprised of magistrates and advisors
under Emperor Constantius II, who abolished it in 353 A.D. for fear of its power and influence. Although the institution was eliminated, the concept of judge-jury did spread to far reaches of the Roman Empire, in particular the Scandinavian region. However, the ideological derivation of our modern system of jury trials stems from European leaders and the propertied aristocratic class of ninth and tenth century Europe. In this context, Baron-Lords summoned jurors to settle property disputes among their vassals, under a scheme titled trial per duodecim juratos or nambia. Historically, this framework was a creation of the Scandinavians who had not employed it for awhile, but was later revived and established by a law of regnenerus, surnamed Lodbrog around 820 A.D. Once the nambia was reinstituted into Scandinavian life, their leader, Rollo, upon his incursion into foreign lands, most notably present-day France took the nambia and Lodbrog as methods of trial in small conflicts in this region (this transformation occurred under Rollo as the Duke of Normandy and head of the Norman clan). Besides conquering France or Normandy, Rollo, leader of the Scandinavians, and now

ruler of Normandy, proceeded to cross the English channel and overtake present-day England, where he sought to substitute their system of jurisprudence titled Saxin Sectatones. Under the English system, prior to Rollo's conquest, the Saxin Sectatones was more commonly known as the judicium parium. In this procedure, witnesses, judges and jurors often had overlapping functions; and jurors were chosen for their knowledge of the facts of the dispute upon which they were to sit in judgment. Moreover, in a power delineation sense, Saxin Sectatones or judicium parium, allowed for the summoning of jurors as a control maintenance device for Baron-Lords who sought power by allowing participation in the solution of disputes among the vassal class. Within the judicium parium structure existed a complex web of dominant-subordinate relationships characteristic of feudel organizations. Other features of this system besides indistinguishable role functions and jurors intimate knowledge were the stipulation that lower Lords could not judge higher Lords who could be judged only by fellow Baron-Lords. From this design, the concept of inter pares was actualized as it denotes "among peers; among those of equal rank." Moreover, "peer" derived from the Latin word "par," meaning anyone of equal or higher social
standing requested to try civil matters.3

In the previous paragraphs, points of information have noted that the trial jury and methods of conflict-resolution have existed in the form of the nambda, Lodbrog, and judicium parium, culture precepts stemming from the Scandinavians and English Anglo-Saxons. However, the modern utilization of trial by jury did not occur until Rollo, who had conquered France or Normandy, crossed the English Channel and laid siege upon Anglo-Saxon England. Though Rollo had intentions of integrating the Scandinavian concept of nambda and Lodbrog into the English system of judicium parium, this agenda was never realized. Instead, Rollo's illegitimate son, William the Conqueror, had other plans for the English system of justice, as he ascended to power. Under William's authority the seed for our modern system of trial by jury was planted. In order to consolidate his powers, William the Conqueror employed a procedure of inquest or inquisition (commonly used in Ancient Rome), to determine the countryside's wealth and population. As

the ruler of England, William dispatched his Lord-Barons into the villages and townships to question men of standing in their communities, upon oath, about the community's financial affairs. Though the function of the institution was mostly financial, occasionally criminal matters were adjudicated. In addition, these pillars of the community served as witnesses for Royal Officers who produced the massive census document, Domesday Book between 1081-1086.4 Although William the Conqueror planted the seed for the modern system of trial by jury via the system of inquest or inquisition, his successor, Henry the II (1154-1189) can be credited with laying the foundation for the modern jury. Henry the II developed and expanded William's system of inquest into the direct ancestor of the grand jury by impaneling men to consider criminal cases and accuse those suspected of committing crimes. The twelve male citizens grand jurors were selected by Knights who, in turn, were designated by the Crown.5 Also, Henry the II, retained features of the judicium parium system as:

1) In civil disputes, qualifications to serve entailed intimate knowledge of the case being judged;6 and

4Van Dyke, Jury Selection Procedures, pp. 2-3.
5Ibid.
6Koskoff and Hodgson, p. 477.
2) Jurors served as witnesses, judges and accuser; in fact, before a case came to trial, jurors were called to identify an offender when no private accuser stepped forward. 

In essence, the major contribution of Henry the II in laying the groundwork for the trial by jury was: the grand jury was delegated and impaneled to examine criminal cases and accuse suspected perpetrators of crimes. Therefore, the concept of trial by jury became institutionalized in 1166 at the Assize of Clarendon or the Constitution at Clarendon which accorded the trial by jury be used to resolve disputes:

That inquiry shall be made in every county in every hundred by the twelve most lawful men of the hundred and by the four most lawful men of every vill, upon oath that they shall speak the truth, whether in their hundred or vill there be any man who is accused or believed to be a robber, murderer, thief, or a receiver of robbers, murderers or thieves since the King's accession. And thus the justice and sheriffs shall inquire before themselves. 

Being mindful of this mandate, the sheriff or justice had the option of pursuing what action(s) were deemed necessary. Upon the direction of the Constitution at Clarendon, Assizes explored and resolved civil land ownership cases and rendered the necessary verdict. In addition to civil

7Ibid.

litigation, the Constitution of Clarendon spelled out ways to determine the guilt or innocence for criminal infractions. In such instance, one's guilt or innocence was established by trial by battle or trial by ordeal under auspices of a clergyman to ensure divine sanction of decision. In the trial by battle or ordeal, which was introduced by the Normans and is a forefront of duel disputes, "champions" did battle to ultimately declare a victor. Other means of judicial decision-making entailed the Wager of Law or Proof by Compurgation, wherein an accused had to assembled a group of twelve men to affirm their trustworthiness. Upon failure of the oath-taking process in Proof by Compurgation or Wager of Law, the accused was subjected to the Trial by Battle or Wager of Law. In retrospect, in England under the judicial framework titled judicium parium or saxin sectatones, and before

9"American Jury System," p. 695. In the Editorial Research Report it is stated that "there is strong speculation as to why the first jury was composed of twelve under the Constitution of Clarendon; some judicial theorist have reasoned that this number derived from the Proof of Compurgation with twelve men, others refer to the 'Apostolic Law' as the judge and jury were likened to Christ and the twelve Apostles, or the twelve Tribes of Israel, or the Twelve Officers of Solomon, the worship of the Teutonic Fire God-Wotan, others even concluding that twelve was large enough to prove efficient, in any event, around the middle of the fourteenth century twelve jurors was well established."
the arrival of Rollo from the north and his love-child, William the Conqueror and his successor Henry the II; an accused-defendant confronted the Ordeal of Hot Irons and Cold Water. The Hot Iron test involved the carrying of heated irons in ones hands for the length of nine feet, after which time they (hands) were bandaged for three nights and subsequently examined. If the results showed the wounds healed, the accused was vindicated; but should unhealthy matter be found, guilty or uncleansed was the verdict. In the latter test, cold water, a suspect was bound and dumped into a body of water and if the accused sanked the distance exceeding the length of their hair, they were found innocent; however, should they float, guilty was the ruling.¹⁰

From the times of William the Conqueror, Henry the II and King John, which covers a period from the tenth to the twelveth century, the trial by jury was used erratically and served the Crown's perjorative; accompanied by other penalties and possibilities as imprisonment, banishment and land expropriation. As a consequence of the aforesated actions and events, and the concomitant discontent and turmoil, King John forcibly conceded to his noble subjects, namely the Lord-Barons, certain rights and

¹⁰van Dyke, Jury Selection Procedures, pp. 2-3.
privileges codified under the 1215 Magna Charta or "The Great Charter" at Runnymede. The guarantees which stem from this historical document, viz., trial by jury, were delimited to free propertied noble males and their peers at the top rung of the feudal hierarchy. Nonetheless, despite this constriction, the "Great Charter" has established a tradition of trial by jury in many democratic societies, as well as being a pillar of Anglo-American law and legal systems. The most prominent and world renown of clauses within the Magna Charta is number thirty-nine which states:

No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.11

The jury framework established after the 1215 Magna Charta was more akin to the modern grand jury than petit trial jury as its role was to decide if evidence warranted additional proceeding against a defendant in the name of the ordeal. Also, in the same year as the Magna Charta, Pope Innocent III halted priest from conjoining trials by ordeals, which further actualized the trial by jury. This reversal in church policy did not occur haphazardly, but

rather as a result of declining religious values among the populace, scrutiny of the validity of oaths in the ordeal(s), and the pernicious motives of the clergy who were regarded as manipulators and money-grafters.\textsuperscript{12} 

As the thirteenth century approached, Anglo-Saxon common law shifted from trials by ordeals to trial by jury. But, alongside this change, came the separation of trial jury and grand jury in the fourteenth century. The petit jury was authorized to evaluate the evidence and establish the verdict of guilt or innocence, while the grand jury served as the indictor of charges. This separation was statutorily set in a 1352 parliamentary enactment which held that grand jurors could not sit on trial juries. After this period, upon arrival of the King's justice to hear disputes, local sheriffs selected twelve community males as jurors and an additional group of twenty-four knightsmen from the surrounding areas as an accusatory body for the county. This body of knightsmen were known for thrawting dissension in favor of unanimity, which would culminate into an investigation and pending indictments. As the twelve body trial by jury emerged, a rule of unanimity also evolved to the detriment of dissenting jurors, as the lone juror was fined for perjury on the

\textsuperscript{12}Van Dyke, Jury Selection Procedures, p. 3; Koskoff and Hodgson, p. 477.
premise that he was incorrect if the majority or others disagreed. In other factionalized situations, more jurors were assembled if the original twelve were split until a group of twelve could concur on a verdict. In the quest for unanimity, reliability was the key goal. As one can witness sometimes bold and daring steps were taken, touching upon the personal integrity of those involved.

Even though the Magna Charta represents a diffusion of royal authority in favor of the Baron-Lords right to jury trials, the former still exerted influence on jury decisions centuries later. One form of predominance was the larger, especially chosen and elite "jury of attainant" which whimsically and capriciously overruled original jury verdicts. In reality, jurors were often imprisoned and landowners dispossessed on assumption by the Crown that jurors perjured themselves in giving "erroneous" verdicts. Despite the arbitrariness inherent in the attainant process, its credibility and vitality seemed moribound by external and internal deficiencies as the harshness of penalties, verdicts rejected by judges, and jurors imprisoned and fined.\textsuperscript{13}

By the late eighteenth century, the concept of independent trial by jury was firmly ingrained in Anglo-Saxon Law,

\textsuperscript{13}Van Dyke, Jury Selection Procedures, pp. 3-5.
but not as a result of actions by English power brokers or institutional leadership; but from the controversy surrounding the milestone Penn-Mead trial. In this matter, two Quaker activists in 1670, William Penn and William Mead, were charged with unlawful assembly after their religious congregation was disrupted by outsiders. In its holding, the jury adamantly refused to find them guilty in the face of contemptuous conduct by the judge. Therefore, the magistrate-judge imposed a stiff fine on the jurors and ordered them jailed until the fine was paid off. The leader of these dissenting jurors, Edward Bushnell, undaunted by magisterial authority, held firm to the doctrine that jurors had a right to free and unobstructed deliberation without judicial coercion. Defendants, therefore, sought relief under a writ of habeas corpus. In a decision rendered two-and-a-half months later, Chief Justice Vaughn of the Court of Common Pleas, affirmed for the judges of that court, that the detained jurors be released without penalty and stated decisively that jurors, hence juries could not be punished for their verdicts. The jurors' obstinance in the Bushnell case is historically important, as it rekindled objectivity and detachment in trial by jury deliberations, which is rooted in the idea that prospective jurors should be impaneled from the district of the alleged crime in order to weigh issues of
fact in relation to the dictates of their understanding, reasoning and conscience. In fact, Chief Justice Vaughn, raised a rhetorical question: Why insist on careful selection procedures which dictates the choosing of jurors from the site of the alleged crime and unbiased, unless the jury verdict is to stand as the final decision on the question? In interpretation, Chief Justice Vaughn's presumption operates in the context that if a jury is to portray its intended role as important fact finder, expressing community sentiments: it must be and remain independent. Moreover, Vaughn reasoned too that the community's voice is sine qua non to judicial proceedings, and to exclude such would be tantamount to the jury serving as an apparatus of the state (i.e., Crown) and a sham under the guise of sovereign authority. Eleven years after the Penn-Mead case in 1681, another monumental case arose involving the Earl of Shaftsbury and the accusation centered around treason, judicial independence and supremacy of the grand jury. And, as before, the power and role of the judiciary, jury deliberation and decision-making was reassured and prevailed. In this situation, upon the probing of prosecution witnesses and examining them in private, the Oxford grand jury returned the bill of indictment for treason to the prosecutor with "ignoramus" written on the back. In order to challenge
the actions of the Oxford grand jury, the British Crown sought and was granted relief from their action by seeking to remove the case to another jurisdiction with the same quantum of evidence, where the Earl was successfully indicted. Though the Crown won a phryric victory in the Shaftsbury case, yet the principles from the Penn-Mead (Bushnell) case and the defiance exuded in the original Shaftsbury case expressed the "will of the people" to stand between or rightfully intercede between the Crown, i.e., state, and the accused without fear of reprisal, retribution or comeuppance.\textsuperscript{14} Also, about this time British expansionism or colonization adventured in the direction of the North American Continent, viz., Canada and the America colonies. This zeitgeist led to King James I granting a charter to the Virginia company to colonize and settle the Jamestown, Virginia community.\textsuperscript{15} In each charter were provisions of trial by jury and protection of the rights of Englishmen, even though methods of selection, vicinage size, and colony to colony usage varied immensely. Unlike their English forebearers, the original colonist truly understood the significance of trial by jury, due to the public prosecutors "arm of the

\textsuperscript{14}Ibid., p. 5.

state" authority to initiate criminal sanctions in North America. Moreover, in England, all trials from criminal offenses, excluding treason, were litigation between civil parties. The more salient reason for the prosecutor's plenary power in North America was the distance between the "Motherland" and the colonies, in addition to the insufficient number of lawyers. The result of this scheme left defendants merciless, as often the accused faced governmental authority which was readily prone to prosecute and better equipped with clarity and knowledge of procedure, idiosyncrasies of jurists and court personnel. Thus, the scales of justice would lean in favor of the state (i.e., Crown) unless citizen watchdogs safeguarded the precarious privileges of the accused. 16

In a major portion of the original colonies, the trial by jury was unequivocally expressed in state constitutions. A clause from the state of Maryland's constitution is illustrative of this right:

...The trial of facts where they arise, is one of the greatest securities of the lives, liberties and estates of the people...is a speedy trial by an impartial jury without whose unanimous consent he ought not to be found guilty. 17

16Van Dyke, Jury Selection Procedures, pp. 6-7.
17Ibid.
Other states borrowed wordings from the Magna Charta. Additionally in colonial Virginia, petit juries were commonly of twelve men, but records have shown juries with from thirteen to twenty-four members. Typically, jury duty fostered good citizen participation and judicial duress, viz.,:

In general, felony trials were held in one day. When the case was given to the jury, it was locked up without food or water until it reached a verdict. A jury man could not leave his fellows until a verdict was reached, which, as one writer has noted, "made a prolonged disagreement practically unknown." 19

Throughout the eighteenth century, the right to a jury trial of one's peers became a increasingly major factor in clashes between the North American colonies and Great Britain which contributed to the making of an "American Revolution" and the Declaration of Independence. The jury became an American symbol of democracy in contrast to a more traditional and repressive Crown (i.e., State). 20 Several confrontations lead to this state of affairs from the 1730s to 1775. Firstly, in 1735, a New York printer and newspaper publisher, John Peter Zenger, was arrested

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18 Simon, p. 5.

19 Koskoff and Hodgson, p. 472.

20 Ibid., p. 478.
and placed on trial for libeling the royal Governor of New York. A jury of Zenger's peers nullified the common law governing libel and held his diatribes averse to the Governor valid and freed him. This victory inspired colonial free speech and the power of fellow Americans to feel secure in themselves. Secondly, in a 1765 edict, the colonial Governor of New York and his agent counsels were delegated and empowered to reverse a jury's decision. This, the colonist, cited was inflammatory and contravened the precedences of Bushnell and Penn-Mead cases one hundred years earlier upholding the carte blanche authority of jury deliberation and decision-making. Thirdly, the Gaspee Affair of 1772 enraged colonist so that they lead a frontal attack on a British taxship. The source of disagreement was the surreptitious plan of English authorities to transport America criminal suspects to Britain for trial. Of course, this incensed colonist and reaffirmed their reverence and tenacious belief in their right to a jury trial of their peers. One result of the Gaspee Affair was creation throughout the colonies of Committees of Correspondence, which were instrumental in development of a

21Ibid., p. 478.
22Van Dyke, Jury Selection Procedures, p. 6.
revolutionary movement. Furthermore, fourthly, in the Port Bill Act of 1773, the royal Governor of Massachusetts was granted power to move trials to England; the colonist, accordingly, deemed such a move a denial of a jury from the community wherein the criminal charge(s) were alleged. This right being established decades earlier in the Penn-Mead controversy. Consequently, due to repressive activity as the curtailment of civil rights to enforce unpopular British revenue and trade acts, etc., and the accompanying sympathetic sentiments of jurors towards rebellious colonist leaders; this engendered an atmosphere of social, political and economic upheaval in the North American colonies.

The first conclave of American colonies, meeting in October, 1765, included trial by jury among its inventory of essential rights and liberties. This principle was re-enunciated at the 1774 First Continental Congress, in their Declaration of Rights: "...that the respective colonies are entitled to the common law of England and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of law." The common law aforesaid was a

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23 Koskoff and Hodgson, p. 478.

24 Van Dyke, _Jury Selection Procedures_, pp. 6-7.
distillation of the customs and usages from native Britons, Picts, Scots and from invaders of the British Isles as Germanic-Angles and Saxons, Norseman, Romans and Normans. Also, at the Second Continental Congress in 1775, a national Declaration of Independence was drafted as a manifesto of social grievance and the intention to start anew. At the Constitutional Convention of 1787, the Founding Framers formulated a national Constitution as a guidepost of a new nation's ideal of oneness under the banner of "God Almighty." During this conclave, delegates from the divergent colonies, discussed and debated, negotiated and finally compromised on key provisions to be included in a national government and structure. Hence, the objective of the 1787 meeting was to dismantle a weak and fragmented government structure under the colonies and Articles of Confederation system for a central and unified national federal system. As the debates and discussion lingered on, most representatives were highly desirious of assuming the right to trial by jury, given the lessons of history, both in America and England. In this capacity, unanimity was reached on certain provisions, viz., Article III, and Amendments V, VI, and VII. Under Article III, section two, it states, "The Trial of All

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25 Simon, p. 6.
Crimes, except in Cases of Impeachment; shall be by jury; and such Trials shall be held in the State where the said Crimes shall have been committed... Originally, this portion caused consternation among ratification skeptics who wondered if civil jury trials were coveted; if appellate judges would reverse jury verdicts; if vicinage rules were too broad (i.e., calling for juries selected statewide and not smaller areas); and, whether there should not be provisions designed to protect the right to challenge prospective jurors. With adoption of the first ten Amendments, titled the "Bill of Rights" to the Constitution, the doubters relaxed their posture in favor of three separate places in that document where the trial by jury was sanctioned. The Fifth Amendment stated, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Amendment Six (1791) held,

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, an impartial jury of the state and district wherein the crime shall have been committed.

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27 U. S. Constitution, Amendment Five.

28 U. S. Constitution, Amendment Six.
Finally, Amendment Seven (1791) proclaimed that,

In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States according to the rules of the common law. 29

Fundamentally, the early planners of our government wanted a national constitution which was lawfully ratified by its citizens and spoke to the right of defendants to demand community sanction before any person could be incarcerated for a crime or denied life, liberty, or the pursuit of happiness. Consequently, forevermore, the trial by jury was meant to serve as a bulwark between citizens and the sovereign authority of the state; in addition to serving as a counterpoising force against government repression and oppression by ensuring the body politic of a jury trial for every defendant accused of a crime, and the jury body properly including a cross-section of the community, randomly selected. Wherefore, it can be stated, at this junction, that the trial by jury is "the only anchor ever yet imagined by man by which a government can be held to the principles of the constitution." 30 Another way of putting this is in the eloquent words of Associate Supreme

29 U.S. Constitution, Amendment Seven.

30 Van Dyke, Jury Selection Procedures, pp. 6-7.
Court Justice Byron R. White, explaining the constitutional protection of trial by jury:

The guarantees of jury trial in the Federal and State Constitution reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the government. Those who wrote our constitution knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The Framers of the constitution strove to create an independent judiciary but insisted upon further protection against such arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the compliant, biased common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of a single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizens to one judge or to a group of judges. Fear of unchecked power, so typical of our state and federal government in other respects, found expression in the common law in this insistence upon community participation in the determination of guilt or innocence.31

In compendium, the right to trial by jury, is a multi-serving principle which can be succinctly stated in the sober and sagacious remarks of Alexis de Tocqueville, while

traveling around America in the first half of the nineteenth century, he noted:

The institution of the jury may be aristocratic or democratic, according to the class from which jurors are taken: it always preserves its republican character, in that it placed the real direction of society in the hands of the governed, or of a portion of the governed, and not in that of the government. . . . In the United States . . . this system is applied to the whole people. Every American citizen is both an eligible and a legally qualified voter. The jury system as it is understood in America appears to me to be as direct and as extreme a consequence of sovereignty of the people as universal suffrage. They are two instruments of equal power, which contribute to the supremacy of the majority. All the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury. . . . The jury contributed powerfully to form the judgment and to increase the natural intelligence of a people; and this, in my opinion, is its greatest advantage. It may be regarded as a gratuitous public school, ever open, in which every juror learns his rights, enters into daily communications with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even the passions of the parties. I think that the practical intelligence and political sense of the Americans are mainly attributable to the long use that they have made of the people rule is also the most efficacious means of teaching it how to rule men.32

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32Simon, p. 7.
In a narrow assessment of present issues confronting the trial by jury concept in America, John M. Van Dyke, author of the widely regarded book on jury selection processes and procedure, *Jury Selection Procedure: Our Uncertain Commitment to Representative Panels*, disentangles the jury structure from several perspectives. In the beginning, Van Dyke concludes that the idea of jury impartiality implies that jurors were to be drawn at random from the community. But when this is contravened, he argues, the jury may overrepresent particular segments of society and under include others, which creates an imbalance that heightens the specter of bias. The concept of trial by jury envisions that neither force in the adversary process will exert unwarranted and unfair advantage in the composition of juries whatsoever. Therefore, it's quite apparent that jury impartiality and the concomitant role of jury representativeness is crucial today as ever before. Against this background, Van Dyke notes, citizens manifest mistrust and cynicism about the jury system as both defendants and victims of crime decry the fairness of verdicts as jurors are viewed as having a predilection for the illogical, pre-judgmental, and being ill-reasoned for the task of jury deliberations. In addition, lay persons and professionals complain of inefficiencies and stress the need for modifications as
reducing size of juries and non-unanimous verdicts—in order to hasten selection deliberations and to reduce cost efficiency. In total, it appears nationally, that citizens are wondering if the present jury trial system is worthy of its claim of expeditious and efficient justice. To buttress their view, cynics cite the fact of endless waiting, low financial remuneration, bureaucratic confusion and abuse by attorneys and judges. Naturally, this state of affairs has unparalleled consequences for the jury system. Compounding these realities is the issue of plea bargaining as a prosecutorial tool, in contrast, to a constitutional right of every accused person of a crime to a jury trial. Despite this constitutional directive, in most jurisdictions only 5 to 15 percent of all criminal cases reach a jury, and of that number, most are serious crimes with a genuine dispute about the issue of fact. In such actions, where the jury trial is essential or the state waives the privilege of plea bargaining, the case must proceed to trial where a jury can deprive an accused of their freedom and liberties. The jury, as the trier of facts or issues, digest and discern the evidence in a case and evaluates the guilt or innocence therefrom. It is for these reasons that its integrity serves as the keystone for impartiality, legitimacy and independence. Otherwise, if there is no effectiveness, there is no jury
system. Each view henceforth expressed refers to petit criminal juries, yet it is not totally restricted from civil or grand juries; as certain quarters maintain that the grand jury is a tool of retribution used by prosecutors in a "cloak-and-dagger" fashion with flagrant and dubious practices adverse to witnesses and potential defendants; and in civil proceedings, juries are belittled as inefficient, time-consuming and insufficiently qualified to decide complex cases.33

The trial by jury, as a body of ordinary citizens assembled for a specific time to evaluate a given case has been hailed as the most equitable instrument of justice embodied in human weakness over singularity of "expert" rule. In effect, to counter the subjective view of a single person, a detached jury of twelve sagacious citizens are summoned to decide questions of justice and law. In the hallowed and venerated words of G. K. Chesterton, a renown English poet and essayist, who supported multi-civilian juries:

And the horrible thing about all legal officials even the best, about all judges, magistrates, barristers, detectives, and policemen, is not that they are wicked (some of them are good), not that they are stupid (several of them are quite intelligent), it is simply that they have got use

to it. . . . Our civilization has decided, and very justly decided, that determining the guilt or innocence of man is a thing too important to be trusted to trained men. If it wishes for light upon that awful matter, it asks men who know no more law than I know, but who can feel the things that I felt in the jury box. When it wants a library catalogued or the solar system discovered, or any trifle of that kind, it uses up its specialists. But when it wishes anything done which is really serious, it collects twelve of the ordinary men standing around.34

It is an undeniable fact that the jury system is wanting in efficiency and expertise, but taken not as a shortcoming, these "problems" may be germane to its legitimacy as the collective conscience of the community. That conscience which is marshalled inartificially and ingeniously to provide a non-total individual objectiveness bound by one's personal outlook and experience. For each citizen-juror constituent imports their particular weltanschauung of human existence and experience to the jury's cogitative process. This reason alone, justifies why a deliberative body of twelve is recognized as more responsible than any one person with acumen and perspicacity. With such diversity, it is anticipated that community bias will be minimized by eclectically uniting members of the same

entrusting their dimensions of life will balance. Thus, the thoughts to be deducted from this discussion is that for a jury to be understood as especial, it must reign as an impartial, legitimate vehicle of justice and law, independently construed and representative of the peoples "esprit de corps." In technological and modern America, the spirit of the people takes on a greater burden and incumbency to have on juries a fair cross-section of the society which depicts its conscience or will. Hence, jury selectors and their respective systems should yield juries or jurors whose outlooks and background depend, in part, upon socioeconomic status, ethnicity, race, sex, and age among other cleavages. To claim ignorance of these multiples, is to offend and masquerade the variant nature of society and fundamental character of the community. To ensure jury representativeness and community standard, one commentator has surmised seven proposals, all worthy of contemplation and discernment.

The tentative notions as espoused are as follows:

1) Lists from which jurors are chosen must be as complete as humanly possible, randomness should replace personal subjectivity; and prevailing list should be supplemented with other sources to give citizens equal chance;

2) No excuse should be granted to anyone summoned for jury duty, excluding medical hardship;

3) Jury service should be limited to at least one week generally, and made pecuniarily rewarding;

4) Peremptory challenges should be greatly curtailed;

5) The impaneling of juries in political trials should be monitored for representativeness given tools at the governments disposal;

6) The unanimity rule of twelve person jury must be preserved;\(^{36}\)

7) The burden of proof in challenging jury selection cases should be slightly relaxed.

In conclusion, the trial by jury is exclusively a western democratic political and judicial institution, which has taken on basically an American design; and with few countries outside the orbital influence of Anglo-Saxon law retaining its use. Seemingly the inclusion of a nation's citizens to prefer the judgment of a group of laymen over that of learned judges reflects the same mode of thought that cherishes the impressive workings of democratic government. An anonymous Englishman once said, "The jury system for deciding criminal trial is like

\(^{36}\)Van Dyke, "The American Jury," pp. 47-48. The Supreme Court has stated, for example, in Williams v. Florida, 399 U. S. 78 (1970) that juries as small as six are constitutionally acceptable and in Johnson v. Louisiana, 406 U. S. 356 (1972) and Apodaca v. Oregon, 406 U. S. 404 (1972) unanimity was not required and decision rules as thin as 9 of 12, and even thinner were sufficient.
democracy for deciding government; the worst system ever devised, except for all the others." Some nations have retained the jury in form, but not in substance. Portugal, Egypt, Czechoslovakia and Hungary have done as such; while Japan terminated a brief experiment with the jury trial in 1943, but it periodically does invite a panel of citizens to participate in trials through opinions and not verdicts. In France, judges sit in on jury deliberations and may set aside verdicts believed in error. In Austria, the courts allow three presiding judges casting unanimous votes to overrule jury verdicts. In the Union Soviet Socialist Republics (U. S. S. R.), a board of lay judges sit with the professional judge and advise him. In northern, eastern and southern Europe, juries of judges and citizens sit in varied numerical combinations. 37

In assessing the connection between jury selection and representation (i.e., source list) as a thesis topic and its relationship to the academic area of political science; it is useful to note that the predominance of this subject as an area of concern to political scientist and political students in particular, has its genesis in the social activist period of the 1960s and early 1970s. During these

37Editorial Research Reports, pp. 694-695.
times, the "forces of the state" began an ongoing effort to repress and prosecute activists who protested the oppressive treatment of black people, young people, and those who challenged the rule of the government as unjust. This necessarily meant that members or sympathizers of the Anti-War-in-Vietnam Movement, the Black Power Struggle, Women's Liberation, and generally those with a predisposition towards the "left" or "power to the people" politics had to be thrawted, if not eradicated. To best recapture the political struggles of the decade, one need only recall the trials of Huey P. Newton, The Chicago Eight, Dr. Benjamin Spock, Angela Davis, Daniel Ellsberg and Tony Russo, The Cantonsville Nine, The Wilmington Ten, The Charlotte Three, and The Attica Brothers, just to mention a few. These cases typify the government's search, find and destroy mission perpetrated upon political and social activists representing divergent political and philosophical perspectives. To counteract and proclaim their innocence the political activists had to shift the politics of protest from the streets and campuses to the courtroom which had once served as a platform for raising social issues. Instead, the courtroom became a battleground for selecting an unbiased jury trial from a representative cross-section of the community. To accomplish this task, social and behavioral scientist such as Jay Schulman and
Richard Christie, drawing upon earlier jury selection and representation works of Attorney Charles Moore of the Huey Newton defense, undertook a systematic attempt to challenge the entire jury selection process as unrepresentative, in that, most juries have traditionally been overrepresentative of older white males, of middle-class lifestyles and rural or suburban environments. Based on Schulman's and Christie's initial effort to apply social science methods in political trials and jury selection and representation work and technique(s), other social and behavioral scientists and political observers formed the National Jury Project. Through this project, political scholars (i.e., behavioral and social scientist) nationwide and across and South (e.g., Fowlkes, Noble and Bray) have pressed to end the poor quality of justice in America and destroy state practices militating against the accomplishment of justice (i.e., jury composition studies and

38 Also, after the Duncan v. Louisiana decision, 391 U. S. 145 (1968), in which the court held that a Sixth Amendment right to a trial by an impartial jury was a right incorporated in the Fourteenth Amendment and applicable to the States. The focus changed to whether jury pools from which juries were drawn were sufficiently representative of the community, and spawned a number of jury composition challenges nationwide.

challenges). Consequently, political scholars have begun to explore jury work or selection representation as a means to countervail unjust political and social conditions. Not only has the National Jury Project inspired political academicians to jury studies on selection and representation, but also in response to the blistering reprimand of social scientist Sheldon Wolin many have begun to probe this unchartered territory. Wolin noted that political scholars have failed to address themselves to political trials and the concomitant problems of jury representativeness and the legitimacy of the state therein. He states:

"one cannot help wondering whether political science, having jettisoned "metaphysical" and "normative" preoccupations about justice in favor of research into "judicial behavior" and the "judicial process" are not repeaing the results: an inability to address a major phenomena like the dangerous rash of political trials in America...and to reflect upon what these trials signify for the future of the authority and legitimacy of the state." 41

40Ibid.

41Ibid. It would seem that members of the National Jury Project have long recognized that laws and rulings are not enough to weed out discriminatory and arbitrary activity at the hands of administrators who may perpetuate defacto and invidious discrimination. Hence, the need for social and behavioral scientist is great, particularly with regards to the systematic framework often employed by them for exploring discriminatory practices embedded in institutions of society. By the application of systems and organizational theories, behavioral scientist can
Moreover, as political scholars explore the coterminous workings of political trials and jury selection and representation; or study each separately, through philosophical, scientific, and empirical investigations. One can readily attain political knowledge and political action in a vital area where politics and justice commingle. Jury selection and representation work or challenges in political trials affords three levels of knowledge for those pursuing the academic art of political science. First, it compels the participants to learn the concrete daily operations of the process. Second, via this exposure, one can better gauge the political nature of jury selection and assist in formulating plans to broaden the scope of political conflict as well as challenging the existing system. For example, efforts maybe pursued to counter socialize participants in the process and reconstruct traditional community groupings around the immediate issue(s) in a trial and the encompassing question of categorize and analyze bureaucratic structures by size, supervision and control, responsibility, specialization, and a variety of duties to find the general directions in which and the specific places at which important decisions are made. Social or behavioral scientist possess the training essential for collecting data and drawing inferences and generalizations that can become evidence for lawyers preparing arguments for legal proceedings. They can encourage the use of modern technology to create an objective bureaucracy.
quality of justice. Third, knowledge acquired can serve to create action-experimental studies around the nexus of political knowledge and political action. Whereupon, in employing action-experimental studies, not unlike the previous benefits of doing jury selection and representation work and challenges in political trials, the role of elites and ordinary citizens in the jury system can be disclosed. In a sense, then, jury selection and representation work and challenges in political trials, for example, is a form of action-experimental studies used by political scholars. Action-experimental studies as a nexus between the concepts of political knowledge and political action, is best measured in political terms. In other words, What are the everyday benefits of using action-experimental studies? In this context, the following results have been evident to date:

1) With action-experimental research troubles, problems and issues involved in jury selection are brought to the fore in view of their impact on courtroom procedures and outcome;

2) Also, many aspects of jury selection are open to public view;

3) There is increased participation around the selection process; and

4) The politics in jury selection and procedures is unveiled.

Fowlkes, Noble and Bray, pp. 2-3.
Furthermore, action-experimental studies around jury selection serve to neutralize social notions impeding political knowledge and political action. For instance, C. Wright Mills noted that "bureaucratic ethos" prevents social and behavioral science from vision, political involvement and contribution to opposition politics. In total, action-experimental studies can help shape jury selection, contribute to political knowledge and action, and add needed fruit to an area bare in exploratory research. Hence, one can easily recognize the applicability of Paul Goodman's postulate for a pragmatic social science, viz., that the experimenter in jury selection studies, whether representation or challenges in political trials, is one of the participants and through whose action an unthought of solution may emerge, yielding untested expedients and answering many questions but creating further questions. In this whole scheme, the political scholar and community produces and maintains action-experimental studies which can expand the scope of political knowledge and action, in addition to democratizing jury selection and minimizing injustices in these United States. 43

43 Ibid., pp. 13-14.
The third objective within the Statement of the Problem will be to focus on the political dimension that jury selection and representation poses. In explaining the political nature of jury selection and representation, many political scholars begin their analyses with David Easton's definition of politics as the authoritative allocation of values (i.e., public policy, management of affairs, course of action) in a society or socio-political system. In applying this paradigm to the judicial system, it is assumed that the legal system (i.e., courts, juries and judges) is one governmental arena or area where a power distribution of values occurs in the socio-political order. In the judicial structure, courtroom participants (i.e., attorneys, judges and jurors) are serving as conduits of social-political values in their intercourse with other members of the community.

Between the role of participants and the conscious or unconscious use of court cases, society's social-political values are being transmitted through a legal or court system which is primarily designed to:

1) Serve as an instrument to secure private and personal remedies;

2) Serve as a mechanism for changing legal symbols (i.e., the applicable rules of law); and

3) The means of organizing and/or suppressing movements for social and economic power and
control. 44

In view of these dynamics, the jury system and participants reflects and maintains political-social values and thus reinforces the social, political and economic order, in other words, cultural values of the system in accordance with Easton's definition. 45 Briefly stated, persons involved in the jury system are acting politically in the sense that they reflect how society will manage its affairs, conduct its business or pursue certain public policies, particularly in the judicial arena. Therefore, jury selection and representation and the source list dilemma is truly political in nature and action. 46

The politics of jury selection and representation as a topic of interest to political scholars can best be understood when connected to the political nature of juries and the methods and consequences of jury decision-making. In total,

It is not the distinctiveness of the policies emanating from the courts that sets them apart (from their more political

44 For additional comments on the role of political trials, see Nathan Hakman, "Political Trials in the Legal Order: A Political Scientist Perspective," Journal of Public Law vol. 21, no. 1 (October 1972): 73-126.

45 Hakman, p. 73.

46 The term politics and political will be used synonymously. Both will refer to the government or the conducting of or participation in public affairs.
counterparts in the American governmental system), but the characteristic manner in which these policies are arrived at and the unique nature of the authority accompanying the decisions.  

Courts (i.e., judges and juries) do allocate values among the members of society. But they allocate them through a unique decision-making process and the authority attached to their decision. Theodore Becker points out that everything the courts does becomes a "proper study for political scientist" given its position in determining public policy as extrapolated from Easton's definition of politics. "Courts, then, appear to be political institutions similar if not identical to legislatures and administrative agencies." It seems from this vantage point that jury selection and representation is a highly recommended place for political students to organize their work for participation, action, knowledge, and justice. Not only does the political student benefit, but the community is also rewarded as political research discloses the political power and activity of jurors; and exposes the contradictions between the concept of equal representation on juries and the often deep-seated biases in the jury selection process.  


48 Fowlkes, Noble and Bray, pp. 13-14.
Furthermore, from a political constitutional stance, jury service or selection representation is theoretically one of the limited government functions which is supposed to be performed by the masses. It is presumed that the people reflect the humanitarian values and contemporary politics of society. The very precept upon which the jury was founded presumes,

A body of men [sic] composed of the peers or equals of the person whose right it is selected or summoned to determine; that is, of his/her neighbors, fellows, associates, persons having the same legal status in society as that which he holds.

This naturally assumes that the jury will be a fair representative cross-section of the community. However, racial minorities, poor persons, young and older individuals, the less-educated, and females are consistently eliminated from jury service through a "systematic plan" designed to ensure that the preponderance of jurors are white, middle-aged, with white-collar incomes and suburban or rural lifestyles. Whereupon jury service has traditionally been performed by some sort of elite. For example, most juries

49Ibid., p. 8.

50Strauder v. West Virginia, 100 U. S. 303 (1880).

in the United States court system retain names from the voter registration list, clearly an elite group. The entire effort to democratize jury selection and representation by bringing into it all adult citizens is most political. This is due to the realization that juries have immense power and serve to reinforce society's norms and values; and as a power distribution center in society. These entrenched elites refuse to concede this authority so that all citizens may partake of the benefits of a democratic government. Hence, jury selection as a process to spread the concept of full citizenship becomes political in nature, and in fact. 52

Jury selection and representation has historically been a struggle to apply the ideal of full citizenship from an elite group of the populace. Therefore, the trial by jury system has essentially been that of elites judging and prosecuting non-elites, and the politically powerful judging the politically weak. As most jurors are gathered from elitist sources as the voter registration list, the keyman system and property tax listings. In light of this, the efforts to broaden the scope of jury selection is an endless process of gaining political power over one's own accused of crimes and apply the "fair trial principle"

52 Fowlkes, Nobles and Bray, pp. 8-9.
more realistically to the entire population, elites and non-elites alike.

Insofar as the idea of representative juries and its impending influence on the "fair trial principle" and "full citizenship" concept, the United States Supreme Court, as the final arbiter of constitutional doctrines and intentions, has assumed an elusive posture on the problems of jury qualifications, selection, and representation. In its capacity, this august body has decreed that a jury must be drawn from a fair cross-section of the community. This clause is perhaps the most critical issue in contemporary selection politics today. The court has also defined certain cognizable classes as race and sex as ingredients of a cross-section which may not serve to exclude potential jurors. But, other categorical groupings such as age and socioeconomic classes have yet to pass the cognizable standard test, as there is a lack of good case law available. But socioeconomic cases seem to be the next best hope for expanding jury selection to the "people" as the struggle continues for justly selected juries to hear their causes.

Another key concern over the selection process and representation is the source of names (i.e., source list)

of potential jurors and how they are taken from the source. In both situations, politics enters the picture if juxtaposed to Easton's definition of values as setting public policy and the management of affairs.

Therefore, the use of source list selection is political. The jury pool or source list is generally taken from voter registration lists, telephone books, public utility lists, city directories, driver license lists, property tax lists and personal associates of the selector or the "keyman system." Jury commissioners maintain and summon jurors from their particular counties. In so doing, commissioners often accept vague legal criteria as upright, moral, responsible, of good judgment and other arbitrary, subjective and imprecise principles of gathering names from the source lists. Those persons automatically excluded are convicted felons, those having served on juries within a two-year period, military personnel and the mentally and physically affirmed.

It is at this stage, where politic (i.e., management of public affairs) often serves as a umbrella for wholesale discrimination and capriciousness and with state legislative approval. The Supreme Court has also accepted these inexplicit and subjective rules "designed" for provoking individual prejudices of pool selectors. The source list(s) makes up the master jury wheel, which
is then culled down to a smaller number of persons who comprise the jury pool. The jury pool is a group of prospective jurors reporting for jury duty in a given term and awaiting assignment to a panel for voir dire and selection to sit on a jury. At the panel stage or among the venire persons, attorneys and judges disqualify and exempt members of the panel, then they proceed with challenges for cause and peremptory challenges. They employ a strike system allowing a fixed number of names; striking off the rejected names, the parties altering in strikes until twelve name and an alternate are chosen. The final strike comes after the voir dire by attorneys and judges, in this instance, federal district court judges have tremendous latitude. Another method of voir dire selection is from a fixed panel, by questioning and building up to twelve, in opposite of paring down to twelve. Either way, the selection of jurors is complete. The end result of voir dire is exclusion through two sets of challenges in jury selection. Namely, the peremptory and the challenge for cause. Peremptory challenges are limited in law and where no reason is given to dismiss a prospective juror. Challenges for cause is limitless in number and the officiating judge has to accept or reject the challenge. At both of these stages, attorneys and judges often distort the purpose of both forms of challenges.
to exclude statutory eligible citizens such as black, females, young and older persons, and the socioeconomically poor. Thus, once again, the politics of jury selection as defined by Easton as the authoritative allocation of values in the management of affairs or course of action in a social-political system.\textsuperscript{54}

\textbf{Purpose of the Study}

1) To state and analyze the concepts of jury selection system, source lists, and multiple listings as a means to summon from the population-at-large persons to serve as prospective jurors in the judicial system and other issues as fair jury representation which may arise therefrom.

2) To discover how the State of North Carolina and the County of Charlotte-Mecklenburg have actualized the concept of trial by jury by examining relevant statutes governing jury selection processes and procedure; as well as viewing the mechanics of jury wheel composition for two biennium periods in Charlotte-Mecklenburg. Lastly, to spotlight some legal cases which have questioned jury composition fairness in Charlotte-Mecklenburg County.

3) To evaluate the inclusiveness and representativeness (i.e., coverage) of a particular source list by performing a jury composition study of two biennium periods of the socio-demographic features of the population. The time periods involved were before and after the State mandated jury source selection modifications.

4) To emphasize the use of mathematical tools to measure jury representation disparity and the

\textsuperscript{54}Fowlkes, Noble and Bray, pp. 4-6. For more study of the jury system, see Gary J. Jacobson, "Citizen Participation in Policy Making: The Role of the Jury," \textit{The Journal of Politics} vol. 39, no. 1 (February 1977).
bases from which mathematical analysis are computed.

**Review of Related Literature**

Prior to performing a content analysis of particular literature on the topic of this research, a more encompassing view of sources which have discussed the American jury system as an entity will be offered. For this reason, themes from peripheral but relevant areas or fields will be expounded upon. However, no analysis will be rendered. But only a synthesis of relevant themes shall be mentioned. However, a caveat must be noted; there appears to be a limited number of historical and authoritative sources (i.e., monographs) which looks at the American judicial system, consequently one may notice an author's name being used repeatedly. In this connection, there are many sources (i.e., mostly journals and not monographs) to date which have addressed the sundry of problems and concerns which face the American jury system. But, in this context, only three sources shall be utilized. In Rita Simon's *The Jury: Its Role in American Society* it is stated that jury studies, under the American framework, came into vogue in the early 1950s at the preeminent University of Chicago Law School, where a program in the behavioral science and the law was started and one of its areas of study was the American jury system. Moreover,
Simon says that the forerunner of the Chicago project was two earlier empirical studies completed between 1924 and the early 1940s. The first was an experimental project by William M. Marston, which measured male and female jurors response to testimony.\footnote{William M. Marston, "Studies in Testimony," \textit{Journal of Criminal Law and Criminology} 15 (1924):5-31.} In the second study, Cornell University law students served on mock juries, and the results were reported in two separate scholarly journals.\footnote{In addition to Marston's article, above footnote 55, see also H. P. Webb and E. R. Danzing, "A Study of the Way in which a Verdict Is Reached by a Jury," \textit{American Journal of Psychology} 53 (1940):518-536; and H. P. Webb and M. I. Roff, "A Study in the Formation of Opinion Based upon Evidence," \textit{American Journal of Psychology} 51 (1938):609-628.} The impetus for the Chicago Jury Project of the 1950s was in reaction to an institutional attack upon the jury system as outmoded, in need of replacement. Shortly before, in England, the jury was kept for criminal trials, but not for civil actions. In America, members of the appellate level of the Federal Judiciary, desired the abolition of juries for civil actions as well. Inspired by the British decision and American anticipation, the Chicago Jury Project was intended for evidence supporting arguments against the jury institution, at least in civil actions. But detractors found little in their publication to support their arguments. As time progressed and the
projects work appeared in books like *The American Jury* by Harry Kalven and Hans Zeisel and Rita J. Simon, *The Jury and the Defense of Insanity*, it became empirically obvious that the jury system was in sufficient condition as a trier-of-facts in criminal and civil disputes. Other research on the jury by legal scholars and social scientists in the 1960s and 1970s has confirmed this view. In fact, the American jury system received approval from the media for its part in political trials of the 1960s and early 1970s. In summary, as an outgrowth of the 1953 Chicago Project, many articles and some monographs have been written about many aspects of the jury system, including competence, representativeness, motivation, socio-psychological dynamics of jury deliberations and the perception of jury performance by trial court judges, etc. However, more particularly, Simon proposes in this book, to consider major research done on the American jury from the 1950s to contemporary times. Her foci are aimed at the following issues or themes:

1) How representative are juries which are chosen from the respective communities?

2) How important are jurors demographic and socio-economic characteristics in the decision process?

3) How motivated is the jury to carry out the task assigned to it?

4) How does the jury go about reaching its verdict?
5) How well does the jury understand testimony of
expert witnesses and the instructions it receives
from judges?

6) To what extent does a jury's verdict reflect
evidence presented and the rule of law it was
told to apply?

7) Does the jury size influence the length of time
it takes to reach a decision and the type of
decision it reaches?

8) Does the verdict unanimous v. 9 to 3 or majority
affect the type of decision juries make?

9) How satisfied are judges and jurors with the jury's
performance?

10) Are jurors' verdict prejudiced by pre-trial
publicity?

11) How effective has the jury been in maintaining
its independence from both the judiciary and
community, especially in controversial political
trials?57

In the second of Rita Simon's well-acclaimed mono-
graphs, ten independent entries with a common view on
issues prominent to any discussion of the jury system are
examined. They range from:

1) History of the trial by jury;

2) Voir dire and jury selection;

3) Social psychology of jury deliberations;

4) Selective characteristics of jurors and litigants:
their influences on juries verdicts;

5) Impact of pre-trial publicity on jurors' verdicts;

57Rita J. Simon, The Jury: Its Role in American
Society (Lexington, Massachusetts: Lexington Books, 1980),
n.p.
6) The jury system as seen from the perspective of judges; and

7) The jury system as perceived from the bar, the press, in American literature, and from the jury box.\textsuperscript{58}

Last, in \textit{The American Jury} which presents a systematic and empirical approach to the jury system, Professors Kalven and Zeisel line of inquiry discerns the proceeding topics:

1) Judges and jury decision-making;

2) The jury's handling of the defense of insanity;

3) Reaction to the contributory negligence rule(s);

4) Post-trial interviews based on free-flowing conversation and structural questionnaires; and

5) The examination of jury selection procedure and voir dire strategies.\textsuperscript{59}

Although the preceding topics fall within the confines of the American jury system, however, they only reflect a limited number themes or topics being researched and published daily. Other areas include, for example, source list and jury selection procedures, the role of capital juries in felony criminal cases, technology and court management plans, the coordination of state and federal judicial systems, the impact of writ of venue in jury trials, ad infinitum. For the purpose of this thesis


project, and to the exclusion of the aforesaid topics, the jury source selection and representation theme and socio-demographic characteristics of juror will be further explained and analyzed in this review of literature. In evaluating the gaps and strengths of source material pertinent to jury source selection and representation, one promptly notices that there are not enough hardback monographs which focus exclusively on the question of jury selection and representation. And of these sparse items, not one is aimed at the jury source selection and representation quagmire independently, but rather, this topic is integrated into the body of literature along with topics as excusals, the jury wheel, challenges and so forth. On the other hand, jury source selection and representation information often comes in the form of newsletters, scholarly or specialized journals, academic law reporters, or independent studies by agencies or special interest groups and graduate theses. This allows


greater access to recent information, and encourages greater scholarship which eventually adds to a growing body of knowledge. With this aside, now the question is: What concept(s) from the source material on jury source selection and representation will the researcher employ. In this regard, there seems to be a consensus among scholars and erudite layperson, though a few may differ, that fair jury coverage and representation remains an elusive goal because one of the reasons is the jury sources or jury list used in jury systems do not foster the equitable selection of voting age (or those who have reached the "age of majority"), prospective jurors from the socio-demographic groups in the population to serve in the jury selection system. This statement represents the conceptual foundation for this entire project.

At this phase, in the quest to fulfill the duties of this section, the next matter to be addressed is: How have the experts or authorities agreed or disagreed in the use of this concept in their respective writings or studies. From the writer's review of the mandatory literature, most authorities seem inclined to uphold the concept as stated. For example, Mark Michael and others found in a 1974-75 study of jury representation in six large urban counties in North Carolina that there was widespread unrepresentation. The counties in question were Durham, Forsyth,
Cumberland, Wake, Guilford, and Mecklenburg; and as of the 1970 census, they had 28 percent of the total state population and 30 percent of its black population. The results of the study showed that in each county's jury pool for the years indicated, there was gross underrepresentation of blacks, the poor, and females; no matter whether the source list was the voters list or county property tax lists, or in what proportion used.62

The second study which explores the issue of jury source selection and representation is an article entitled, "Black Representation on Juries in Miami," by Roger G. Dunham, Geoffrey P. Alpert and Darrell T. Connors. This piece, unlike the other articles, actually supports the use of voter registration list. The authors state:

...The jury selection process in Dade County creates a substantial over-representation of blacks on juries. In fact, blacks appear to be substantially over-represented at each stage of the jury selection process. ...where potential jurors are selected from the voter registration list. In spite of this substantial bias in favor of blacks, white representation does not suffer drastically.63


Nijole V. Benokraitis explores the involvement of southern blacks in the jury selection process in several southern states by viewing their participation at the jury box, jury panel and jury list stages. As a result of this field experience, he concluded it was essential to replace, and not supplement existing institutional arrangements in jury selection systems. He proposes that the first step is to effectuate statutory changes which should be amended to eliminate unsupervised and unauthorized discretion which selection officials presently exercise regarding explication of mandatory qualifications, sources from which names are chosen and the method for choosing names from these sources. In addition, statutes should be amended to eliminate vague and useless qualifications as "good character" or "sound judgment." In paraphrasal terms with regards to the source of names and the jury list, Benokraitis explicitly suggests that jury sources tap broader and larger segments of the general population. He says the voter registration list is an insufficient source given that it does not reflect the total population in respect to characteristics as age, education, occupation, race, and sex. Thus, he encourages the use of supplemental sources as the census list and
telephone service list. In shifting from the South to New England where in a study involving the sole use of the voter registration list in Connecticut, writers Alan E. Gelfand and Jack E. Davis found that the voter source was not as representative and inclusive as the merger of voter registration list and motor vehicle operator list. The merged list would ensure fairer sexual and socioeconomic profile on Connecticut's juries.

In a paper titled "Jury Selection: The Law, A Mathematical Method of Analysis and a Case Study" by David Kairys, he states several worthy points in regards to jury source selection and representation:

1) There is always the possibility of discrimination in the source or sources from which names of prospective jurors are taken;

2) No source should be used which discriminates against a cognizable group;

3) The voter registration list has been upheld as a proper source for jury selection;


4) Though the voter source has credibility before the courts, it may not be used as a subterfuge for discrimination; and

5) Moreover, some courts have suggested that voter lists are per se, an unconstitutional source since they are not representative of a cross-section of the community, and they exclude many persons who are statutorily qualified for jury service.67

John M. Van Dyke, the author of one of the premier books on jury selection and representation studies, states with regards to jury sources, jury lists and jury wheels that:

The lists from which jurors are selected must be as complete as is humanly possible. This initial step is fundamental to the success of a selection scheme because an unrepresentative source will inevitably produce unrepresentative juries. States where individual discretion still governs the initial selection of prospective jurors must switch to a random scheme. These jurisdictions that permit jurors to be hand-picked by local officials or by specially selected citizens invariably impanel juries that are elite rather than representative. This method of selection is still used in some 16 states, in the South and in New England, and in a large number of states --including New York, Texas, and California--for the selection of grand jurors. It is an anachronism today, when the importance of a representative jury is almost universally accepted. Jurisdictions that use the list of registered voters as their exclusive source for jurors (all Federal and most state courts) should seek to supplement it with the aim of giving all citizens an

equal chance of becoming jurors. Because it can be demonstrated unequivocally that the exclusive use of the voter list skews the jury toward some sectors of society, research and experimentation with additional lists must be undertaken. Voter registration procedures should also be simplified to make it easier for people to vote. Even if the voter lists were found to mirror society in some counties, supplementation would still be important as a means to spread the burden of jury duty to all citizens, not just voters, and ensure that jury service is not a penalty for voting. In most jurisdictions, a combination of voter lists and the list of holders of drivers' license will obtain a more representative jury wheel, but in others, these two will probably have to be used in connection with additional sources. A representative wheel could easily be assembled from census lists, if they were kept up-to-date for this purpose.\(^6\)

In an article headed, "The Use of Social Science in Trials with Political and Social Overtones: The Trial of Joann Little," it is observed that the voters lists is generally ill-favored towards blue-collar workers, the less educated, blacks, females, young and older citizens, because as a rule, these groupings register and vote less.\(^6\)

Furthermore, Diane Potash contends that the public list method involves the seemingly innocent compilation


of population lists from the telephone directory, public utilities lists or voter registration lists, which is in reality discriminatory against racial minorities. In her view, there is an obvious economic discrimination against the poor and thus against racial minorities who form a large percentage of the nation's poor in the use of the telephone directories and public utilities lists. Therefore, these lists should not be used as the exclusive source from which the jury pool is selected. Also, Potash states that voter list discrimination is less obvious, and has therefore survived challenges in the courts. The courts have refused to strike down this system of selection, noting the absence of proof of discriminatory intent in the use of such a neutral device as voter registration lists. The use of voters list as a source for the jury pool has been upheld by courts in Boston, New York, and California because those not registered to vote were not shown to constitute a racial, economic, political or other identifiable minority. Blacks and other low income groups are less likely to register to vote. Also, non-voters are not randomly distributed throughout the adult population. Seymour Lipset has found the following groups tend to vote at a higher proportionate rate: men (as opposed to women); those with a higher level of formal education; persons with higher incomes; those aged thirty-five to
fifty-five years; married persons, and members of organizations. Also businessmen, white-collar workers, and government workers vote at a higher proportionate rate than do unskilled workers, service workers, and servants. In each case, minority groups are heavily represented as the group least likely to vote. Blacks have a lower overall level of formal education, lower occupation level and lower income than the white community. Finally, income makes more of a difference in voting turnout for blacks than it does for whites. Failure to vote in a general election results in removal of the voter's name from the registration lists, and the lower occasional voting habit of minority groups depress their representation even further by making those who vote occasionally only partially liable for jury service. A study of voting habits in Detroit found that the average black registered vote turnout was 54.3 percent, while the average Caucasian turnout was 75.1 percent. This meant that almost one-half of the low proportion of blacks who were registered were removed from the jury list, cutting their representation for the jury draw drastically. This study was also confirmed by a study of black voting trends in northern industrial cities showing that, in 1948, 1952, and 1956 presidential elections the average rate of registered black voter turnout was only 73.6 percent, far behind the
white rate of 83.4 percent. Again, the fact that fewer blacks register to vote is relevant since the names remaining subject to the voter list would be 73.6 percent of the initially small number registered. The discriminatory effect of using voter registration lists has not been recognized by the courts since the use of the lists appears so fair "every American can and should register to vote." Most courts refuse to note that even random selection from broad lists, such as voter registration lists, public utility customer lists, city directories and tax lists requires a test to determine whether each, all or some of these sources give a true and complete picture of the community and its components. 70

In an important legal manual title Jurywork: Systematic Techniques - A Manual for Lawyers, Legal Workers and Social Scientist, the editors have stated with respect to source use and jury representation that the constitutional principal that jury systems be representative of a cross-section of the community applies to source lists; such that a substantial disparity between the representation of a cognizable class in the source and in the population establishes a prima facie case of invalidity. And at

present, no particular type of source list or method of compiling the source list has been invalidated. In this capacity, the courts have stated that a source which is discriminatory itself, such as a list maintained on a segregated basis or one that is used as a subterfuge for discrimination, is invalid. Tax lists, property lists, actual voter lists, and even the "keyman" system, where "key" people select names for the source from people they know or have heard about, has not per se been invalidated. However, discriminatory systems are clearly disfavored and create a special affirmative duty on selection officials to include all groups in the community to obtain a cross-section.

Voter registration lists have uniformly been upheld as a valid single source list, although several courts have expressed substantial doubts about their representativeness. Although source list are responsible for most of the lack of representativeness on juries, they have received little attention in composition challenges until recently. The discrediting of discretionary systems, the recognition that voter lists usually are not representative, and the development of methods of inexpensive use of multiple lists have led courts and legislatures to begin to address the source list problem. Two federal district courts and several state jurisdictions now use
multiple lists. The Federal Jury Selection and Service Act of 1968 requires supplementation where voter lists are not representative, and an amendment that would have created a presumption that voter list are representative was defeated. An additional rule had been proposed based on the principle underlying jury selection cases, that would require a minimal level of inclusiveness for source lists in the proposition of the eligible population that is included. A list can be fully representative of all cognizable classes but comprise only a small portion of the eligible population. For example, in a county of 1,000 eligible persons of whom 25 percent are black, a source list of one hundred people, twenty-five whom are black, would be fully representative of blacks but only 10 percent inclusive, thereby excluding 90 percent of the eligible population. Although an inclusiveness requirement has not as yet been adopted by the courts, there is some activity to support it.

In challenging a source list as unrepresentative, it is important to emphasize that the source list is a means to an end—representativeness and that use of voter list or any other list is not an end in itself. The notions that voters or others are "most concerned and competent" or the "best" citizens reflect subjective, unsupported judgement and directly contradict basic constitutional
and democratic principles. Evidence should be presented that pinpoints the deficiencies of the source and differentiates them from other defects being challenged. This requires data concerning, at least, the composition of the source, the pool, and the population. For example, if the pool is 10 percent black, the source (voter registration list) is 13 percent black, and the population 35 percent, one can say that the unrepresentativeness (comparative disparity) of the pool is 71 percent and the unrepresentativeness of the source is 63 percent and, further, that 88 percent of the unrepresentativeness of the pool is attributable to the source list. The proportion attributable to the source is the comparative disparity of the source divided by the comparative disparity of the pool:

\[
\frac{(.35 - .13)}{(.35 - .10)} \cdot \frac{1}{.35} = \frac{.35 - .13}{.35 - .10} = 88\%
\]

This means that whether or not blacks are unavailable or ineligible for serving more than whites or the process is discriminatory, almost all of this serious underrepresentation is attributable to the decision to use voter registration lists as the source list. 71

According to James O'Reilly, other sources besides the voters list and tax list must be employed in jury selection

71 Bonora, Krauss and Goodman, pp. 81, 84-86.
systems. However, he does not view the use of city directories, telephone directories, or licensed drivers list as representing the ideal; rather, they have major errors in coverage that create bias against the disadvantaged. But, O'Reilly contends that their biases do not all cut along the same lines. Thus, the combination of a number of broad-based list would be more feasible, after duplications are eliminated in the representation of greater proportions of the disadvantaged than any list would by itself. This method was used in Denver County, Colorado in 1974. The total voters, driver license, and city directory lists were combined and duplicated names eliminated by computer. The result was a master list twice the size of the voter list, and also substantially larger than either of the other two lists. Although no study was apparently done to determine if the resulting master list significantly improved representation, it seems quite reasonable to assume that it did since the final list much more closely approach the total number of eligible adults in the population. Such a procedure seems quite promising, especially in medium and large cities where such lists are likely to be used in computerized form.  

72James O'Reilly, "Measuring Jury Representation by Neighborhood," revised version of a paper presented at the Research Symposium on Social Indicators of Institutional Racism-Sexism, University of California at Los Angeles, Los Angeles, California, April 1977, pp. 19, 42-44.
In "Jury Representativeness: A Mandate for Multiple Source List," David Kairys et al. contend that jury systems throughout the country use voter registration list as the source, although most available studies and data show them to not represent a cross-section of the society and are substantially underinclusive. According to the Census Bureau, since their 1960 study dealing with representativeness and inclusiveness of voter registration list. Their study of 1972 elections showed:

Higher levels of registration and voting were associated with persons who were male, white, those in the middle age group (35-64), those persons with at least a high school diploma, those in families with income greater than $10,000, and those in white-collar occupations. Conversely females, Negroes, persons of Spanish ethnic origin, the youngest (18-34) and oldest age group (65 or older), those who did not complete elementary school education, those in families with incomes less than $5,000, and those in non-skilled occupations, such as laborers and private household workers, were less likely to be registered and vote. 73

In a book captioned, Minimizing Racism in Jury Trials: The Voir Dire conducted by Charles R. Gary in People of California v. Huey P. Newton, the defense counsel motion to quash the entire master panel and jury venire in Alameda County, California on grounds that blacks, the

culturally different and persons of lower-economic status were systematically and substantially underrepresented on said panel, by virtue of the fact that the use of voter registration list without supplementation, resulted in the disproportionate exclusion of identifiable groups, specifically racial minorities and lower-income citizens. The master panel was not reflective of the community-at-large and not of Oakland's black ghetto, in violation of Due Process and Equal Protection clauses of the Fourteenth Amendment. The judge denied defendant's motion, and the accused, i.e., Huey Newton, co-founder of the Black Panther Party, was convicted of voluntary manslaughter in a shoot-out with Oakland police that left an officer dead, and sentenced from two to 15 years in prison. However, he was released in 1970, after serving 22 months, when an Appeals Court ruled that the jury had not received proper deliberation instructions from the trial judge.74

Charles DiSalvo studied the keyman system for composing jury lists in the state of West Virginia and concludes: "By reason of its 'keyman' system, West

Virginia state court juries can be, and often are, the whimsical creation of the virtually unfettered discretion of powerful jury commissioners who operate unchecked by substantial statutory or other controls." There are three points within the West Virginia system at which the discretion of the jury commissioner or the circuit court judge in choosing potential petit jurors can be employed. The writer, however, is only concerned with jury list compositions. In this context, in West Virginia it is common for jury commissioners to divide in half the total number of potential jurors to be listed, with each commissioner then having responsibility for providing one-half of the names independently of the other commissioners. In compiling the hundred of names required, the individual commissioner is clearly not bound by statute or case law to use any source of objective information for finding names. There is no requirement that commissioners use voter registration list (a source widely used in other jurisdictions), property tax lists, welfare rolls, or driver license lists. The commissioners are bound only by the state criteria. These criteria are so amorphous and subject to idiosyncratic personal interpretations that provide no serious restraint on the commissioners' range of choice. In the absence of both direction and restraint, the commissioners are on a romp. They can pick friends,
relatives, employees, previous jurors, whites but not blacks, the old but not the young, the businessman but not the blue-collar worker, the rich but not the poor. The possibilities for abuse are limited only by the imagination of the jury commissioners. Two of the points at which commissioners can examine discretion in picking names for the grand jury list are similar to points in the petit jury procedure:

1) The commissioners have broad discretion in the initial composition of the list; and

2) When names are drawn from the list for actual summoning to court, a commissioner can eliminate anyone he or she believes may be "disqualified or unable to serve."

Unlike the petit jury system, when the list of names is submitted to the circuit clerk, the responsibility of striking the names of those thought not to be qualified falls to the clerk or the judge, not the commissioners. This study uncovered no evidence that discretion was actually exercised in composing grand jury lists, except at the important point of initial list composition.

Hypotheses

The null hypothesis (H₀) of this study is that Charlotte-Mecklenburg County's jury pool for 1976-77 and


76Ibid.
1980-81 did reflect the socio-demographic characteristics of the county population due to the jury commission use of the voter registration list, county property tax listings, and the North Carolina drivers license list as sources to constitute the jury list from which prospective jurors are chosen. This procedure, in turn, serve to represent and ensure jury service to constitutionally entitled groups as females, older and younger persons, racial minorities, the poor and less-educated, and blue-collar workers.

The alternative hypothesis (H₁) of this study is that Charlotte-Mecklenburg County's jury pool for 1976-77 and 1980-81 did not reflect the socio-demographic characteristics of the county population due to the jury commission use of the voter registration list, county property tax listings, and the North Carolina drivers license list as sources to constitute the master jury list from which prospective jurors are chosen. This procedure, in turn, has served to underrepresent and deny jury service to constitutionally entitled groups as females, older and younger persons, racial minorities, the poor and less-educated, and blue-collar workers.

Definition of Conceptual Terms

Jury Pool: Periodically the clerk of court, judges, or jury commissioners determines how many jurors are needed
for a given term. A sufficient number of names are then randomly selected from the master jury list, and the sheriff issues a summon for these citizens to appear at the courthouse for jury duty.

**Socio-demographic:** The division, classes or distinctive characteristic groupings within a geographic area with peculiar features, qualities and beliefs indigenous to that group alone and separative of other entities. Classes applicable here are age, sex, race, income and occupation and education level.

**Jury Commission:** A three-member board of qualified voters of the county who serve two-year appointments. They are appointed by the Senior Resident Superior Court Judge, the Clerk of Superior Court and by the County Board of Commission. Their purpose is to prepare a jury list of eligible or prospective jurors each biennium from the county property tax list, North Carolina drivers license list, and voter registration records and any other source(s) of names deemed reliable.

**Voter Registration List:** List of eligible citizens in a particular county or territory who have met certain statutory requirements: age, resident, knowledge of the English language, no felony convictions, mental and physical competency in order to participate in the electoral process (i.e., local, state and federal levels).
Property Tax List: A compiled list of freeholders or propertied citizens within the jurisdiction of a county or territory, who pay taxes or charges on said value(s) of goods and chattel owned.

Driver License List: A confirmed list of registered and authorized citizens of the locale and state approved to possess, drive and operate a motor propelled, vehicular device on the streets, highways and thoroughfares of North Carolina.

Master Jury List: A subset of names selected (randomly) from the source list usually used by the court as the list from which names are selected for qualification and summoning for each term of the court. Also called the master wheel, prospective juror list, master juror file, master file, master list of prospective jurors.

Prospective Jurors: An individual who has been qualified and summoned for jury duty but has not yet been sworn as a juror for a trial. The term can also be used to designate an individual who has not yet reported to the courthouse for duty.

Scope of the Study

The scope of this study takes place in Charlotte, Mecklenburg County, North Carolina at the Twenty-Sixth Judicial District, General Court of Justice for the State
of North Carolina. It also included a survey sampling of four hundred persons serving in the jury pool within the jury selection system. The time frame for this study is 1976-77 and 1980-81. The first biennium was selected as this was the time for America's Bicentennial Celebration and 1980-81 was chosen as the new state law governing sources and jury selection went into effect.

**Limitations of the Study**

In examining jury selection processes and procedures, one could study various components of this system such as the jury panel or venire, exemptions, disqualifications, excusals, peremptory challenges, challenges for cause, and so forth. But the researcher has elected to focus on the source list, jury wheel-jury pool dimension of this system, to the exclusion of other possibilities; and then to place this phase within the border context of jury representativeness by performing an empirical study, i.e., jury composition study, and the use of statistical tools to measure jury representativeness. In addition, even where the source list(s) provides a true reflection of the community, the representativeness of the jury pool is also affected by inaccurate list of prospective jurors which results in undeliverable summons and the non-responses therefrom. In addition, statutory exemptions
such as mental (i.e., non compos mentis) and physical impairments, the deceased, and those serving on jury duty within two years prior, as well as disqualifications pertaining to convicted felons, those with no English competency, and persons no longer residents of the county serve to detract from the pool's representativeness. Last, the raw lists from the source lists are culled down to a smaller number of prospective jurors. All the following actions serve to reduce the number of individuals who serve in jury pools; and, all of these factors can be expected to affect various cognizable groups differently, thus affecting ultimate representativeness of the pool.

The ideal study would be to sample every prospective juror in the pool. This is impossible given the resources of the investigator and quite unnecessary with statistical procedures. The restrictions of the law required that those persons who have been jurors may be interviewed. Those currently serving in the pool may not be questioned. The study was then relegated to an after the fact matter, rather than a "right now" situation. There was also the possibility the subjects did not account for the emotions which influenced decisions which individuals made in stressful situations. Instead, the study took on the character of stereotyping individuals and did not reflect
a whole truth. It did act as a partial guide of some factual data.

Methodology

This section has two parts. The first part is non-empirical and the second is empirical.

Non-Empirical

Collection of Data: The information in this part is of secondary nature and derives from the following documents: conference papers, scholarly journals, law reviews, legal standards, books, legal manuals, statutory and constitutional law, memorandum, newspapers, constitutional amendments, federal agency documents, a court transcript, a legal dictionary, newsletters, pamphlets, interest group reports, a state manual, and annual reports.

Analysis of Data: The content analysis method is the means of inquiring into the relevant documents outlined. This approach is meaningful as a way to facilitate the objective analysis of words, concepts, themes, sentences and paragraphs in printed material. More precisely, content analysis has advantages and disadvantages. It strives for exactness and the elimination of bias in the investigative process; it lessens the subjectivity in analyzing or evaluating materials; it allows for a more
explicit interpretation of document material analyzed; and the writer or analyst has hardly no affect on what is being studied. However, one negative attribute of this method of inquiry is that it may reflect arbitrary factors used in the original data, which may not provide an authentic reflection of the variable under study. Thus, the analysis and results may be a little inconclusive. But the author took what preventive measures were necessary to impede this occurrence.

Empirical

Collection of Data: The information for this part stemmed from a jury composition study and survey sampling methodology. The survey approach employed the systematic sampling of the jury pool for Charlotte-Mecklenburg in 1976-77 and 1980-81 which had 21,723 persons, i.e., 1976-77--8,276 and 1980-81--13,447. The other data came from the U. S. Census Reports and State Data Reports.

Analysis of Data: Statistical theory was utilized to make a systematic comparison between the jury pools and census data. In fact, the approach is called statistical hypothesis testing and mathematical probability, which involves the following steps:

1) Mutually exclusive hypothesis established;
2) Statistical tool selected to evaluate data;
3) Calculations are performed;
4) Hypothesis tested, accept, reject or modify propositions;
5) Two types of error; and
6) Report of analysis findings.

Organization

Introduction embraces the statement and significance of jury selection and representation as a research problem. The review of existing literature related to the subject matter. The hypothesis and definitional assumptions, scope of the study and research design and methodology.

Chapter II has general information on the jury selection system, which is followed by information on how the master wheel, pool and venire list are compiled by looking at the issue of source list, the utility of voter registration lists, the concept or idea of multiple and inclusive listings, possible multiple and inclusive sources, and the effects on areas which have implemented multiple and inclusive systems.

Chapter III offers comments on the role of mathematical tools in assessing disparity in jury selection and representation cases. This is the second quantitative phase of our project, the first is the empirical study.

Chapter IV investigates the plan for jury selection in North Carolina and Mecklenburg County by inspecting
state statutes on the jury commission system, juror eligibility standards, and source lists from which jurors are summoned, as well as an overview of jury issues and records in Charlotte-Mecklenburg.

Chapter V is an empirical study conducted to evaluate whether the voter registration list, property tax list and driver license list underrepresented socio-demographic groupings in the jury pool in Charlotte-Mecklenburg for the years 1976-77 and 1980-81, as posited in the alternative hypothesis of this study, and the analysis and result of same.

Chapter VI is the conclusion and summary.

Significance of the Study

In other portions of this chapter, certain themes prevalent in the literature as it pertains to the American jury system in general have been synthesized. After that the theme which was employed by the researcher, i.e., jury source selection and representation and its socio-demographic implications was further analyzed in the Review of Literature segment of this chapter. In the Review of Literature phase, emphasis was placed on the strengths and weaknesses of the materials published to date on jury source selection and representation and its socio-demographic dimensions, after which an assessment was offered of the studies and authoritative writings by
scholars pursuing this topic. In evaluating these studies and writings, the researcher noted that most scholars and writers on jury source selection and representation have noted one predominant concept which will serve as the basis for this project. That concept is: that jury representativeness remains an elusive goal because one of the reasons is that jury sources or list used in jury systems do not encourage fair and equitable selection of voting age socio-demographic groups in the population to serve in the jury selection system. At present, the question to be addressed is: Why is jury selection and representation, i.e., source list studies worthwhile. This particular topic is deserving of attention, not only because scholars have published significant findings in this area, but also for other reasons which will follow. According to Henry Dogin and David Tevelin, jury source selection and representation studies is a viable topic for discovery as the courts focus more on purposeful discrimination, and, as a result, plaintiffs see that it is easier to pose prima facie challenges to the selection system. Henceforth, the number of challenges questioning jury selection methods will proliferate, the State and local governments will be under greater pressure to justify the sources used in jury selection systems, especially when the problem can be resolved with more
economical and more efficient practices than which initially caused the equity.\textsuperscript{77}

Further, as the American society undergoes drastic changes from an industrial to,

\ldots an information society (sic)--for the first time in civilization--the game is people interacting with other people. This increases people transaction geometrically, that is, all forms of interactive communication. This is one basic reason why we are bound to continue to be a litigious-intensive society.\textsuperscript{78}

With this fertile ground taking hold across the American landscape, and as more controversies appear in the open court, or legal rights are determined and enforced, there will be ample opportunity for research and inquiry into jury selection and representation issues.\textsuperscript{79} As a worthwhile endeavor for the academician, jury selection

\textsuperscript{77}Henry S. Dogin and David I. Tevelin, "Jury Systems of the Eighties: Toward a Fairer Cross-Section and Increased Efficiency," \textit{University of Toledo Law Review} 11 (Summer 1980):941. Other scholars or experts who recognize the importance of jury selection and representation research work are Jimmy Schafer, "Down South Juries Are Big Business" (jury selection and study in the United States), 9 \textit{Canadian Lawyer} vol. 28, no. 2 (February 1985); James Lewin, "Jury Research: A Growing Field," \textit{Social Action and Law} 50 (May/June 1982).


and representation studies (i.e., source list) allows the scholar to confront, expose and discover whether the present system is a weapon of elite control which perpetuates inequality, as Professors Fowlkes, Noble and Bray contend. Further, this threesome supports the process of jury selection and representation research and its discoverable components as a means to open some parts of the jury selection process to public view, broaden citizen activity and reveal the politics of jury selection processes and procedures and outcomes. In like manner, by engaging in and publishing scholarly studies around the theme of jury selection and representation, practical results may contribute to a growing body of knowledge. A knowledge base which renders a theory neither totally cognitive nor action-oriented. Though it does afford perception or insights in order to label and recognize previously unrecognized or poorly defined patterns of things, events, relations or symbols in society; not to mention heuristic theories as devices for new experiments, observations, and discoveries. The heuristic effectiveness of a theory is greater the more

80 Fowlkes, Noble and Bray, pp. 8-9.
81 Ibid.
fruitful it proves to be, as it more likely will lead to new knowledge, discoveries and new theories eventually superseding old ideas. Although this kind of scientific and empirical knowledge is "objective" as being verifiable and sharable, it is not "free from values" in Max Weber's sense; for it assumes, a priori, that values enter into the choice of topic of inquiry, the strategy for research, the interpretation and evaluations of the implications of the findings and one's response to the choice of actions at his/her disposal. 82

From another angle, the worthwhileness of performing a jury composition study of the Charlotte-Mecklenburg County jury pool for two bienniums derives from a sense of curiosity, in that only one study to date based upon the writer's research, has looked empirically into the jury system in Charlotte-Mecklenburg, especially at the jury pool stage; and before the 1980 statutory changes altering the sources used for jury systems in North Carolina. This study, moreover, proposes to examine the jury pool after the effected changes, and to serve as the second jury composition study of the jury pool in

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Charlotte-Mecklenburg County. For the author's purpose, then to discover whether the sources used as jury lists for two biennium periods to constitute the jury pool was equitable and representative of the socio-demographic groups in Charlotte-Mecklenburg in proportion to those in the pool. Also, as a native of this region, the role of blacks on criminal and civil juries has always been intriguing, and served to stimulate an intense interest, as well as lack of research around jury work studies deficient not only in the locale of Mecklenburg County, but also at the state and federal levels. As a region, the South is a likely place for jury work, as this area has traditionally exhibited the most repressive strategies in limiting and controlling black civil rights; there are twice as many criminal jury trials in the South as in the nation and a disproportionate number of criminal defendants in jury trials are black; southern states still have the largest proportion of the black population so that jury visibility is greatest and larger numbers of blacks are effected by jury selection processes; and since the mid-1960s, an upsurge in filling discrimination suits in the South. In light of such, one may gain insight and experience into the relation of political science and the nexus of criminal justice and judicial process, i.e.,
source selection and representation. Consequently, this area of research remains teeming for any burgeoning political scholar or student.

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CHAPTER II

JURY WHEEL, JURY POOL, AND JURY VENIRE: SOURCE LIST QUANDARY

General Information: Jury Selection Systems

The main purpose for the existence of jury selection systems (i.e., processes and procedures) is generally to impanel impartial jurors without unlawful and odious discrimination from a fair cross-section of the community. In a series of procedural steps, the selection system narrows the pool of possible jurors until a single panel for a set trial remains.\(^1\) The forms that jury selection systems come in varies, and are often defined by statutes and court rules, and are very often modified by informal

\(^1\)Elissa Krauss and Beth Bonora, Jurywork: Systematic Techniques, 2nd ed. (New York: Clark Boardman Company, 1983), pp. 5-3 and 5-4. "Normally, most jury selection processes and procedures entail three stages. During the first, the Court assembles a list of potential jurors, often termed the "master wheel" or list. Then, jurors are selected from the master wheel, and those citizens who are not exempt make up the jury venire. The final step involves the voir dire examination where the judge or competing attorneys challenge the venire for bias or suspected bias. Those who are not struck during the step are sworn in as the jury." William A. MaCauley and Edward J. Heubel, "Achieving Representative Juries: A System that Works," Judicature vol. 65, no. 3 (1981):127.
policies and administrative procedures. 2

General Information: State Constitutions and Statutes

The concept of jury selection system, and, thus jury rights, is well-established in state constitutions and jury selection statutes. In this capacity, state courts normally compel strict adherence to state statutes which govern both selection procedures and substantive standards for selection; often stating explicitly that non-compliance with statutory dictates renders the jury unlawful and annul its actions. However, if a violation is looked upon as inconsequential, the courts have interpreted the statutes as only advisory or the error as harmless. For this reason, in order to show a violation of a state statute, the aggrieved party must show a true and significant intent to transgress the law. 3 There are two categories where a violation of state statutes governing jury systems (i.e., jury processes and procedures) falls. The first category involves the conduct of selection officials who initiate or use standards for selection that

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2Krauss and Bonora, pp. 5-3 and 5-4.

3Ibid., pp. 5-15 and 5-16. See also N. C. Constitution, Article II, Sections 24-25, 1971, which states with respect to jury service that: "no person shall be excluded from jury service on account of sex, race, color, religion, or national origin."
are not mandated by statute, regardless of whether they are sensible or if the officials have an allegedly improper motive, such as excusing persons whom jury service will inconvenience or those who usually request to be excused. The next classification which would constitute a violation of state law is where selection officials disregard statutory procedures for selection, particularly with respect to how and by whom the selection should be made. For instance, if the statute direct that a specific official make the selection, or if a procedure for selection is specified; in each case, the selection duty may not be delegated, and, if the names are to be drawn at random from a "jury wheel" or all eligible persons placed in the jury pool, that procedure should not be altered.\(^4\)

**General Information: Qualification and Criteria**

Normally, the first stage in jury selection systems (i.e., processes and procedures) involves the qualification process. In this context, the Supreme Court in *Duren v. Missouri*, 439 U. S. 357 (1979), held that if the qualifications for jury service cause major underrepresentation, then that "qualification must be reviewed to determine

\(^4\)Ibid.
whether they manifestly and primarily advance 'a significant state interest.'\(^5\) The qualification process usually begins with a questionnaire to be filled out by each potential juror, but the screening procedures varies. In some areas, personal interviews are conducted. At the qualification stage, possible jurors are chosen from the source list and screened according to criteria set by court rule or state law. The criteria standard which serves as a basis for qualification of prospective jurors, include exemptions, exclusions and excuses. There are two types of rules or criterions which are used in the qualification system. The first is the objective criteria which may stipulate that possible jurors be citizens, or that prospective jurors be excused if they are over a specific age limit. The other criteria is a subjective one wherein selection officials exercise judgment or discretionary authority, for example, to evaluate that jurors be of "good character" and so forth. Table 1 looks at the statutory qualifications for petit trial jurors in states of the southern United States.\(^6\) The qualification


\(^6\)For a list of objective and subjective criterions in various states, see Table 1 and Appendix IV.
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<td>Prior Jury Service</td>
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a - "Integrity, good character and sound judgment"
b - "Good character or approved integrity," "sound judgment"
    "reasonable information," "good behavior"
c - "Intelligent and upright citizens"
d - "Good moral character" and "sound judgment"
e - "Competent"

process and the criterions established, results in a list of names of persons qualified for jury service. This list has been variously called the "qualified wheel" in the federal system, and in other systems it has been titled "master wheel," "jury wheel," and so forth. Regardless of the name, it represents a group of persons who have been qualified for jury service. 7

General Information: Summoning and Impaneling

Of those on the master jury wheel, names are selected, when jurors are needed, and summoned for jury service. The summoned jurors would constitute the jury pool. Once the jury pool members have been summoned from the "master wheel" they are assigned to panels. In other words, in smaller jurisdictions, jury pools are summoned on a case-by-case basis, but in larger jurisdictions, summoned jurors from the master wheel or jury pool are assigned to one of the pending cases docketed. Hence, the group of summoned jurors or jury pool members assigned to a particular case is usually called the "venire" or "panel." Sometimes jurors are subject to a second application of the qualification criteria when they are called to serve. The additional screening process may exacerbate the problem

7Krauss and Bonora, pp. 5-4 and 5-6.
of representativeness introduced at an earlier stage—it may create new problems. The impaneling stage is also distinguished in many selection systems by the existence of highly discretionary "hardship" excusals.  

**General Information: Discretionary v. Jury Commission**

As an alternative to these stages, some jurisdiction have a jury commissioner or commission qualification criteria body prepare the jury list, often without any specified source list or criteria. In such systems, the commissioners are also responsible for administering the qualification criteria. Because the final list is the product of such substantial discretion, jury commissioners are under an affirmative duty to acquaint themselves with a broad cross-section of the community and to avoid practices that have a disparate impact on distinctive groups.  

**General Information: Source Lists**

Most jury selection systems mandate the use of particular sources of names to obtain possible jurors. The source most widely recognized is the voter registration...
source, and it is from this source that juries have proved to be most unrepresentative. Recent research and reforms have shown that the use of multiple list creates a significantly more representative pool of prospective jurors. Governing statutes and rules will usually set out a particular method for selecting names from the source list.¹⁰

Source List: Inclusive and Representative

Jury source list are a necessary way to select prospective jurors from the population-at-large;¹¹ and, ironically, to ensure unrepresentativeness on juries. This two-sided situation has resulted from the jury source list receiving little or nor assiduity in composition challenges. But, in more recent times, this bipartite difficulty has compelled state legislative bodies and the courts to face this dilemma. Three factors can be credited for this development:

1) The basic rejection of discretionary systems (i.e., key-man system);

2) The realization that voter registration list as a single source are normally not representative; and

¹⁰Ibid., p. 5-4.

3) The inexpensive methods for merging multiple source listings.

In light of the aforestated complication with organized source list and the accompanying attention it has received; the American Bar Association adopted standards to govern organized source list use in 1983 as a means to combat the problems of unrepresentativeness while recognizing the necessity for certain sources of names.12 The proceeding suggestions will be stated in alphabetical sequence:

"a. That the names of prospective jurors should be chosen from a jury source list assembled from one or more regularly maintained lists of persons residing in the court jurisdiction;

"b. That the jury source list mirror a representative cross-section of the community on the source list and include the adult population of prospective jurors in the jurisdiction as is feasible;

"c. That there be an affirmative obligation to check source(s) of names from which potential jurors are selected to guarantee that the list is representative with an added responsibility to update the source list at intervals;

"d. The responsibility, once a source list is determined deficient in coverage, to examine other lists to correct the deficiency;

"e. At periodic times to examine list(s) used by the jurisdiction for summoning prospective jurors for their representativeness and coverage of the adult population in the jurisdiction;

12Krauss and Bonora, pp. 5-18.1 and 5-21.
"f. Each potential list should be categorized to determine:
1. whether it omits or underrepresents any age, race or sex within the community;
2. whether it has the requisite information for determining juror eligibility such as name, address, and if the prospective juror lives within the geographic boundaries of the court's jurisdiction;
3. and how frequently and in what manner the list is kept current and accurate;

"g. Evaluate the inclusiveness and representativeness of source list by comparing it against the most recent local, state, and federal census estimate or a more recent, reliable population projection;

"h. If the list(s) already being used are not inclusive of or representative of the adult population, appropriate steps should be taken to identify new lists that would alleviate the problems:
1. identify additional lists that are available — e.g., lists of registered voters, licensed drivers, persons counted in a local census, utility customers, newly naturalized citizens, persons with telephones, parents of children enrolled in public schools, property owners, motor vehicle owners, and persons with hunting, trapping and/or fishing licenses;
2. viable source lists should be ranked in order of their representativeness and inclusiveness of the adult population;
3. determine the list or combination of lists that will provide a jury source list meeting the standards;
4. a process for the regular review of the list(s) for the degree of representativeness and inclusiveness of the adult population should be established.

"i. In selecting a list to be used to form a jury source list, attention should be given to the frequency with which names are deleted from those
lists and the corrections made from addresses and other information should be explored. In using lists which are seldom culled of names of persons who, say, for example failed to renew their registration or driving license, or the list is not kept current this can increase the number of summons that must be issued at a greater cost to the jury selection process as well as interfere with efforts to provide a representative panel. Also, whenever a list shows a good chance of increasing the inclusiveness of the juror source list but is updated at sporadic times, discussion should be held with the compiling agency so that it may be kept up-to-date and to identify the elements which might impede updating of the list. Similar discussions should be initiated when a potentially useful list is not in a format that would permit its use for jury selection purposes or does not contain critical bits of information—e.g., the list omits addressed or clarifies persons within geographical boundaries that differ from those defining the court's jurisdiction. 13

In a similar vein, the courts have said that a jury source maintained on a segregated basis is discriminatory, or one that is used clandestinely as a subterfuge for invidious discrimination is unlawful. However, the courts have not per se invalidated any particular source; whether it be the property tax list, voter registration list, or even the "keyman" system wherein "key" persons choose names for the source from their acquaintances or associates. 14 Consequently, the courts have still


failed to promulgate clear and enforceable standards to govern list use, instead they have often confused the issue and eroded the constitutionally mandate representativeness principle.\textsuperscript{15}

The constitutional rule that jury systems be representative of a cross-section of the community applies to the source list and derives from the Sixth Amendment representative principle and the rule of exclusion standard from the Fourteenth Amendment. Under both of these amendments, a constitutional violation has occurred if a substantial or comparative disparity between a source list and the population is more than 15 percent as it relates to any cognizable class or if the source list is less than 80 percent inclusive, unless the underinclusiveness can be explained in terms of availability or eligibility.\textsuperscript{16} However, no particular type of source list or method of combining the list has been required.\textsuperscript{17} In sum, there are no accepted standards for evaluating representativeness of source list or pools.\textsuperscript{18} Although the relationship

\textsuperscript{15}Ibid.

\textsuperscript{16}Kairys et al.

\textsuperscript{17}Krauss and Bonora, p. 5-17.

between jury representativeness is undeniably contingent upon the quality of the source list. The closeness of this relationship was succinctly stated in a California case, People v. Wheeler, 22 Cal. 3d 258 (1978), where the court stated "obviously if that [the source] list is not representative of a cross-section of the community, the process is defective ab initio." In order that juries be representative of a fair cross-section of the community, source lists used in jury systems must be complete, accurate, and as recent as possible. 19

There are two distinct concepts which should be considered in any discussion of jury source list: inclusiveness and representativeness. Inclusiveness refers to the percent or proportion of the entire adult population in a jurisdiction which is on the source list. 20 A source which is unrepresentative impedes the rights of citizens and litigants, as well as society's interest in maintaining a judicial system which is legitimate, credible and impartial. For example, in a particular jurisdiction, the list of utility customers may be representative but actually include less than half of the

19 Ibid., pp. 1-3.

20 American Bar Association, pp. 24-25.
eligible population. In this case, when the source list is less than fully inclusive, the jury is often denied "a perspective on human events that may be of unsuspected importance in any case that may be presented." Since "the people on...a source list may well have considerably different values, attitudes and experience from the rest of the eligible population," and since it is unlikely that such values, attitudes and experience would ever be measured, the degree to which a source is truly representative with respect to relevant juror characteristics will always be questionable as long as the source is not 100 percent inclusive. In the process of expanding a source inclusiveness, very often a list is rendered less representative. Therefore, in the process of making a source list inclusive, it should be tempered with the condition that it be representative. Although an inclusiveness requirement has not yet been adopted by the courts, there is some authority to support it. In fact, much of the literature and recent practice in local courts, however, indicates that a jury

21Kairys et al., pp. 801-802.
22American Bar Association, pp. 24-25.
23Ibid.
24Krauss and Bonora, p. 5-18.
source list should cover 85 percent of the adult population in a jurisdiction as a reasonable goal. In order to include 85 percent, most jurisdictions would require the use of sources in addition to the voter registration list. And convenient and inexpensive methods exist to produce combined source lists that are 95 percent inclusive in many districts. Also, officials responsible for preparing the source list are strongly encouraged to make it as inclusive as possible given financial and statutory limitations. One court has, in fact, suggested that a source list that contains only half of the eligible people in a community may be unconstitutional.

A source list can be fully representative of all cognizable classes but comprise only a small portion of the eligible population in a community. For example, in a county of one thousand eligible persons of whom 25 percent are black, a source list of 100 persons, twenty-five of whom are black, would be fully representative of blacks but only 10 percent in inclusive, thereby excluding 90 percent of the eligible population.

25 American Bar Association, pp. 24-25.
26 Ibid.
27 Kairys et al., pp. 801-802.
28 Ibid.
Principles underlying jury selection cases require that source lists be sufficiently inclusive that a significant proportion of the eligible population is not excluded, although the courts have not explicitly recognized a minimal inclusiveness requirement, criterion or standard. There can be absolute certainty that a source list is both representative and inclusive only when it contains 100 percent of the eligible population. Practical constraints, however, will always render it impossible to establish empirically that a source list is representative with respect to all "qualified of human nature and varieties of human experience" which may affect a juror's reaction to a case and performance as a juror.

\[29\text{Ibid.}\]

\[30\text{American Bar Association, pp. 24-25. "Inclusiveness and representativeness are synonymous; in that if a source list is inclusive --if the names of almost everyone eligible for jury duty appears on the source list, the degree to which the list reflects the eligible population will be good. The inclusiveness indicator or representativeness has the advantage of simplicity. If the source list includes most of the eligible population, it will allow that a random sample drawn from the list will have a representation sample of the population without necessity of identifying cognizable classes, determining their proportion in the population, and then setting permissible tolerance ranges of deviation from the standards." See National Center for State Courts, "Source List Issue," paper presented to the Task Force, Reno, Nevada, May 1982, pp. 8-9.}\]

\[31\text{Ibid.}\]
In summary, the American Bar Association (ABA) suggest that source list be periodically examined for their representativeness and inclusiveness of the adult population in a particular jurisdiction. Should the particular list be found deficient in anyway, it assumes the courts will take the necessary steps to rectify the situation. This may involve coordination with those agencies supplying the list in order to update it more frequently.\textsuperscript{32} In total, in light of claims regarding jury representativeness, challenges arose nationwide in both federal and state jury systems over their unrepresentativeness. An analyses of these challenges showed that unrepresentativeness was due to the source list. In fact, statistical data showed no available list, including voter registration list, the most commonly used source, sufficiently represent a cross-section of communities. Therefore, there was a need for an inexpensive means to achieve inclusiveness and representativeness through multiple lists. The sections on the voter registration list and the use of multiple list will be dealt with at a later stage.

**Primary List: Voter Registration Source**

In the quest to untangle the topic of jury sources and the selection system, the next emphasis will be on the use

\textsuperscript{32}Kairys et al., pp. 801-802.
of voter registration list as the primary source list in compiling jury wheels or master jury rolls across the nation, which ultimately impact the jury pool and jury venire or panel; hence, grand, petit, and civil juries in coordination with the constitutional and common law dictates of trial by jury. Prior to delving into the particulars of this area, one must state briefly, the contextual framework wherein voter list are engendered; that is, there is a need to explain the connection of the American political system of participatory democracy with elections (e.g., local, state and national) and universal source of voter registration list as a compilation of eligible citizens qualified to vote in the "body politic" (i.e., contract theory); and, finally, the usefulness of this source in summoning citizen-jurors within the halls of judicial administration, viz., jury selection and systems.

In a representative democratic government as these United States of America, where the "people" or citizens elect representatives to act as their agents in creating and enforcing laws and decisions; there resides the assumption of popular sovereignty or the ultimate power of the "people." Concomitant with this authority is

the presupposition that persons can control their destiny, and that they can decide moral judgments and practical decisions of everyday life, such presumptions being rooted in the Democratic Creeds of Liberty, Equality, Individualism and Fraternity. Hence, in this scheme, the citizen-prospective voter elects government leaders, expresses and affirms governmental legitimacy and attempts to influence public policy. Therefore, in a republic democracy life the United States, the electorate partakes of a two-party, winner-take-all system, where compromises are made and coalitions are built ahead of elections since the loser, irrespective of the minority vote, loses all. This creates a situation where candidates tend for moderate postures and have a great reluctance to address questions of principle within their respective parties. But, still, given citizens (electorate) sovereign power(s) their elected representatives are ultimately accountable to them. The composition of the electorate body is

34Ibid.


36Kairys et al., pp. 809-810. See also Plano and Greenberg, p. 19.

37Plano and Greenberg, p. 19.
based on voting qualifications; that is, legal requirements that prospective citizen-voters must fulfill to become eligible to vote. Qualifications imposed in all of the states include citizenship, age and residence. Special qualifications involve lengthy residence, tax payments, property ownership, but literacy may no longer be imposed under Supreme Court rulings. Most states, however, disqualify mental incompetents, i.e., non compos mentis, prison inmates, election law violators, and vagrants. According to the Fifteenth and Nineteenth Amendments to the constitution, no person may be disqualified by a state from voting because of race or sex.38 Once the preceding qualifications are met the potential voter must register to be eligible to vote on election day (whether for local, state or national elections). Registration involves enrolling prospective voters prior to their participation in elections. Under a system of permanent registration, the voter, once qualified, remains on the eligible list until he/she dies, moves, or fails to vote in several consecutive elections.39 Periodic

38Ibid., p. 151.

39Age eighteen is the requirement for all elections since adoption of the Twenty-Sixth Amendment in 1971. Congress, in the Voting Rights Act of 1970, provided that thirty days residence would qualify citizens to vote in presidential elections.
registration requires that the voter enroll at the appropriate local office annually or at fixed intervals. Almost all states now use some form of permanent registration, although in many states there is no statewide application.40 Once registered, the numbers, names, addresses, zip codes, party affiliation, race, and gender of these citizen-voters are retained with the various "states" Board of Elections. It is a listing of eligible-actual voters. The list is universally recognized as the voter registration roll (Emphasis Added).41 Not only does the voter registration roll serve an electoral function, but the courts and judicial systems have come to rely on a source list of legitimate voters as possible venire persons in translating the Anglo-American concept of trial by jury into a practical and concrete reality. The source list is the Voter Registration Roll.

The Voter Registration roll as an instrument for jury selection and representation began to receive prominence in the 1960s, most fundamentally, from the 1968 Federal Jury Selection and Service Act (28 U. S. C. A. §1861, et. seq.).42 This Federal Act was generally applicable only

40Plano and Greenberg, p. 143.
41Wolfinger and Rosenstone, pp. 61-62.
42Hereafter referred to as the "Federal Act."
to Federal Courts,43 and came into existence out of a concern that the keyman system then in use in Federal Courts did not provide representative juries. As a consequence, "a rising tide of criticism of the key-man system crested in 1966 with Fifth Circuit's decision in Rabinowitz v. United States, 366 F. 2d 34 (1966), in which the court reversed a number of federal criminal convictions on the theory that the jury commissioners departed without authority from the statutory qualifications for jurors." Rabinowitz illustrated the vices that can occur under the keyman system and set the stage for the Federal Jury Selection and Service Act of 1968.44 The Rabinowitz ruling propelled then Chief Justice Earl Warren to reconstitute the committee on the operation of the jury system of The Judicial Conference of the United States ("The Kaufman Committee") to study jury selection procedures. The Kaufman Committee, together with Congressional Committees, discovered that the jury selection process did not afford many citizens in minority or low-income population groups an opportunity to serve as federal

43 One of the principle criticisms of the Federal Act is that it excludes state court juries from its scope, see, e.g., Ashby, "Juror Selection and the Sixth Amendment Right to an Impartial Jury," Creighton Law Review 1137, 1143 (1978).

44 DiSalvo, p. 226.
jurors. The Committee found that the jury selection system's dependence on keymen or jury commissioners, generally individuals from affluent population groups, contributed to the disparity in jury representation. Perhaps, more importantly, the haphazard "nature of the process did not insure that each qualified citizen would have an opportunity equal to that of every other qualified citizen to be considered for jury service. The Jury Selection and Service Act of 1968 was drafted from the recommendation of the Kaufman Committee and the Congressional Committees. In total, as a result of court commissions, Congressional hearings and committee reports, in addition to the social and political activism of the 1960s (i.e., political trials and challenges); the broader question of jury representativeness came into vogue—as experts and dissenters, particularly at the federal level, stressed that jury systems nationwide were not fair and equitable as cognizable groups as race and sex were excluded because of the discretionary and subjective "keyman" jury selection system. It is for this reason that discretionary systems are clearly disfavored and


46 Bonora and Krauss, pp. 5-12 and 5-13. See Appendix I.
place a special affirmative duty on selection officials to include all groups in the community in order to obtain a cross-section where utilized.\(^{47}\) This new Federal Act acclaimed the voter source for its randomness and self-motivational aspect which would create for a civilly interested citizen-voter while objectively broadening the jury pool selection from the community. Furthermore, the voter source was seen as the "best reflection of the community" with randomness and objective selection of the community which afforded every legitimate citizen-voter a right to serve on juries excluding socio-demographic qualities, as every eligible citizen had the right to vote.\(^{48}\) In addition, as a result of this Act, many

\(^{47}\)Ibid., p. 5-17.

\(^{48}\)DiSalvo, pp. 226-227. The heart of the Federal Act is its codification of the notion that the jury ought to represent a fair cross-section of the community. This is clear from the Act's declaration of policy that:

"All litigants in Federal Courts [sic] are entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose. The Act attempts to achieve these goals by mandating the use of random selection methods and by
states, including North Carolina, followed this lead and mandated voter registration lists in jury selection.

requiring district courts to obtain names from voter registration or actual voter lists as supplied by state, local or federal authorities. Such lists may be supplemented with other lists when necessary to obtain a fair cross-section. In addition, each district court is required to comply with the standards expressed in the Act by establishing a local implementation plan. The plan must provide, among other things, for the management of the selection process by the appointment of the clerk or a one-person jury commission as manager; must specify in detail the random method employed for selecting names from the chosen list or lists; must specify those groups of persons or occupational classes whose members should be barred from jury service on the ground that they were exempt, as defined by the plan. Under each plan, and pursuant to the Act, names are randomly taken from the source lists and a qualification questionnaire. After the questionnaires are returned, the district judge determines 'solely on the basis of information provided on the ... form and other competent evidence whether a person is unqualified for or exempt, or to be excused from jury service.' U. S. C. 1865 (b) lays out the narrow disqualification criteria. Non-citizens, those not versed in English, the infirm, felons whose civil rights have been restored, and those against whom certain criminal charges are pending, are disqualified. Unless a person meets one or more of these sharply defined criteria, he/she is deemed qualified. From among those not disqualified, names are then publicly chosen, on a random basis, for people to serve on specific grand or petit juries. A judge may excuse an individual juror on hardship grounds but only as a temporary matter."
Therefore, federal and many states legislatures, supplanting a discretionary system known as the "key-man" where local leaders choose venire persons based on personal association or subjective judgment, to one with less capriciousness and whimsicalness.\textsuperscript{49} However, detractors of the exclusive use of this source to compile jury wheels contend it is a poor reflection on the community; it must be supplemented with other viable sources. As late as 1985, Charles DiSalvo recognized the fact that the overwhelming majority of jury systems throughout the country use voter registration lists as the source, although all available studies and data indicate that voter registration lists do not represent a cross-section of communities and are substantially underinclusive.\textsuperscript{50} Despite the previous comments, in the following section, the writer shall limelight the negative and positive qualities of using the voter registration list as a jury source, be it exclusive or not. With respect to a peripheral matter, attention will not be directed towards the role of citizens and the registration process for voting; as this does have an impact on the eventual use of the voter's list as a jury source. Secondly, the author of this paper is cognizant

\textsuperscript{49}Van Dyke, \textit{Jury Selection Procedures}, pp. 85-86.

\textsuperscript{50}DiSalvo, p. 256.
of the socio-demographic factors which contribute to why certain classes do and do not register and vote, which would depreciate or increase their chance of being summoned for jury duty via the voter's list; but this will not be addressed either. Rather, this section will be somewhat superficial, and lacking depth or reasoning as to the whys of this situation. This is done as a consequence of the complexity of the problem which might lead to a digression from the main topic. Henceforth, there are essentially two basic affirmative viewpoints which support the use of voter registration list:

1) It is administratively convenient to use; and

2) It excludes those who would be poor jurors because it contains only the names of those interested enough in the duties of citizenship to register to vote.  

In the first case, the voter registration list is easy to use. It is usually well ordered and easily available for public offices. In addition, in certain areas, especially cities, voter registration list are on computer tapes, which are programmable to select names randomly for jury lists. Obtaining the list of potential jurors can be accomplished in a matter of minutes, since the list

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51 Ibid.
52 DiSalvo, p. 256.
is kept by a government agency, it can usually be obtained easily and relatively inexpensively.\textsuperscript{53} The second view contends that the voter registration source is a "filtering source" of the uninterested and incompetent; and a source of those meeting citizenship and residence requirements with the unstated assumption that these persons have a greater self motivation towards civic responsibility and public policy questions, hence, they should serve in the jury box.\textsuperscript{54} In the words of Mecklenburg County District Attorney Peter Gilchrist, commenting on the separative or eliminative aspects of the voter list as a jury source selection tool,

Voter registration reflects interest in citizenship. . . people who make an effort to go to register to vote impress me as more concerned about the community and concerned about the input into governing the community.\textsuperscript{55}

Further, the second reason depends on an alleged relationship between the registrant's status as a registrant, and their desirability as a good juror. However, this

\textsuperscript{53}Van Dyke, \textit{Jury Selection Procedures}, p. 86.


constrained approach ignores a value implicit within the jury system--broad public participation in the institution of self-government. By eliminating citizens who are not registered voters, though they have a stake in the outcome, it does "serve society's interest in stability to have as many people as possible participate in the judicial system, whether they are registered or unregistered." For example, litigant will not "retain negative feelings towards an unfavorable verdict when their racial, sexual, age or other group is fairly represented than when his/her group is excluded or is underrepresented." Both litigants and non-litigants are likely to lose confidence in the integrity of the judicial system if they observe that its decisions are made by a select few rather than the democratic many. Moreover, there is no concrete proof that non-registrants make less able jurors than registrants. Some non-registrants may have philosophical reasons for not voting that would not interfere with their ability to serve on juries. Others may be the victims of the practical difficulties of registration which prevent them from enrolling. The United States' voter registration rate is much lower than those of other industrial democracies for this very reason.\textsuperscript{56}

\textsuperscript{56}DiSalvo, p. 257. For court cases upholding the use of voter registration list as a jury source, see Appendix II.
In a contrary posture, a plethora of sources have raised questions as to the voter registration list representativeness and inclusiveness. Robert DiSalvo holds to the notion that the voter's list as a sole source for names does an inadequate job of reflecting a fair cross-section of the community. He continues to explain that the voter list as the sole source of names is a major cause of unrepresentativeness given that different groups register to vote at quite different rates. For instance, "whites more than minorities, older people more than younger people, college graduates more than the"

57"For years political scientist and sociologist have studied why socially and economically disadvantaged groups register and vote at lower rates than more favored classes, and the conclusions were: (1) economically--registration and voting imposes a costs in terms of acquiring information on how elections affect one's interest, and the burden it imposes upon the disadvantaged; (2) psychologically--political interest is a personal characteristic reflecting the salience of politics to one's personality; (3) socio-cultural--voting activity is a function of the absorption of prevailing civic norms and results of contact with integrative forces of society; (4) demographic poor and minorities change residence more often and have a younger population; (5) political--this political system predominately serves the interest of the majority population and middle-class." O'Reilly, p. 7.

58 DiSalvo, p. 257.
less-educated, white-collar workers more than blue-collar and service workers, and high income people more than low income people." Also, the voter source may be unrepresentative because registration officials have failed to keep them up-to-date or have improperly limited registration. Additionally, voters have a distinct set of characteristics which separate them from non-voters. They are usually better-educated, have higher incomes and higher occupational levels. Further, young persons, minority groups, and lower income groups, and new residents are least likely to have registered. According to a study conducted by Raymond E. Wolfinger and Steven J. Rosentone, they found that certain groups accounted for a proportion of voters larger than their share of the general population such as whites, the well-educated, government employees, northerners, the well-to-do, the middle-aged, the married and those residentially stable. Furthermore, an abundance of statistical data can attest to the above mentioned facts:

Whereas 73.4 percent of whites reported that they were registered to vote, only

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59 Ibid.
60 Ibid., p. 257.
61 Ibid.
65.5 percent of Hispanics said they were registered; (2) 58.1 percent of the country's 18-20 years old, 59.5 percent of our 21-24 years old, and 66.1 percent of the 25-29 years old said they were registered, compared to percentages of at least 70 percent of all other age groups, ranging up to a high of 80.2 percent for the 55-64 age category; (3) 61.2 percent of those making less than $3,000 said they were registered, 64.1 percent of those earning between $5,000 and $7,499 were registered, compared to 77.7 percent for those earning $10,000 to $15,000 and 85 percent of those making over $15,000; (4) 61.5 percent of those with eighth-grade education or less said they were registered compared to 84.4 percent of those with at least one year of college; and (5) only 66.5 percent of the nation's blue-collar workers said they were registered, compared to 82.4 percent of the white-collar employees.62

Further confirmation of the voter's list underrepresentation can be seen from a portrait of the United States District Court for the Eastern District of Pennsylvania, where the sole use of this source showed that while non-whites represented 15.7 percent of the population; they represented only 11.7 percent of the source list. While those in the under 30 age group represented 25.5 percent of the eligible population, they represented only 17.2 percent of the source list. Those under 40 represented 41.8 percent of the eligible population, and only 32.2 percent of the source list.63 Besides the preceding

62DiSalvo, p. 258.
63Ibid.
sources, other parties have raised questions of substantive doubt about the validity and ability of this source to produce representative jury pools. In "Jury Representativeness: A Mandate for Multiple Source List," David Kairys et al. raised the point that all available studies and data indicate that voter registration lists do not represent a cross-section of communities and is quite underinclusive. This consensus was garnered after the Census Bureau Study of Voting and Registration after each election. Since 1960 these studies have reached the same conclusions concerning the representativeness and inclusiveness of voter registration lists. The study of the 1982 election stated:

Higher levels of registration and voting were associated with persons who were male, white, those in the middle age group (35-64), those person with at least a high school diploma, those in families with incomes greater than $10,000; and those in white-collar occupations. Conversely, females, Negroes, persons of Spanish ethnic origin, the youngest (18-34) and oldest age group (65 or older). Those who did not complete elementary school education, those in families with incomes less than $5,000, and those in unskilled occupations, such as laborers and private household workers were less likely to be registered and vote.64

Also, in the words of District Court Judge Jay Sullivan of the Shawnee County, Kansas District Courts,

64Kairys et al., pp. 806-807.
voters list have a leaning towards people who are "white, members of the Jewish, Catholic, Presbyterian, or other Protestant and established religious beliefs, well-educated or higher-educated citizens than average, middle-age citizens and men...." And, as recent as 1983, the American Bar Association, House of Delegates stated that as a result of differential voting patterns among non-whites, the poor and young who vote at a lower rate than the general population; that such groupings are inclined to be underrepresented on the voter registration list. From the perspective of mobility and the voter registration list as a source to create fairness in jury compositions; it has the names of many persons having moved since registering to vote without altering address or re-registering, which ultimately dilutes black and minority representation, who are less likely to vote initially, so they are less likely to re-register; yet, blacks, et al. need to re-register, as they have higher rates of intracounty migration than whites. Also, James O'Reilly says that the voter registration list is an outdated and incomplete


66American Bar Association, p. 23.

67O'Reilly, p. 9.
source, which eliminates the names of new entrants into a community but fails to delete the names of those deceased. 68 Another, and final, discouraging facet of the voter registration roll is that as a source for summoning jurors some citizens refuse to register and vote, period. "Some people who realize that by being placed on jury rolls only if they register and who feel for economic or personal reasons they can not spare the time for jury service, choose not to register. . . ." 69 Finally, one of the latest authoritative sources to chide the use of voter registration list, particular the sole use of same, is a 1984 case from California, People v. Harris, 36 Cal. 3d, 679 P. 2d 433, 201 California Reporter 782, in which Lee Edward Harris was charged with robbing and murdering the husband and wife managers of an apartment building in Long Beach, California. Before the jury was selected, the defendant moved to quash the venire. Harris asserted denial of his constitutional right to a fair cross-section jury. The trial court considered the motion and received that potential jurors were selected randomly from the list of registered voters. The trial court, however, denied the motion, holding that statistical

68 Ibid.

69 Van Dyke, Jury Selected Procedures, p. 99.
comparisons must be made between potential jurors and those persons eligible because they are registered voters. The jury found the defendant guilty. On appeal, the California Supreme Court reversed the conviction, finding the defendant established a prima facies case that he was denied a fair cross-section jury. The court ruled first that a defendant may use total county population figures, rather than voter registration lists, to demonstrate comparative underrepresentation of certain groups on the jury venire. The foundation of the defendant's argument, the court said was that certain groups were underrepresented on the voter registration lists, and, therefore, perennially underrepresented in jury pools. The court then held the defendant carried his burden by showing the exclusion of cognizable groups from the jury venire selected. 70 For a look at the inclusiveness of voter registration lists in certain states and metropolitan areas, see Table 2. Table 3 has the percent reported registered for thirty selected standard metropolitan statistical areas. Table 4 has the percent reported registered for the twenty-five largest states. 70

70 Nancy Brame, "Constitutional Law--Sixth Amendment Jury Pools Drawn from Voter Registration List May Not Provide a Fair Cross-Section," Cumberland Law Review 15 (1984):556. See Appendix III for court cases which have expressed reservations about the voter registration source, particularly its exclusive application.
TABLE 2

INCLUSIVENESS OF VOTER REGISTRATION LISTS: STATES AND METROPOLITAN AREAS

<table>
<thead>
<tr>
<th>State</th>
<th>Inclusiveness</th>
<th>% Not on Registration List</th>
<th>Metropolitan</th>
<th>Inclusiveness</th>
<th>% Not on Registration List</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>58.7</td>
<td>41.3</td>
<td>Atlanta, GA</td>
<td>62.3</td>
<td>37.7</td>
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<tr>
<td>Florida</td>
<td>56.1</td>
<td>43.9</td>
<td>Baltimore, MD</td>
<td>61.8</td>
<td>38.2</td>
</tr>
<tr>
<td>Georgia</td>
<td>61.2</td>
<td>38.8</td>
<td>Boston, MA</td>
<td>68.7</td>
<td>31.3</td>
</tr>
<tr>
<td>Illinois</td>
<td>66.9</td>
<td>33.1</td>
<td>Chicago, IL</td>
<td>65.0</td>
<td>35.0</td>
</tr>
<tr>
<td>Indiana</td>
<td>69.6</td>
<td>30.4</td>
<td>Cleveland, OH</td>
<td>66.2</td>
<td>33.8</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>69.2</td>
<td>30.8</td>
<td>Dallas, TX</td>
<td>52.6</td>
<td>47.5</td>
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<tr>
<td>Michigan</td>
<td>63.1</td>
<td>36.9</td>
<td>Denver, CO</td>
<td>67.2</td>
<td>32.8</td>
</tr>
<tr>
<td>Missouri</td>
<td>63.9</td>
<td>36.1</td>
<td>Detroit, MI</td>
<td>65.0</td>
<td>35.0</td>
</tr>
<tr>
<td>New Jersey</td>
<td>61.9</td>
<td>38.1</td>
<td>Houston, TX</td>
<td>57.0</td>
<td>43.0</td>
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<td>New York</td>
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<td>42.2</td>
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<td>63.3</td>
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<td>North Carolina</td>
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<td>44.1</td>
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<td>41.6</td>
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<td>Ohio</td>
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<td>39.4</td>
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<td>49.9</td>
<td>50.1</td>
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<td>Pennsylvania</td>
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<td>29.4</td>
<td>Milwaukee, WI</td>
<td>64.7</td>
<td>35.3</td>
</tr>
<tr>
<td>Texas</td>
<td>56.6</td>
<td>43.4</td>
<td>Minneapolis-St. Paul, MN</td>
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<td>Virginia</td>
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<td>46.0</td>
<td>Newark, NJ</td>
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<td>36.0</td>
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<td></td>
<td></td>
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<td>Philadelphia, PA</td>
<td>67.7</td>
<td>32.3</td>
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<td>St. Louis, MO</td>
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<td>35.7</td>
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<td></td>
<td></td>
<td></td>
<td>San Francisco, CA</td>
<td>60.4</td>
<td>39.6</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Washington, DC</td>
<td>54.8</td>
<td>45.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>New York, NY</td>
<td>51.1</td>
<td>48.9</td>
</tr>
</tbody>
</table>

Table 3

PERCENT REPORTED REGISTERED FOR 30 SELECTED STANDARD METROPOLITAN STATISTICAL AREAS

<table>
<thead>
<tr>
<th>SMSA</th>
<th>Reported Registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anaheim-Santa Ana-Garden Grove, CA</td>
<td>67.9</td>
</tr>
<tr>
<td>Atlanta, GA</td>
<td>58.4</td>
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<tr>
<td>Baltimore, MD</td>
<td>70.2</td>
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<tr>
<td>Boston, MA</td>
<td>70.9</td>
</tr>
<tr>
<td>Buffalo, NY</td>
<td>61.8</td>
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<tr>
<td>Chicago, IL</td>
<td>69.7</td>
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<tr>
<td>Cincinnati, OH</td>
<td>60.8</td>
</tr>
<tr>
<td>Cleveland, OH</td>
<td>66.4</td>
</tr>
<tr>
<td>Dallas, TX</td>
<td>59.7</td>
</tr>
<tr>
<td>Denver, CO</td>
<td>64.1</td>
</tr>
<tr>
<td>Detroit, MI</td>
<td>72.2</td>
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<tr>
<td>Houston, TX</td>
<td>56.9</td>
</tr>
<tr>
<td>Indianapolis, IN</td>
<td>67.5</td>
</tr>
<tr>
<td>Kansas City, MO</td>
<td>66.1</td>
</tr>
<tr>
<td>Los Angeles-Long Beach, CA</td>
<td>52.7</td>
</tr>
<tr>
<td>Miami, FL</td>
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<td>Milwaukee, WI</td>
<td>83.8</td>
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<tr>
<td>Minneapolis-St. Paul, MN</td>
<td>80.8</td>
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<td>Newark, NJ</td>
<td>68.4</td>
</tr>
<tr>
<td>New York, NY</td>
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<tr>
<td>Paterson-Clifton-Passaic, NJ</td>
<td>69.3</td>
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<td>Pittsburg, PA</td>
<td>63.9</td>
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<tr>
<td>Philadelphia, PA</td>
<td>65.6</td>
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<tr>
<td>San Bernardino-Riverside-Ontario, CA</td>
<td>53.8</td>
</tr>
<tr>
<td>San Diego, CA</td>
<td>59.2</td>
</tr>
<tr>
<td>San Francisco-Oakland, CA</td>
<td>60.2</td>
</tr>
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<td>Seattle, Everett, WA</td>
<td>62.9</td>
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<tr>
<td>St. Louis, MO-IL</td>
<td>69.4</td>
</tr>
<tr>
<td>Washington, DC-MD-VA</td>
<td>58.8</td>
</tr>
</tbody>
</table>

(Civilian-Non-institutional Population)

Note: U. S. Department of Commerce, Bureau of the Census publishes reports after each election entitled "Voting and Registration in the Election of November (the year of election)," Advance Reports, Current Population Reports, Series P-20.

Source: Krauss and Bonora, pp. 5-19.
### TABLE 4

PERCENT REPORTED REGISTERED FOR 25 LARGEST STATES

<table>
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<td>Connecticut</td>
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<td>Florida</td>
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<td>57.5</td>
<td>65.6</td>
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<td>70.0</td>
<td>72.8</td>
<td>65.8</td>
<td>73.1</td>
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<td>69.3</td>
<td>62.0</td>
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<td>75.7</td>
<td>64.4</td>
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<td>66.3</td>
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<td>72.7</td>
<td>68.2</td>
<td>70.3</td>
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<td>70.0</td>
<td>76.5</td>
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<td>83.7</td>
<td>83.5</td>
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<td>75.4</td>
<td>69.4</td>
<td>70.5</td>
</tr>
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<td>66.8</td>
<td>61.8</td>
<td>66.9</td>
</tr>
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<td>56.5</td>
<td>59.5</td>
<td>57.8</td>
<td>61.0</td>
</tr>
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<td>60.6</td>
<td>51.2</td>
<td>58.9</td>
</tr>
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<td>63.6</td>
<td>66.4</td>
<td>59.5</td>
<td>64.0</td>
</tr>
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<td>61.0</td>
<td>62.0</td>
<td>61.3</td>
<td>63.0</td>
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<td>67.2</td>
<td>62.7</td>
<td>67.3</td>
</tr>
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<td>55.4</td>
<td>62.4</td>
</tr>
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<td>59.2</td>
<td>62.2</td>
<td>56.5</td>
<td>61.8</td>
</tr>
<tr>
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<td>62.6</td>
<td>66.7</td>
<td>59.3</td>
<td>70.7</td>
</tr>
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<td>82.1</td>
<td>87.1</td>
<td>85.3</td>
<td>85.2</td>
</tr>
</tbody>
</table>

(Civilian-Non-institutional Population)

Note: U. S. Department of Commerce, Bureau of the Census publishes reports after each election entitled "Voting and Registration in the Election of November (year of election)," Advance Reports, Current Population Reports, Series P-20.

Source: Krauss and Bonora, pp. 5-20.
Concept of Multiple Listings: Inclusive and Balance

The voter registration list as a universal listing or a primary source for juror selection has proven in innumerable judicial locales that it was not what had been expected. Rather, in violation of both constitutional and statutory law, criminal and civil juries were found to be unrepresentative of a cross-section of the community.\textsuperscript{71} In spite of the fact that court decisions had held that juries be roughly representative of the population, in the face of this, judicial personnel came to realize that voter registration rolls tend to underrepresent of minorities, younger citizens and other groups which do not vote in proportion to their population.\textsuperscript{72} It was just that simple, requiring a newer and bolder approach, as students, teachers, and observers of the judicial process and administrators as practitioners of the same--knew that a novel approach was long overdue.\textsuperscript{73} In recognition of the complications and problems surrounding the exclusive use of the voter registration list,

\textsuperscript{71}National Center for State Courts, pp. 1-3.

\textsuperscript{72}National Council on Crime and Delinquency, "How to Pick Jurors from Multiple Lists," Criminal Justice System Newsletter, vol. 8, no. 24, December 5, 1977, pp.6-7.

\textsuperscript{73}National Center for State Courts, pp. 1-3.
advocates on jury selection methodology have suggested the continual use of the voter's list but the supplementation of at least one additional list to effect an accurate cross-section of the community.\textsuperscript{74} Other voices for modification have invoked the Federal Jury Selection and Service Act of 1968, 28 U. S. C. 1861 et. seq., which provides that while voter registration lists are to be the primary source for names, it may be supplemented with other multiple list when the voter registration roll is unrepresentative. In a similar assessment, the Uniform Jury Selection and Service Act makes mandatory the use of multiple list.\textsuperscript{75}

There are certain reasons to justify the use, implementation and standardization of multiple list systems:

1) Multiple listings are essential in order to ensure adoption of standards of representativeness or cross-sectionality for jury source lists or pools pursuant to the Sixth Amendment representativeness principle or the Fourteenth rule of exclusion;\textsuperscript{76}

\textsuperscript{74}DiSalvo, p. 259.

\textsuperscript{75}Ibid.

\textsuperscript{76}DiSalvo quotes the applicable section of the Federal Act: "28 USC 1863 (b) provides that the federal courts may 'prescribe some other source or sources...where necessary to foster the policy...' of representation of a cross-section. In the Uniform Jury Selection and Service Act § 5, it requires the supplementation of voter registration list with other lists. Nine states (Colorado, Hawaii, Idaho, Indiana, Maine, Minnesota, Mississippi, North Dakota and Utah) have adopted the Act or portions of it. Colo.
2) Unrepresentativeness in jury systems attributable to the unrepresentativeness of source lists;

3) Multiple lists are now used by several jurisdictions, and there exist an easy and inexpensive way to implement multiple list systems.77

The entire concept of multiple listings or supplemental list implies inclusiveness and balance. Inclusion is the sense that the larger the jury source(s) the more representative and a better balance of the general population at large.78 Thus, inclusiveness implies a numerical relationship between the source list and the population considered. The larger the source list the more inclusive it is. Therefore, if a list included everyone in the population, it is totally inclusive. Adding lists together nearly always increases inclusiveness unless the list is totally contained in the first instance.79 On the other

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77 Kairys et al., pp. 819-820, 820.
78 National Center for State Courts, pp. 8-9.
hand, should a multiple source not be inclusive the chances are small that it will be representative of the population. But, one would witness, as is often the situation, that the young, non-white, the poor, the transients, and members of the low socioeconomic stratum are excluded. Balance comes into the picture when a multiple list used as a jury source include or represents the general population adequately. In other words, balance in a source list means a fair cross-section of the population with respect to such characteristics as age, minority status, and other identifiable classifications. Balance, therefore, suggests a one-to-one correspondence between the source list and the population with regard to all classifications which have been considered in the past and might be studied in the future. Hence, the purpose of multiple and supplemental list is to create longer and more representative lists and pools demanded by the Constitution, relevant statutes and societal considerations. In view of the fact that, generally single source list, i.e., voter registration list does not have adequate and sufficient

80 National Center for State Courts, pp. 8-9.  
82 Kairys et al., p. 819.
coverage.\textsuperscript{83} However, if single source list did have adequate coverage, it would be more efficient and least costly to use one source list. This is not apparently the case, moreover.\textsuperscript{84} Notwithstanding the reality of biasness and exclusiveness inherent in available single lists, multiple and supplemental lists are necessary.\textsuperscript{85} The advantage of multiple source list is greater coverage, including inclusiveness. Furthermore, multiple list systems regularly produce 80 percent inclusiveness compared to about 62 percent for voter registration list.\textsuperscript{86} With a multiple list scheme, the total number of unique names increases and the overall list becomes more inclusive; though caution should be exercised in selecting lists to ensure no bias results. If a group is underrepresented on all lists, it will be underrepresented in combined source no matter how many lists are used. Supplementation with some lists can up a group's underrepresentation or create an underrepresentation of another group. Hence, if the purpose of using multiple lists is to be achieved,

\textsuperscript{83}National Center for State Courts, pp. 1-3.
\textsuperscript{84}Ibid.
\textsuperscript{85}Kairys et al., pp. 816-819.
\textsuperscript{86}National Center for State Courts, pp. 1-3.
the additional lists utilized must overrepresent the groups underrepresented on the primary list.\textsuperscript{87} In opposite terms, the use of multiple or supplemental list entails the combining of lists which can be costly and inefficient, in addition to the problem of elimination of duplicates.\textsuperscript{88} Further, the use of multiple lists for juror selection also has other disadvantages, certain lists such as telephone directories, property tax rolls, and city directories have a built-in male bias or socio-economic prejudice. The case of multiple lists may also increase the error factor because any errors created by the list originators, that is incorrect spelling of names or wrong addresses, are then incorporated into the selection system. Some lists include the name of businesses as well as the names of individuals. This, of course, necessitates a method or program for deleting these business names from the jury selection process.\textsuperscript{89} But the major argument against the use of multiple or supplemental list is the high cost of setting up computerized jury selection systems in a jurisdiction. Critics have complained about the expenses of computer programming and

\textsuperscript{87}Kairys et al., pp. 819-822.

\textsuperscript{88}National Center for State Courts, pp. 1-3.

\textsuperscript{89}Disalvo, p. 259.
updating, the problems of coordinating information and different formats and the sheer human effort required where computer technology is not available. Nevertheless, these contentions are dissipating as new and efficient techniques are developed to accomplish the combining of lists at an economical rate. 90

As of January 1980, some counties in sixteen states and two federal district courts were using multiple lists, and in all but two of these the multiple or supplemental list was the drivers license list. 91 In this context, regrettably, North Carolina was not among these sites, but would join ranks in 1983. In scrutinizing the issue of multiple list or supplementation in source list composition for juror selection, the role of the legal system or courts has not received much attention. The intention of this section will be to reverse that trend. As of the last decade, no court had required multiple list or supplemented a primary list on unconstitutional or statutory grounds. 92 Apparently the courts failure to adopt multiple lists or supplement primary list on constitutional or statutory grounds to correct unrepresentative selection

90Ibid., pp. 259-260.
91Bonora and Krauss, p. 5.04(1).
92Kairys et al., pp. 776, 778-780.
systems stems from:

1) Confusion over the constitutional standard applicable. Since the 1940s, the courts have required jury pools and source list be representative of a cross-section of the community. Though, the courts tend to analyze disparities between composition of the population and source list under a purposeful discrimination test, rather than representativeness test;

2) Inadequate source list causes unrepresentativeness, yet they have received insufficient attention in challenges and court decisions due to a lack of available data and unquestioned notion that voters list are the "best" or the "most concerned" citizens; 93

3) No passable standard for evaluating representativeness of source list or pools. Neither courts nor legislatures have established criteria for allowable from impermissible deviations from the cross-section ideal.

In summary, there are several poignant reasons for utilizing supplementary or multiple source list:

1) Proof of purposeful discrimination in jury selection;

2) Constitutional and statutory authority shows proof of significant disparity between composition of the population and sources which makes for a prima facie case;

3) Proof that underrepresentation resulted in a "substantial impact" on the absolute number of minorities on a panel, making challenges based on underrepresentation of small and medium-sized minorities impossible. 94


94Kairys et al., pp. 776, 778-780.
Prospective Multiple and Inclusive Lists: Supplements

In this section the aim will be to concentrate on qualities of some often suggested sources or listings retained in any multiple list system. In order to comply with this directive, not unlike the segment on the voter registration list, the negative and positive aspect of each proposed source or list examined will be explicated. From a review of the literature, it would appear that the most often referred to source for supplementation in a multiple list plan is the driver license list. Accordingly, a discussion of the driver license list will commence this section.

The driver license list as a supplement to voter registration list in the jury selection process appears to be the method of choice in most multiple list jurisdictions and systems. In fact, the states of North Carolina, Connecticut and California each have juror selection statutes which require driver license list as a supplement to the primary source, voter registration lists. With the increased use of driver license list as a supplement, the percent of licensed drivers in a jurisdiction is important to those studying the use of this

\[95\] DiSalvo, p. 260.
The driver license list, like other supplement sources has its drawback, even though it is the most utilized source in multiple list systems. The disadvantages are more procedural than substantive, and are no greater than for any other supplemental listing. These impediments are primarily economics of administration, such as deletions, errors, updating, computer programming and so forth. However, with technological advancements, "these complications are negligible by comparison with the goal of developing a jury selection system that will truly reflect a fair cross-section of the community."96

The shortcoming of the driver license list as a supplement are as follows:

1) It is not separable by community or jurisdiction; thus the jurisdiction may be difficult to ascertain;

2) Very often zip codes may cross jurisdictional boundaries in some states;

3) Some persons are still missed as those who do not drive, who are for the most part, persons with physical or mental handicaps which prevent them from operating a motor vehicle, those whose licenses are revoked, the poor, females, the young, those in urban areas, and the old who are underrepresented on drivers list;

4) The drivers list is updated or purged every four years, therefore the list may have names of some persons who have moved to other jurisdictions, died or left the state, so it is not up-to-date;

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96 Ibid., p. 261.
5) And as a source of prospective juror names the list often have those with expired licenses, incorrect addresses and interstate duplications;

6) Also the record show 94 percent male coverage as compared to 75 percent females. See Tables 5-7 and Figure 1.

The positive factors for the driver license list as a supplement in jury selection processes are some of the following considerations:

1) It serves as a complementary function in that it provides balance;

2) It compensates for the inadequacy of all other lists considered;

3) More of the poor, the young and non-white are inclined to have driver licences than, say, are registered to vote. See Tables 5-7 and Figure 1.

4) In certain parts of the country, a very high percent of adults have driver licenses. In Michigan and California, for example, the proportion of people with driver licenses is very high. Figure 2 shows the 1979 figures from the Federal Highway Administration, titled "Licensed Drivers as a Percent of Driving Age Population" which shows that most western states exceed national average of 84 percent, whereas states in the East and South fall below that level. The percent above 100, according to Federal Highway Administration spokesman, results from duplicates in listing. They caution of inconsistencies in state records and disclaim control over what is reported by the states;

5) The driver license list is usable because it can be merged with the voter registration list with the aid of computers;

6) It is not only available and often on computer tape; it can be sorted by county and zip code to match court jurisdictions;
## TABLE 5

**DISTRIBUTION OF LICENSED DRIVERS: BY SEX AND PERCENTAGE IN EACH AGE GROUP AND RELATION THE POPULATION - 1980**

<table>
<thead>
<tr>
<th>Age</th>
<th>Male Drivers</th>
<th></th>
<th>Female Drivers</th>
<th></th>
<th>Total Drivers</th>
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<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent of Population</td>
<td>Number</td>
<td>Percent of Population</td>
<td>Number</td>
<td>Percent of Population</td>
</tr>
<tr>
<td>Under 16</td>
<td>(1,000)</td>
<td>0.1</td>
<td>(1,000)</td>
<td>0.1</td>
<td>(1,000)</td>
<td>0.1</td>
</tr>
<tr>
<td>16</td>
<td>1,002</td>
<td>1.3</td>
<td>822</td>
<td>1.2</td>
<td>1,824</td>
<td>1.3</td>
</tr>
<tr>
<td>17</td>
<td>1,530</td>
<td>2.0</td>
<td>1,260</td>
<td>1.9</td>
<td>2,790</td>
<td>1.9</td>
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<tr>
<td>18</td>
<td>1,763</td>
<td>2.3</td>
<td>1,484</td>
<td>2.2</td>
<td>3,247</td>
<td>2.2</td>
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<td>19</td>
<td>1,900</td>
<td>2.5</td>
<td>1,643</td>
<td>2.4</td>
<td>3,543</td>
<td>2.4</td>
</tr>
<tr>
<td>Under 16</td>
<td>6,247</td>
<td>8.1</td>
<td>5,250</td>
<td>7.7</td>
<td>11,496</td>
<td>7.9</td>
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<tr>
<td>20</td>
<td>1,930</td>
<td>2.5</td>
<td>1,706</td>
<td>2.5</td>
<td>3,636</td>
<td>2.5</td>
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<tr>
<td>21</td>
<td>1,962</td>
<td>2.5</td>
<td>1,772</td>
<td>2.6</td>
<td>3,734</td>
<td>2.6</td>
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<td>22</td>
<td>1,999</td>
<td>2.6</td>
<td>1,813</td>
<td>2.7</td>
<td>3,812</td>
<td>2.6</td>
</tr>
<tr>
<td>23</td>
<td>2,062</td>
<td>2.7</td>
<td>1,876</td>
<td>2.8</td>
<td>3,939</td>
<td>2.7</td>
</tr>
<tr>
<td>24</td>
<td>2,047</td>
<td>2.7</td>
<td>1,868</td>
<td>2.7</td>
<td>3,915</td>
<td>2.7</td>
</tr>
<tr>
<td>Under 16</td>
<td>10,000</td>
<td>13.0</td>
<td>9,035</td>
<td>13.3</td>
<td>19,036</td>
<td>13.1</td>
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<td>20-24</td>
<td>9,868</td>
<td>12.8</td>
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<td>13.3</td>
<td>18,929</td>
<td>13.0</td>
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<td>8,358</td>
<td>12.3</td>
<td>17,368</td>
<td>12.0</td>
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<tr>
<td>30-34</td>
<td>7,113</td>
<td>9.2</td>
<td>6,582</td>
<td>9.7</td>
<td>13,695</td>
<td>9.4</td>
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<td>35-39</td>
<td>5,827</td>
<td>7.5</td>
<td>5,306</td>
<td>7.8</td>
<td>11,133</td>
<td>7.7</td>
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<td>40-44</td>
<td>5,311</td>
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<td>4,765</td>
<td>7.0</td>
<td>10,076</td>
<td>6.9</td>
</tr>
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<td>45-49</td>
<td>5,351</td>
<td>6.9</td>
<td>4,739</td>
<td>7.0</td>
<td>10,091</td>
<td>6.9</td>
</tr>
<tr>
<td>50-54</td>
<td>5,198</td>
<td>6.7</td>
<td>4,571</td>
<td>6.7</td>
<td>9,770</td>
<td>6.7</td>
</tr>
<tr>
<td>55-59</td>
<td>4,439</td>
<td>5.8</td>
<td>3,793</td>
<td>5.6</td>
<td>8,232</td>
<td>5.7</td>
</tr>
<tr>
<td>60-64</td>
<td>3,631</td>
<td>4.7</td>
<td>2,948</td>
<td>4.3</td>
<td>6,579</td>
<td>4.5</td>
</tr>
<tr>
<td>65-69</td>
<td>5,195</td>
<td>6.7</td>
<td>3,699</td>
<td>5.4</td>
<td>8,894</td>
<td>6.1</td>
</tr>
<tr>
<td>70 and Over</td>
<td>77,190</td>
<td>100.0</td>
<td>68,109</td>
<td>100.0</td>
<td>145,299</td>
<td>100.0</td>
</tr>
</tbody>
</table>

1/ These percentages are computed from the 1980 Census date.

2/ Column totals may not add due to rounding.

TABLE 6

DRIVERS LICENSES, BY SEX AND AGE GROUPS, FOR 45 STATES - 1980

<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>% Male</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>52,470</td>
<td>40,655</td>
<td>93,125</td>
<td>56.34</td>
<td>Under 16</td>
</tr>
<tr>
<td>1,001,831</td>
<td>921,856</td>
<td>1,823,687</td>
<td>54.93</td>
<td>16</td>
</tr>
<tr>
<td>1,529,943</td>
<td>1,260,191</td>
<td>2,790,134</td>
<td>54.83</td>
<td>17</td>
</tr>
<tr>
<td>1,762,548</td>
<td>1,484,032</td>
<td>3,246,580</td>
<td>54.29</td>
<td>18</td>
</tr>
<tr>
<td>1,899,824</td>
<td>1,643,036</td>
<td>3,542,860</td>
<td>53.62</td>
<td>19</td>
</tr>
<tr>
<td>1,929,983</td>
<td>1,705,688</td>
<td>3,635,671</td>
<td>53.08</td>
<td>20</td>
</tr>
<tr>
<td>1,961,663</td>
<td>1,772,213</td>
<td>3,733,846</td>
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<td>21</td>
</tr>
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<td>1,990,932</td>
<td>1,812,986</td>
<td>3,811,918</td>
<td>52.44</td>
<td>22</td>
</tr>
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<td>2,062,180</td>
<td>1,876,386</td>
<td>3,938,574</td>
<td>52.36</td>
<td>23</td>
</tr>
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<td>2,047,343</td>
<td>1,868,151</td>
<td>3,915,494</td>
<td>52.29</td>
<td>24</td>
</tr>
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<td>9,867,929</td>
<td>9,060,979</td>
<td>18,928,908</td>
<td>52.13</td>
<td>25-29</td>
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<td>9,010,010</td>
<td>8,358,440</td>
<td>17,368,450</td>
<td>51.88</td>
<td>30-34</td>
</tr>
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<td>6,582,469</td>
<td>13,695,286</td>
<td>51.94</td>
<td>35-39</td>
</tr>
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<td>5,827,440</td>
<td>5,305,895</td>
<td>11,133,335</td>
<td>52.34</td>
<td>40-44</td>
</tr>
<tr>
<td>5,311,036</td>
<td>4,764,862</td>
<td>10,075,898</td>
<td>52.71</td>
<td>45-49</td>
</tr>
<tr>
<td>5,351,436</td>
<td>4,739,144</td>
<td>10,090,580</td>
<td>52.03</td>
<td>50-54</td>
</tr>
<tr>
<td>5,198,347</td>
<td>4,571,489</td>
<td>9,769,836</td>
<td>53.21</td>
<td>55-59</td>
</tr>
<tr>
<td>4,438,993</td>
<td>3,792,581</td>
<td>8,231,574</td>
<td>53.93</td>
<td>60-64</td>
</tr>
<tr>
<td>3,630,784</td>
<td>2,948,472</td>
<td>5,579,256</td>
<td>55.19</td>
<td>65-69</td>
</tr>
<tr>
<td>5,194,920</td>
<td>3,699,064</td>
<td>8,893,984</td>
<td>58.41</td>
<td>70 + over</td>
</tr>
<tr>
<td>77,190,407</td>
<td>68,108,589</td>
<td>145,298,996</td>
<td>53.13</td>
<td>Total</td>
</tr>
</tbody>
</table>


7) Duplicates can be eliminated by social security numbers and birthdays;

8) It is convenient and representative and used as a sole source of names in some Alabama counties and widely recommended in areas where the voter registration is slow;
<table>
<thead>
<tr>
<th>Male</th>
<th>Female</th>
<th>Total</th>
<th>% Male</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>37,233</td>
<td>31,554</td>
<td>60,787</td>
<td>54.13</td>
<td>16</td>
</tr>
<tr>
<td>43,293</td>
<td>37,443</td>
<td>80,736</td>
<td>53.62</td>
<td>17</td>
</tr>
<tr>
<td>49,316</td>
<td>43,021</td>
<td>92,337</td>
<td>53.41</td>
<td>18</td>
</tr>
<tr>
<td>52,692</td>
<td>46,016</td>
<td>90,700</td>
<td>53.38</td>
<td>19</td>
</tr>
<tr>
<td>51,406</td>
<td>46,766</td>
<td>90,172</td>
<td>52.40</td>
<td>20</td>
</tr>
<tr>
<td>53,382</td>
<td>48,300</td>
<td>101,682</td>
<td>52.46</td>
<td>21</td>
</tr>
<tr>
<td>55,493</td>
<td>50,771</td>
<td>106,264</td>
<td>52.22</td>
<td>22</td>
</tr>
<tr>
<td>56,613</td>
<td>51,939</td>
<td>108,552</td>
<td>52.18</td>
<td>23</td>
</tr>
<tr>
<td>54,935</td>
<td>51,503</td>
<td>106,438</td>
<td>51.61</td>
<td>24</td>
</tr>
<tr>
<td>297,490</td>
<td>248,200</td>
<td>545,690</td>
<td>50.92</td>
<td>25-29</td>
</tr>
<tr>
<td>233,635</td>
<td>227,664</td>
<td>461,349</td>
<td>50.65</td>
<td>30-34</td>
</tr>
<tr>
<td>180,893</td>
<td>176,410</td>
<td>357,303</td>
<td>50.63</td>
<td>35-39</td>
</tr>
<tr>
<td>147,771</td>
<td>143,780</td>
<td>291,529</td>
<td>50.69</td>
<td>40-44</td>
</tr>
<tr>
<td>135,619</td>
<td>131,394</td>
<td>267,013</td>
<td>50.79</td>
<td>45-49</td>
</tr>
<tr>
<td>132,621</td>
<td>125,873</td>
<td>258,494</td>
<td>51.31</td>
<td>50-54</td>
</tr>
<tr>
<td>126,494</td>
<td>116,087</td>
<td>242,581</td>
<td>52.18</td>
<td>55-59</td>
</tr>
<tr>
<td>105,325</td>
<td>92,237</td>
<td>197,562</td>
<td>53.12</td>
<td>60-64</td>
</tr>
<tr>
<td>83,887</td>
<td>69,412</td>
<td>153,399</td>
<td>54.72</td>
<td>65-69</td>
</tr>
<tr>
<td>104,821</td>
<td>74,890</td>
<td>179,711</td>
<td>50.33</td>
<td>70 + over</td>
</tr>
</tbody>
</table>

1,963,049 1,814,018 3,777,067 51.97  Total


9) And, one-half of California counties use it...97

Also, driver license lists are very inclusive because typically a very high percentage of driving age population

FIGURE 1

DRIVERS LICENSES BY SEX AND AGE GROUPS - 1980

FIGURE 2

LICENSED DRIVERS AS A PERCENT OF DRIVING AGE POPULATION
(U. S. Average = 84.2% - 1978)

is licensed to drive. For example, a 1976 study by the San Diego County Superior Court found that the driver list included 83 percent of the county's over eighteen population, contrasted to a mere 56.6 percent of the voter registration list. In some states, including West Virginia, the percentage exceed 90 percent. The driver license list is so extensive in its coverage that there is a question as to why it might not be used as the sole source list. The apparent reason for not recommending it as a sole list is that about one-fifth of those on voters list are not on the driver license list; thus, it might be considered unwise to deny jury duty to these people who have demonstrated an interest in government by registering to vote. These people (voters) tend to create a balance that the vehicle drivers list by itself does not have. The drivers list usually has greater coverage than the voters list and...it is usually the list used with the voters list. Since 1979, however, a number of jurisdictions have gone to exclusive use of the drivers list with excellent results. The driver license, the most suitable and convenient substitute for, or supplement to, the voter registration list, have a

---

98Ibid.
large number of additional names of potential jurors. In most jurisdictions more individuals are licensed to drive than are registered to vote. Various geographical, cultural, and psychological factors compel persons to secure a driver license regardless of their feelings towards affairs of citizenship (i.e., voting and jury service). In most states to procure an operator's license, persons must pass a written examination. This requisite would assist in maintaining a satisfactory level of juror competency.99

The second possible list of names uses as a supplemental source is the income tax list, and it is relatively up-to-date; the tax source stems from local, state and federal governments. At the local and state levels, the income tax list as a possible source has special merit in high density areas as New York City, where public transit has priority over automobiles and in Alaska where topography and climate curtail the use of cars. State income tax lists are often used to supplement voter registration lists in some states. Moreover, the federal tax list has all Americans over 18 years of age, besides

being federal in nature; it is not available. The undesirable qualities of this list are that it excludes non-property owners and females are underrepresented. Also, the young are generally underrepresented on income tax list. In sum, the same groups generally underrepresented on the income list are not properly represented on the driver license list.\textsuperscript{100} The third potential source of names to be examined is the utilities customer list. Though there are few jurisdictions experimenting with customer lists of gas and electric companies; however, when it does occur, this list has the advantages of a list of available names, and a larger number of names which are relatively up-to-date. Now, to the contrary, it generally underrepresents the same groups as voter registration and actual voter lists. In addition, other detracting qualities of this list are its "head-of-household" male biasness, the lack of young persons, females, has corporate listings, the lack of first names, and the jurisdiction is not readily apparent.\textsuperscript{101} Fourthly, 

\textsuperscript{100}Kairys et al., p. 826; American Bar Association, p. 26; Center for National Jury Studies, pp. 3 and 16; Van Dyke, \textit{Jury Selection Procedures}, pp. 99-100; and National Center for State Courts."

\textsuperscript{101}Van Dyke, \textit{Jury Selection Procedures}, p. 101; National Center for State Courts, pp. 1 and 15; American Bar Association, p. 26; Gelfand and Davis, p. 456; Kairys et al., p. 826.
the motor vehicle registration list has a lot of names, and is quite up-to-date. The disadvantages are minimal but significant, such as corporate and institutional listings and a male bias. In the case of telephone directories, like other potential sources or list, has its advantages and disadvantages. On the positive side, it is an additional source of large number of names updated annually. In fact, in some instances, it may be more up-to-date than the primary sources, and commissioners should not hesitate to use it to supplement the primary sources when they deem it economical or convenient to do so. On the downside, this source has an economic "head-of-household" bias in it. Has multiple listings for some people, and bias in favor of men, middle-aged and the middle-class. Also, the list contains business or corporate listings, and jurisdiction is not readily apparent, and may have business entries. Other facts reveal that it has frequent changes and unlisted numbers, and a larger percent of minors, non-personal listings or seasonal numbers. Although the telephone list does appear to add a quantity of unique names not on the voter-driver lists, it is suspected that these involve non-persons,

102 National Center for State Courts, p. 16.
internal list duplicates or missed matches. Young people are underrepresented. The telephone list generally under-represent the same groups as voter registration or actual voter lists.\textsuperscript{103} The next often mentioned source as a multiple supplement involves the welfare list. The welfare list or roll is federal in nature. As the list for public assistance, it gives strong representation to the young, minority groups, persons from lower socio-economic backgrounds, and the not so well-educated. However, like the social security source, it is not available as a possible jury list.\textsuperscript{104} The second source of a federal origin involves the use of social security numbers. This potential source of jury names is federal in nature, and is the most complete source of names available to


date. But it is unavailable for use. With the city directories, the advantage is that it has an available list of names which is relatively up-to-date. It is normally published yearly or bi-annually in most urban areas for the use of businesses that solicit by direct mail since businesses are interested in stable and affluent members of the community, they are the ones most likely canvassed. The city directories are compiled from a list of employees provided by major employers in the area. Negatively, then, the city directories are not complete and are not county wide. Until the last decade or so, the city directories were a popular source of names of jurors. In 1971, the cities of Denver, Colorado and Washington, D. C. discontinued the use of them when it was "found" to underrepresent the poor and low-income. Further, more males than females names are likely to appear in the directory since it is based on residence rather than on person. The directories also tend to underrepresent the young more than voter registration lists do. In general, city directories underrepresent the same groups as voter registration and actual voter lists. Up to this

105Van Dyke, Jury Selection Procedures, p. 100. See also National Center for State Courts, p. 15.

106Kairys et al., p. 826; "The Use of Multiple List for Juror Selection," p. 7; Van Dyke, Jury Selection Procedures, pp. 93-94 and 98-106; National Center for State Courts, pp. 1 and 15.
point, seven supplemental sources to be employed in any multiple list system have been explained as to their positive and negative properties in determining whether they should be used along with primary listings such as the voter registration list. The next source is the real estate or real property tax. This often used disputable source has an available list of names which is relatively up-to-date. It is used to supplement the voter registration list in some states. As a jury source, it has been held constitutional by some courts under the notion that it does not constitute systematic discrimination against any cognizable group. The "weakness" in using this source is its economic and "head of household" bias inherent in this list. In addition to:

1) Exclusion of non-property owners;
2) Females are underrepresented;
3) Because property owners are listed separately for each piece of property, the lists are likely repetitive and inefficient;
4) Has an over abundance of male names;

5) It is relatively small;

6) Difficult to use because of formats involving multiple ownership;

7) Poor persons are excluded from the list;

8) Less representative of blacks who are poorer and less likely to own taxable property;

9) Has multiple listings of the same name which require screening;

10) Husband-wife listings which also require screening;

11) Absentee-owner listings which require screening;

12) Young persons are usually underrepresented or absent from state real estate and personal property list;

13) In total, the use of tax list can be interpreted in jury systems as another way to use elites or to choose fit or "good citizens" model which serves as a basis of the keyman system which chooses a select few from the community. Taxpayers have more of a stake or interest in society as they are more than likely car owners paying car taxes and homeowners paying a similar fee. Blacks and the poor are quite often renters, and do not have homes or cars; and where there are personal possessions which are taxable, it is more inclined to be listed under the husband's name and adding to a greater sexual bias if property tax is listed. It has overt and obvious economic discrimination. Exclusion of the poor is the most obvious bias.108

Even though authorities do not agree on any particular supplemental list to be used in multiple list systems; there seems to be a consensus that underrepresentative jury sources should be supplemented with other lists to obtain a combination of names that "yields as broad a current census of citizens of the jurisdiction as practical, while simultaneously minimizing the duplication of names as far as possible." Also, close attention should be given to the probability that the supplementary list chosen will yield additional names and not merely duplicates. Furthermore, more than one source list may be used to supplement a primary source list and thus include a larger percent of the population. Some list may be particularly effective in certain areas of the country. For example, hunting, fishing and trapping lists are a good source of names in Alaska, but it would not be useful in the District of Columbia, for example.


109 Disalvo, p. 260.
The lists chosen to supplement the voter registration list should therefore compensate for specific deficiencies such as racial minorities, persons under 40, the lower income and less educated, blue-collar workers and the unemployed.\footnote{Kairys et al., p. 826.} The advisability of various combinations will, of course, vary in different areas. Data from various jurisdictions indicate that generally voter registration lists combined with licensed drivers, public assistance and unemployment lists will provide representative and inclusive sources. These and other lists should be examined and evaluated before determining which lists to use.\footnote{Ibid.}

In Table 8, a summarization is offered of the list used in fifty-two jurisdictions, i.e., each of the fifty states, the District of Columbia and Puerto Rico. The table reveals that the voter registration list is the most widely used source of names for prospective jurors. Forty-seven of the fifty-two jurisdictions use the voter registration list, either alone or in conjunction with other lists, as a source of names. Table 8, which is current as of January 1980, also reveals that sixteen jurisdictions use city directories, nine use census lists,
**TABLE 8**

TRIAL JURIES - SELECTION PROCESS, MASTER LIST OF SOURCES USED

<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Selection Process</th>
<th>Voter Registration List</th>
<th>Telephone Directory List</th>
<th>Driver License Directory List</th>
<th>City Directory List</th>
<th>Property Tax Roll</th>
<th>Utility Income Tax Customers Lists</th>
<th>State Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Random selection (some counties use drivers list exclusively)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Alaska</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Arizona</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Discretion, exercised by a 3- to 12-member citizen jury commission appointed by a circuit judge</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>California</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Colorado</td>
<td>Random selection (Uniform Jury Selection Act)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Discretion, exercised by town civil servants</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Florida</td>
<td>Discretion, exercised by county commissioner or 2-citizen jury commissions (in Dade County [Miami] and a number of other counties, random selection from voter lists)</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>No particular master list is used.</td>
</tr>
</tbody>
</table>

- **Note:** Other (civic organization)
<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Selection Process</th>
<th>Voter Registration List</th>
<th>Telephone Directory</th>
<th>Driver License Directory</th>
<th>City Directory</th>
<th>Property Tax Roll</th>
<th>Utility Customer Lists</th>
<th>State Income Tax Lists</th>
<th>Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>Discretion, exercised by a 6-member citizen jury commission, appointed by a judge</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Random selection</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Idaho</td>
<td>Random selection (Uniform Jury Selection Act)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>Discretion, exercised by court-appointed commissioners (random selection in Lake County)</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Kansas</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Discretion, exercised by a 5-member citizen jury commission appointed by a judge (in Orleans Parish, they are appointed by the Governor)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*No particular master list is used.*
<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Selection Process</th>
<th>Voter Registration List</th>
<th>Telephone Directory List</th>
<th>Driver License Directory List</th>
<th>City Directory</th>
<th>Property Tax Roll</th>
<th>Utility Customers</th>
<th>State Income Tax</th>
<th>Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Discretion, exercised by town officials and county officials followed by personal interviews</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Mid-dies)</td>
<td></td>
<td>(inclu-des pol-ice cen-sus list)</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>Random selection</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>Random selection in the major cities, discretion in the less populated counties</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td>(any public records)</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>Discretion, exercised by county commissioners or jury commissioners</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>-------</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Discretion, exercised by town select men</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No particular master list is used.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>Random selection</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Random selection</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>Random selection (Uniform Jury Selection Act)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Ohio</td>
<td>Random selection, followed by personal interviews conducted by a 2-member citizen jury commission, appointed by judges and representing the 2 major political parties</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Discretion, exercised by a jury commission opposed of civil servants, or--at the discretion of the presiding judge--random selection (Oklahoma and Tulsa counties now both select randomly from the voter list)</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
TABLE 8 - Continued

<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Selection Process</th>
<th>Voter Registration List</th>
<th>Telephone Directory</th>
<th>Driver License Directory</th>
<th>City Directory</th>
<th>Property Tax Roll</th>
<th>Utility Income Customers</th>
<th>State Income Tax</th>
<th>Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oregon</td>
<td>Random Selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Random selection, followed by personal interviews; (Allegheny County combines voter registration, telephone directory, and welfare list)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Random selection, followed by personal interviews</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>Discretion, exercised by a jury commission composed of civil servants</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Discretion, exercised by a jury commission composed of civil servants</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>Discretion, exercised by a 2 court-appointed jury commissioners from different parties</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Allegheny County)
<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Selection Process</th>
<th>Voter Registration List</th>
<th>Telephone Directory List</th>
<th>Driver License Directory List</th>
<th>Property Tax Roll</th>
<th>Utility Customer Lists</th>
<th>Income Tax Lists</th>
<th>Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vermont</td>
<td>Random selection</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Virginia</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Washington</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Discretion, exercised by 2-member citizen jury commission (representing the 2 major political parties)</td>
<td>No particular master list is used.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Random selection, followed by personal interviews conducted by a 3-member citizen jury commission</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Samoa</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>Random selection</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guam</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>Discretion by appointed jury commissioners</td>
<td>No particular master list is used.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 8 - Continued

<table>
<thead>
<tr>
<th>State or Other Jurisdiction</th>
<th>Voter Registration List</th>
<th>Telephone Directory List</th>
<th>Driver License Directory List</th>
<th>City Directory Roll</th>
<th>Property Tax Records</th>
<th>Utility Customer Lists</th>
<th>State Income Tax Records</th>
<th>Census Records</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virgin Islands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

x = An affirmative

\(^a\)Actual voters list used.

\(^b\)As of 1980-81, changes in North Carolina State Law, G. S. § 9-2.

Source: The National Court Statistics Projects, State Court Organization Survey, 1981. The table was originally compiled from staff review of State Statutes; Center for Jury Studies, Newsletter #5, September 1979. See also Van Dyke, Jury Selection Procedures, Appendix A.
five use property tax rolls, four use state income tax lists, and four use driver license lists either as primary or supplementary source of names to compile the master source list. Other sources of names include civic organizations, police census lists, welfare recipients, volunteers, and hunting/trapping/fishing licenses. At present, at least some jurisdictions in twenty-six states use multiple lists. Evidently, some jurisdictions in fifteen other states have introduced the use of multiple lists since that time.

Effects of Multiple and Inclusive Listings: Mergings

In the foregoing parts of Chapter II, the author has focused on the source list: Inclusive and Representative; Primary List: Voter Registration Source; Concept of Multiple Listings: Inclusive and Balance; Prospective Multiple and Inclusive List;\textsuperscript{113} Supplements; and, at

\textsuperscript{113}Other recommended sources suggested are Dog License List for very transient populations as Las Vegas, Nevada. For a useful discussion on impaneling jurors from the vicinage or vicinity (neighborhoods) to create multiple and inclusive juries. See note, "The Case for Black Juries," \textit{Yale Law Journal} vol. 79, no. 531 (January 1970):974-978; Derrick A. Bell, Jr., \textit{Race, Racism and American Law} (Boston: Little, Brown and Company, 1973); Van Dyke, \textit{Jury Selection Procedures}, pp. 9-11, Huey P. Newton, \textit{Revolutionary Suicide} (n.p.: Ballantine Books, 1973), p. 131. Also, Indian Tribal rolls may be useful where there are large American Indian populations, as well as unemployment lists generally give strong representation to people with lower socioeconomic status and minority groups. See Kairys et al., p. 826.
present, the focus will be the effects of multiple and inclusive listing in certain geographical jurisdictions across the nation.

In Figure 3, the inclusiveness of the voters and driver's list is compared and considered. In order to determine the inclusive figure for each state, it is computed from the absolute difference between the coverage of drivers list and the voter list. In Minnesota and Montana, the voters list is larger than the drivers list, but in other States of the Union, the drivers list is larger by at least 21 percent. The fact that the drivers list is the larger list in most states would imply that if a single list were used, the drivers list is the likely candidate.

In Maine, most counties of Alabama and in Clark County (Las Vegas), Nevada, only the drivers list is used. But, in Arizona, California, Connecticut, Delaware, Hawaii, Nebraska, New Jersey, North Carolina and the District of Columbia, the voters and drivers lists are merged together. In addition, four states retain the voters and drivers lists and another list, i.e., Alaska, Colorado, Idaho and Iowa. Also, some counties use a voters or drivers list in the following states: Kansas, Maryland, Minnesota, New Mexico, North Dakota and Pennsylvania.\textsuperscript{114}

\textsuperscript{114}\textsuperscript{G. Thomas Munstermann and Janice T. Munstermann, "The Search for Jury Representativeness," The Jury System Journal vol. 11, no. 1 (Spring 1986):66.}
FIGURE 3
DIFFERENCES IN INCLUSIVENESS: DRIVERS LIST MINUS VOTERS LIST COVERAGE

Note: This particular map was borrowed from G. Thomas Munstermann and Janice T. Munstermann, "The Search for Jury Representativeness," The Justice System Journal, vol. 11, no. 1 (Spring 1986):67. No registration required; based on number voting.

In Figure 4, the results of merging two lists from data in San Diego County, California can be seen. The particular list are the voter registration list and the driver license list. In the following illustration, each list is represented by a circle, where the area is proportioned to the list size. Those areas of the circle which bisect represent names on both lists. "The automated and manual combination of the lists should remove all but one occurrence of these duplicated names so that each person on the merged list has an equal probability of selection."

In this table, the drivers list contributed 410,359 names not found on the voters list; those with driver licenses, but are not registered to vote. The result of the merged source list is shown in the bar chart at the bottom of the table. Half of the one million persons on the merged list are voters and drivers, 39 percent drive but are not registered to vote, and 11 percent are voters but do not drive. The small percent of those who vote but do not drive indicates that if a single list is to be used and the quality of the lists were comparable in terms of producing qualified jurors, the drivers list would be the better list.115

115 Ibid., p. 68.
FIGURE 4

EFFECT OF COMBINING LISTS IN SAN DIEGO COUNTY, CALIFORNIA, 1976

<table>
<thead>
<tr>
<th>List Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Voters List</td>
<td>628,217</td>
</tr>
<tr>
<td>Driver Licenses (18 +)</td>
<td>925,497</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,553,714</strong></td>
</tr>
<tr>
<td>Less Duplicated</td>
<td>- 515,138</td>
</tr>
<tr>
<td>Combined Master List</td>
<td>1,038,576</td>
</tr>
<tr>
<td>Population 18 and Over</td>
<td>1,110,783 (Estimate)</td>
</tr>
</tbody>
</table>

In a 1980 study of six North Carolina counties, the demographic features given in Table 9 were from the results of a survey of persons on the voters and drivers lists. The expected characteristics of the merged list were also estimated. The data in Table 9 showed that by combining the voters and drivers lists, the result would be an increased representation of blacks and young people and a decrease in the representation of females. In terms of age, the voter source overrepresented younger persons. As of biennium years 1980-81, the State of North Carolina now requires that jurors be drawn from a combination of the voters and drivers lists.\textsuperscript{116}

Table 10 shows the overlap between the voters and drivers lists for a geographically diverse group of jurisdictions. The variation of coverage from the voters and drivers lists in the six jurisdictions herein may be attributable to the age of the lists, the duplicate matching routine or the nature of the population. However, the figures indicate that in all of these jurisdictions, except in Connecticut, the uniting of the voter and driver lists would be worthwhile. Missing from the above mentioned lists are those individuals that neither vote nor drive. As Table 10 indicates, the difference between

\textsuperscript{116}Ibid., p. 69.
TABLE 9

COMPARISON OF DEMOGRAPHIC CHARACTERISTICS OF LISTS IN SIX NORTH CAROLINA COUNTIES (In Percent)

<table>
<thead>
<tr>
<th>Ages</th>
<th>Population (N = 518)</th>
<th>Voter</th>
<th>Driver</th>
<th>Voter and Driver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>22.3</td>
<td>16.5</td>
<td>18.3</td>
<td>19.0</td>
</tr>
<tr>
<td>Female</td>
<td>53.7</td>
<td>52.4</td>
<td>48.2</td>
<td>50.6</td>
</tr>
<tr>
<td>18-24</td>
<td>19.9</td>
<td>12.7</td>
<td>18.6</td>
<td>17.8</td>
</tr>
<tr>
<td>25-34</td>
<td>24.1</td>
<td>27.8</td>
<td>28.9</td>
<td>29.4</td>
</tr>
<tr>
<td>35-54</td>
<td>30.5</td>
<td>34.2</td>
<td>32.2</td>
<td>31.6</td>
</tr>
<tr>
<td>55-69</td>
<td>17.2</td>
<td>18.1</td>
<td>15.4</td>
<td>15.3</td>
</tr>
<tr>
<td>70 and over</td>
<td>8.3</td>
<td>7.2</td>
<td>4.9</td>
<td>5.9</td>
</tr>
</tbody>
</table>

Source: Munstermann and Munstermann, p. 70.

the merged list size and the population is 6.5 percent. Yet, with a predictable number of duplicates and many names of individuals no longer residing in the jurisdiction remaining on the lists, the merged list size is an inaccurate measure of the true coverage.

A more accurate measure of true coverage was found in a telephone survey of five hundred persons of age eighteen and over in Connecticut. This survey was used
TABLE 10

COMPARISON OF OVERLAP OF VOTERS AND DRIVERS
LISTS IN SELECTED JURISDICTIONS
(In Percent)

<table>
<thead>
<tr>
<th></th>
<th>CT</th>
<th>Wayne County</th>
<th>Santa Barbara</th>
<th>NY</th>
<th>CO</th>
<th>NC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters/Drivers</td>
<td>72</td>
<td>54</td>
<td>40</td>
<td>60</td>
<td>30</td>
<td>42</td>
</tr>
<tr>
<td>Voters/Non-Drivers</td>
<td>8</td>
<td>20</td>
<td>25</td>
<td>19</td>
<td>28</td>
<td>18</td>
</tr>
<tr>
<td>Drivers/Non-voters</td>
<td>20</td>
<td>26</td>
<td>35</td>
<td>31</td>
<td>42</td>
<td>40</td>
</tr>
</tbody>
</table>

(CT = Connecticut, MI = Michigan, CA = California, NY = New York, CO = Colorado, and NC = North Carolina)

Source: Munstermann and Munstermann, p. 70.

to study the impact on representativeness of using a
combined voters and drivers list. Of the five hundred
names selected, only nine (1.8 percent) were neither
registered to vote nor a licensed driver. Those called
were queried concerning their sex, race, age, occupation,
religion, political party, income, employment, job
duration, and union affiliation. While the voters and
drivers lists individually were deficient in many of these
characteristics, the combined list, as one, might surmise
from the excellent inclusiveness, was very close to the
population characteristics.117

In Ventura, California, a study was undertaken of six hundred and fifty-six prospective jurors via juror exist questionnaire. The aim was a comparison of demographic characteristics of jurors on voters and drivers lists in Ventura, California. Among the questions were, "Are you a licensed driver?" and "Are you a registered voter?" Since the source list is the merged voters and drivers lists, it was possible to determine the contribution of each list to the actual pool of prospective jurors. The results are in Table 11. People who vote and drive constituted 83 percent of the prospective jurors. Of those persons, 16 percent were non-white as compared to 17 percent in the population, and 14 percent were between the ages of eighteen and thirty as compared to 28 percent in the population. Only 2 percent of those serving were voters and not drivers. Those who drive but do not vote, 15 percent of the prospective jurors, have greater proportions of non-whites and the eighteen to thirty age group than the general population. This indicates that representativeness of both the young and non-white population is increased with the use of the drivers list.118

117Ibid.

118Munstermann and Munstermann, p. 71.
### TABLE 11

COMPARISON OF DEMOGRAPHIC CHARACTERISTICS OF JURORS ON VOTERS AND DRIVERS LIST IN VENTURA, CALIFORNIA

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Percentage</th>
<th>Percent Non-white</th>
<th>Percent 18-30 of Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters/Drivers</td>
<td>547</td>
<td>83</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>Voters/Non-Divers</td>
<td>10</td>
<td>2</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>Drivers/Non-Voters</td>
<td>99</td>
<td>15</td>
<td>22</td>
<td>33</td>
</tr>
<tr>
<td>Combined List</td>
<td>656</td>
<td>100</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Population</td>
<td></td>
<td></td>
<td>17</td>
<td>27</td>
</tr>
</tbody>
</table>

Source: Munstermann and Munstermann, p. 70.

In Castle County, Wilmington, Delaware, the source list was changed in 1982 to add drivers to the previously used voter list. The results are shown in Table 12. In this table "summoned" refers to those persons sent a summons and "served" refers to those serving as a prospective juror. When the voters and drivers lists were used, the sex of those serving was very close to the proportions found in the general population. Furthermore, the non-white proportion serving on juries changed from underrepresentation to overrepresentation.119

119 Ibid., p. 71.
### Table 12

**Comparison of Voters List and Merged Voters and Drivers Lists in New Castle County, Delaware (In Percent)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>53</td>
<td>50</td>
<td>46</td>
<td>49</td>
<td>55</td>
</tr>
<tr>
<td>Male</td>
<td>47</td>
<td>50</td>
<td>54</td>
<td>51</td>
<td>45</td>
</tr>
<tr>
<td>Non-White</td>
<td>14</td>
<td>10</td>
<td>11</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>White</td>
<td>86</td>
<td>90</td>
<td>89</td>
<td>86</td>
<td>80</td>
</tr>
</tbody>
</table>


Source: Munstermann and Munstermann, p. 72.

One of the most extensive studies of the impact of the use of a merged voters and drivers list was performed in 1982 in Los Angeles, California. This work use exit questionnaires to compare the characteristics of those persons serving in the courts of Los Angeles County in 1980 (when the source of juror names was only the voters list) to the situation in 1982 (when both the voters and drivers lists were used). High levels of response (94 and 96 percent) were achieved in the samples of 12,249 and 18,059 persons, respectively. Results are reported in Table 13. The merged list marginally increased the
TABLE 13

COMPARISON OF VOTERS LIST AND MERGED VOTERS AND DRIVERS LISTS IN LOS ANGELES COUNTY, CALIFORNIA (In Percent)

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>1980 Census</th>
<th>Voters List Only Fall 1980</th>
<th>Comparative Disparity</th>
<th>Voters/Drivers Spring 1982</th>
<th>Comparative Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian</td>
<td>58.3</td>
<td>71.0</td>
<td>-21.78</td>
<td>69.8</td>
<td>-19.73</td>
</tr>
<tr>
<td>Black</td>
<td>11.4</td>
<td>13.9</td>
<td>-21.93</td>
<td>13.3</td>
<td>-16.67</td>
</tr>
<tr>
<td>Hispanic</td>
<td>23.3</td>
<td>9.2</td>
<td>60.52</td>
<td>9.7</td>
<td>58.37</td>
</tr>
<tr>
<td>Other</td>
<td>7.0</td>
<td>5.0</td>
<td>31.43</td>
<td>6.3</td>
<td>10.00</td>
</tr>
</tbody>
</table>

Source: Munstermann and Munstermann, p. 72.

representation of Hispanics and reduced overrepresentation of blacks and Caucasians. Underrepresentation of "other racial groups was also reduced." This good news is balanced with the bad news that, despite the improvements, Hispanics were still substantially underrepresented.120

Table 14 shows for three jurisdictions the changes to comparative disparity statistics when drivers lists were added to voters lists for selection of venires. The results were mixed. In Delaware, racial disparity shifted

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120 Ibid.
TABLE 14

COMPARATIVE DISPARITIES OF THE VOTERS LIST AND THE MERGED VOTERS AND DRIVERS LIST IN SELECTED JURISDICTIONS (In Percent)

<table>
<thead>
<tr>
<th>Voters</th>
<th>Delaware New Castle</th>
<th>Iowa Des Moines</th>
<th>California Los Angeles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters/Drivers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race (Non-white)</td>
<td>21.0</td>
<td>-46.3</td>
<td>32.6</td>
</tr>
<tr>
<td></td>
<td>-30.0</td>
<td>-46.2</td>
<td>29.7</td>
</tr>
<tr>
<td>Sex (Female)</td>
<td>13.3</td>
<td>4.8</td>
<td>7.5</td>
</tr>
<tr>
<td></td>
<td>-3.5</td>
<td>-1.3</td>
<td>8.1</td>
</tr>
</tbody>
</table>

Source: Munstermann and Munstermann, p. 73.

from underrepresentation of non-whites to an even greater overrepresentation of non-Caucasians. Effects on racial disparity were slight in the other two jurisdictions. Underrepresentation of females was reduced in both the Delaware and Iowa jurisdictions; in Los Angeles it marginally increased. Further in San Mateo County, California, as well as the states of Alaska and Kansas, have joined two or more source lists for juror selection. In San Mateo County, the court has combined voter registration and driver license lists by computer in much the
same way as Colorado. A difference, however, is found in the characteristics of the list, for here the drivers constitute nearly 85 percent of the combined list in contrast to 72 percent in Colorado. Moreover, the voter list in San Mateo County is only 53 percent of the combined lists in contrast to 58 percent in Colorado. Only 15 percent are unique voters in San Mateo, in contrast to twice that percentage in Colorado. These results raise the question of how much is added by the use of the voters list. If the demographic profile of the drivers list is no different from that of the combined list, then in San Mateo and in other like situations, there is virtually no gain from the addition of the voter list; the drivers list might be used independently.\textsuperscript{122} See Figure 5 as an illustration.

Alaska combines the voters list, the fish and game (hunter and trapper) lists, and the income tax list to form their juror source list. The excellent records kept make possible an analysis of the intersection among the lists. The number of unique names contributed by a list divided by the number of names on the list provides a measure of efficiency in adding that list. Thus, the

FIGURE 5
EFFECT OF COMBINING LISTS IN SAN MATEO, CALIFORNIA

<table>
<thead>
<tr>
<th>Voters</th>
<th>Voters and Drivers</th>
<th>Drivers</th>
</tr>
</thead>
<tbody>
<tr>
<td>15%</td>
<td>38%</td>
<td>47%</td>
</tr>
</tbody>
</table>

Combined Master List = 426,655 = 100%

San Mateo, California - 1975

Registered Voters List 226,372
DriverLicenses 361,652
Total 588,024
Less: Duplicates 161,369
Combined List 426,655*
Population 18 and Over (Est.) 390,000

*5.4% Duplicates remain, estimated.

following is given for the three lists:

<table>
<thead>
<tr>
<th>List</th>
<th>Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters = 100/168</td>
<td>60%</td>
</tr>
<tr>
<td>Fish and Game = 54/116</td>
<td>48%</td>
</tr>
<tr>
<td>Income Tax = 43/121</td>
<td>33%</td>
</tr>
</tbody>
</table>

This suggests that the income tax list is the least efficient because the great portion of its names are duplicated, whereas the voter list is most efficient because fewer names are duplicated. If only the voter and the fish and game lists were used, the combined list total would be reduced from 289,910 by the number of unique names of the income tax list and would thus be 246,696. Given these two lists, these new efficiencies are derived:

<table>
<thead>
<tr>
<th>List</th>
<th>Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voters</td>
<td>78%</td>
</tr>
<tr>
<td>Fish and Game</td>
<td>61%</td>
</tr>
</tbody>
</table>

Therefore, both lists contribute to the combined list and complement each other. If only voter and income tax were used, the combined list would fall to 235,989, and the efficiencies would be 66 percent and 55 percent, respectively, indicating that these lists do not complement each other as well.¹²³ Look to Figure 6 for more explanation.

FIGURE 6
EFFECT OF COMBINING LISTS IN ALASKA

State of Alaska - 1975

<table>
<thead>
<tr>
<th>List</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered Voters List</td>
<td>168,137</td>
</tr>
<tr>
<td>Fish and Game</td>
<td>116,860</td>
</tr>
<tr>
<td>Income Tax</td>
<td>121,026</td>
</tr>
<tr>
<td>Total</td>
<td>406,023</td>
</tr>
<tr>
<td>Less Duplicates</td>
<td>116,113</td>
</tr>
<tr>
<td>Combined Master Wheel</td>
<td>289,910</td>
</tr>
</tbody>
</table>

Source: Munstermann, Mount and Pabst, Multiple Lists for Juror Selection, p. A-11, Figure 4.

In Wyandotte County, Kansas, both the state census and the voters list are combined by statute with the result being shown in Table 15. The combined list is not as long as the census total, indicating that some of the census names were edited out in the duplicate checking program which is an automated merger and a manual check.
TABLE 15

COMBINED LIST OF WYANDOTTE COUNTY, KANSAS, 1975

<table>
<thead>
<tr>
<th>Wyandotte County, Kansas - 1975</th>
</tr>
</thead>
<tbody>
<tr>
<td>Census (State) List</td>
</tr>
<tr>
<td>Voter Registration List</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Less Duplicates</td>
</tr>
<tr>
<td>Combined List</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Census List Voters</th>
<th>Census List Non-Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.2%</td>
<td>44.8%</td>
</tr>
</tbody>
</table>

Combined List = 125,255 = 100%

Source: Munstermann, Mount and Pabst, A-12, Figure 5.

The result is that the voters list is completely contained in the census list and adds nothing to combined list. The efficiency of the voters list is 0 percent and 46 percent for the census. These lists do not complement each other and should not be used together.124

In closing, the increases in the coverage of the merged lists would indicate a high degree of agreements with the population; yet the resulting improvements in

representativeness, while significant, may still result in a venire of jurors that is non-representative in some respects. The process of summoning, qualification, and excusal can undo the benefits provided by the use of multiple lists.125

CHAPTER III

COMMENTARY ON MATHEMATICAL TOOLS TO MEASURE JURY REPRESENTATIVENESS/DISPARITY

**Mathematical Tools to Analyze Data**

The entire question of jury representativeness, whether derived from the Sixth Amendment, i.e., fair cross-section, cognizable and distinctive standard; or the Fourteenth Amendment, i.e., systematic exclusion, is mathematically rooted. Obviously, then, jury representation standards must therefore reflect mathematical as well as legal principles. However, it should not be inferred by applying mathematical jury representation standards that only one formula will be used or that these standards will replace legal analysis. Rather, there are innumerable mathematical formulations, and each can and should be evaluated by legal as well as mathematical principles. Indeed, mathematics serves to formulate and transpose into quantitative terms the guiding principles and assumptions determined by legal principles and analysis. The establishment of concrete mathematical standards for jury representativeness raises distinct
questions:

1) What mathematical measure of representation will be adopted?

2) What basis of comparison or the proper figures will be used to perform the mathematical analysis? and

3) Then using the mathematical measure, what maximum allowable unconstitutional deviation from the cross-section ideal will be tolerated?¹

This chapter is presented in such a manner as to disclose some measures of jury representativeness; the basis of comparison in using mathematical analysis for jury selection cases; and, third, to point out the degree of disparity or significance essential for a prima facie case or the maximum allowable unconstitutional deviation from the cross-section ideal once the measure of representation is selected. In this capacity, there are five highly recognized mathematical standards or tools used to measure jury representation or disparity for a prima facie violation of the Sixth and Fourteenth Amendments. The five are as follows:

1) Absolute disparity;

2) Comparative disparity or ratio approach;

3) Chi-square analysis;

¹Kairys et al., pp. 788-789.
4) Standard deviation or statistical significance; and

5) Proportion of the eligibles and substantial impact.

For the purpose of this project, only the two initial mathematical standards were studied at any length. The third formula will receive attention in Chapter V; and coverage for the latter is short for the sake of brevity. Of the various measurements available, the courts are divided on the proper method to apply in analyzing data in jury selection and composition cases. But, of the

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\(^2\) The proportion of the eligibles test holds that if the percentage of the group in question on the jury list comes to less than 80 percent of what it ought to be under perfect circumstances, then the disparity between actual inclusion on the list and the inclusion rate of the group in the general population is significant. Various federal courts have adopted this test. The statistical significance test measures the number of standard deviations by which the actual sample departs from the ideal. More than three standard deviations are considered statistically significant, indicating that the results probably did not occur by chance. This test has received mixed greetings from the courts. And some commentators have criticized it on the ground that it is not as easily understood as the absolute and comparative disparity methods. Critics have also pointed out that the validity of this test depends upon the size of the group studied and the proportional composition of the sample. For law cases favoring the statistical significance test, see Castaneda v. Partida, 430 U. S. 482 (1977); Alexander v. Louisiana, 405 U. S. 625 (1972); Whitus v. Georgia, 385 U. S. 545 (1967). In instances where the test is highly favored, see also United States v. Maskeney, 609 F. 2d 183 (5th Cir., 1980) and Test v. United States, 550 F. 2d 577 (10th Cir., 1976). See DiSalvo, pp. 237-238.

\(^3\) Beale, p. 275.
measurements noted, the Courts mostly prefer the absolute disparity and comparative standards.

The absolute disparity test compares the group percentage on the jury list, in contrast to the same group percentage in the population. Thus, if females are 50 percent of the population but only 40 percent of the jury list, there would be an absolute disparity of 10 percent. The absolute disparity standard is somewhat simple, but it lacks statistical validity. Another major disadvantage of the absolute disparity is that it is insensitive to the size of the group involved. More particularly, charges have been placed that the absolute disparity test is unfair to racial minorities when they consist of a small or medium percentage of the general population. For example, if a minority group represents 5 percent of the community population and its members are 2 percent of the jury list, with the absolute disparity test, the result would be a minuscule 3 percent. David Kairys, a highly respected jury expert has stated that:

4DiSalvo, p. 235.
5Beale, p. 275.
6DiSalvo, pp. 235-236. See also Bonora and Krauss, pp. 5-47 and 5-48.
The absolute disparity standard is objectionable on both legal and mathematical grounds; because it fails to account for the range of which the disparity occurs. For example, an absolute disparity of 10% in a jurisdiction that is 30% black is quite different from the same absolute disparity in a jurisdiction that is 11% black. In the jurisdiction that is 30% black, a 10% absolute disparity means that the eligible black person has 33% less chance of serving than the average eligible person, while in jurisdiction that is 11% black, the same absolute disparity means that the eligible black person has 91% less chance of serving. This difference is, of course, legally significant as well; in the 11% black jurisdiction, the 10% absolute disparity amounts to almost total exclusion of black people. The absolute disparity standard yields the same results in situations in which the results should clearly differ. On the other hand, some positive attributes of the absolute disparity standard are its popularity with the Courts, which may be attributed to its simplicity and the ease with which it can be calculated by persons having no advanced training in statistics or mathematics. In addition, other miscellaneous aspects of the standard are that it has been used without discussion or any maximum by the Courts, although in some quarters a range of

7Kairys et al., p. 793.
8DiSalvo, p. 236 and Beale, p. 275.
9Kairys et al., pp. 789-790.
10-15 percent is considered significant. In fact, Dr. Henry D. Moore, Professor of Economics and Director of the Center for Business Research, University of Alabama, has made the suggestion of 10 percent.

The Supreme Court has applied the absolute disparity standard in *Swain v. Alabama*, 380 U. S. 202, 208-209 (1965), in this case the Court ruled that purposeful discrimination could not be "satisfactorily proved by showing that the identifiable group in a community is underrepresented by an absolute disparity of 10 percent." The absolute disparity method was in effect, used in *Duren v. Missouri*, 439 U. S. 365-66 (1979), in which the Court compared the raw percentage, 15 percent of the venire was female while 54 percent of the general population was female, and found this to be "fairly represented." Furthermore, the Supreme Court has invalidated jury systems with absolute disparities as small as 14 percent.

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10DiSalvo, p. 236.

11Kairys et al., pp. 789-790.

12Beale, p. 275.

13DiSalvo, p. 236.

At the lower federal court level and state courts, too, each have concluded that when an absolute disparity test is applied, a disparity of 10 percent or less is not sufficient to establish a prima facie case in either equal protection or fair cross-section cases, although it may be sufficient as a minimal requirement for relief. In sum, absolute disparities between 10 percent and 15 percent have been found sufficient in a few cases, and, conversely, insufficient to establish a prima facie case of either an equal protection or a fair cross-section violation in other cases. But absolute disparities between 15 percent and 20 percent have generally been found significant, and disparities of more than 20 percent have almost always been deemed sufficient to establish a prima facie case. Finally, the rigid application of the 10 percent cut-off standard in absolute disparity cases, for either equal protection or fair cross-section claims seems hard to justify given the proceeding factors:

15Beale, p. 278.
17Beale, p. 278.
18Ibid.
1) The significance of a 10 percent disparity varies as to both the percent of the minority group in the population and the size of the relevant sample;

2) In equal protection cases a smaller disparity may be sufficient to establish a prima facie case in a system where there exist opportunities for discrimination;

3) A smaller absolute disparity should also be significant in equal protection cases if the comparison is made between minority jurors and eligible minorities, not all minorities in the population as a whole;

4) In a system where jurors are selected at random from source list compiled without discrimination, a greater disparity should be necessary to establish a prima facie case; and

5) Many Courts have recognized that the absolute disparity which is necessary to establish a prima facie case should vary case to case.¹⁹

The comparative disparity test measures jury disparity by comparing two different percentages against each other. The figures are:

1) The percent of the group in the eligible population (e.g., females in the eighteen to sixty-five age bracket); and

2) The percent on the jury list.²⁰ With this standard, a comparative disparity of 15 percent to 20 percent is looked upon as significant.²¹ In other

¹⁹Ibid., pp. 278-279. For a list of legal cases which have applied the absolute disparity standard, see Appendix VIII.

²⁰Disalvo, p. 237.

²¹Ibid.
words, in using the comparative disparity measure and if the results show that the percentage or proportion of a cognizable class in the population and the source list used is greater than 15 percent, there is the possibility of a constitutional violation. However, most of the jury selection systems are within the 10 to 15 percent range for all or most distinctive groups. The United States Civil Rights Commission has suggested a 20 percent maximum comparative disparity before an inference of jury underrepresentation is made. In some ways, the comparative disparity standard complements the absolute disparity; it is the same as the absolute standard divided by the proportion of the population in the specified category, and it relates the absolute disparity to the size of the group in the population. In summary, the comparative standard measures representativeness by the percent or proportion by which the probability of serving is reduced for people in a particular category or cognizable class who might be underrepresented on a jury. The percentage


23Bonora and Krauss, pp. 5-48 and 5-49.

24"The Search for Jury Representativeness," p. 64.
is determined by the following calculations:

\[
\text{Proportion of the population that is in the specified category} \times \frac{\text{Proportion of the source that is in the specific category}}{100} \times \text{Proportion of the population that is in the specific category}^2
\]

The comparative standard of measurement has no designated maximum, and is a valid mathematical technique to measure representativeness because:

1) It is understood and used;

2) It provides a clear basis for weeding out of permissible from unlawful deviations from the cross-sectional ideal which states "that in a fair, cross-sectional system, the possibility of any eligible person being included in the pool would be the same for every eligible person, regardless of race, ethnic background, sex, age or socioeconomic status"; 26

3) It is easily calculated and interpretable;

4) "As a tool which measures the reduced probability of serving for prospective jurors in a particular category, its results are not affected by the proportion of the population in the specified category or the size of the sample used to determine the composition of the pool. Although the sample size does not affect the result, care should be taken that the sample size is large enough so the comparative disparity is reliably determined. The sample size necessarily [sic]

25Bonora, Krauss and Goodman, p. 89.

26Ibid. See also Kairys et al., pp. 790-791; Bonora and Krauss, pp. 5-48 and 5-49.
to ensure any given degree of accuracy can be calculated."27

From both a mathematical and legal standpoint, the comparative disparity method is superior to all the rest, and commentators have noted this. They have highlighted the fact that it is not subject to the difficulties of the absolute disparity standard or the statistical significance test. Also, Judge Walter P. Gewin of the Old Fifth Circuit Court of Appeals, an expert in jury representation methodology, prefers the comparative disparity standard except in instances when the cognizable class is a small percent of the population, in which case he recommends the absolute disparity standard.28 The disadvantages of the comparative disparity standard are: where the group in question is very small, the comparative disparity analysis tends to magnify slight underrepresentations which could result from chance; and when the group is very large the comparative method tends to validate deviations that are unlikely to have been produced by chance despite the fact that the disparity alters the

27 David Kairys et al., pp. 797.

representativeness of the jury substantially. In addition, some courts have applied the comparative disparity analysis when the minority group is small. Other courts have found the comparative approach inappropriate where the group is small because it "distorts reality."29

From a legal perspective, the comparative disparity standard as a measure of representativeness has been adopted by the Supreme Court and other courts, more or less, intuitively.30 Although there are far fewer cases applying the comparative disparity standard, but in these instances, at least where small groups are involved, the courts are more than willing to tolerate greater percent disparities in comparative cases than in absolute ones. For instance, in one case, the courts found that no prima facie case was established by evidence of a comparative disparity as high as 59 percent. Even still, the courts have not established a permissible level for comparative disparity cases.31

29Beale, pp. 274-275.

30Bonora, Krauss and Goodman, p. 89. See also Kairys et al., pp. 790-791.

31Beale, pp. 280-281. For a list of legal cases which have applied to comparative disparity standards, see Appendix VIV.
Basis of Comparison in Using Mathematical Analysis for Jury Selection Cases, or What Are the Proper Figures upon Which to Base the Mathematical Analysis

The basic issue in cases involving mathematical proof in jury selection and discrimination cases is what comparisons will provide proof or evidence of invidious discrimination. In this capacity, the most widely accepted form of mathematical proof of underrepresentation involves "comparing the proportion or percent of the group in the total population to the population called to serve as grand jurors (or as venire persons) over a significant period of time."

Notwithstanding this, in more recent developments, however, some courts have adhered to the percent which prosecutor's assert: the "proper comparison is between the percent [sic] of minority jurors and the percent [sic] of minorities among the population eligible for jury service, not the population as a whole."

In the polemic debate over the use of figures in establishing a mathematical jury discrimination claim, most authorities seem content with a comparison based on the entire population as opposed to the eligibility standard favored by prosecuting attorneys. Sara Sun Beale, an

Associate Professor of Law at the Duke University School of Law, states that it is "more difficult to establish the correct figures for the eligible population than for the minority population as a whole which can readily be determined from the census data." In addition, as a caveat to prosecutors who have successfully rested their cases on the estimate of the eligible population standard and not on the entire population in a jury discrimination case, Beale states that this practice may be subject to judicial challenge as unconstitutional. Also, Judge Walter Gewin, in an analysis prepared for a committee of the Judicial Conference of the United States, concluded it is difficult "to obtain full and accurate figures for jury eligibles" and that the use of such evidence "may place an insuperable burden on a litigant." In casting his lot for the use of the whole population standard as a comparative basis in jury discrimination cases, Judge Gewin simultaneously would impose a greater disparity in order to establish a prima facie case than would be necessary if the jury pool were compared to the eligible population. A third voice for the use of data from the population as a whole standard is the United States Supreme Court. Here, the court has accepted data stemming from the population as a whole in constitutional challenges grounded in the fair cross-section standard, and not the eligible population to prove
a prima facie transgression of the law. In the 1979 case of *Duren v. Missouri*, 439 U. S. 357, the court held that a fair cross-section standard embraces a comparison of the jury venires to the composition of the community. Two years before *Duren*, in *Castaneda v. Partida*, 430 U. S. 482 (1977), the court ruled for the petitioner, who established a prima facie case based on a comparison of the percent of Mexican-Americans summoned for grand jury service and the proportion of this ethnic group in the local population. In its decree, the court, upon describing the elements of a prima facie case, cited the total population and not the eligible population standard. "The degree of underrepresentation must be proved by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors." In compendium, by adhering to the total population figures as sufficient to establish a prima facie case, the court appears willing to ease the challenger's burden of proof. In conclusion, Sara Beale suggest that since some courts may side with the prosecution in using eligible population figures in jury composition challenges, in contrast to decisions from the Supreme Court and the views of some jury methodology experts; that potential challengers need to develop evidence which looks at both the eligible population and the population
as a whole.\textsuperscript{33}

\textbf{What Degree of Disparity/Significant Necessary to Establish a Prima Facie Case}

This, the third and final section of Chapter III, examines two predominant questions:

1) What is a disparity within the context of jury selection and discrimination cases?

2) Given the situation, when does it become significant enough to make out a prima facie constitutional violation of the Sixth and Fourteenth Amendments?

A disparity within the meaning of jury selection and discrimination cases requires proof based upon two variables:

1) The total population for the jury service; and

2) The population eligible for jury service.\textsuperscript{34}

In fact, proof of a disparity is a complicated aspect of jury selection and representation law. This difficulty has translated into a sort of inertia, as officials have yet to institute rules and procedures with respect to the

\textsuperscript{33}Beale, pp. 270-273.

proof mentioned.\textsuperscript{35} But, generally, disparities occur between the presence of a cognizable group in the jury pool and that groups' number in the total population or in the population eligible for jury service. Say, for example, if blacks are \(X\) percent of the pool and \(Y\) percent of the population, the courts have examined whether \(Y\) is much larger or less than \(X\) (this would constitute the disparity) without setting rules as to when the difference between the two becomes critical or significant.\textsuperscript{36} In determining the significance or the substantiality of a disparity, there are two crucial factors which must be considered:

1) The size of the sample used to determine the populations of the pool; and

2) The range at which the disparity appears.

In comparing the presence of a cognizable class in the population with its representation in the juror pool, the "sample size used to determine class representation in the pool must be known and accounted for in order to know the significance of the comparison."\textsuperscript{37} In cases


\textsuperscript{36}Kairys et al., pp. 772 and 786.

\textsuperscript{37}Ibid.
involving statistical proof of disparity, there is, at present, no set range or a maximum allowable unconstitutional deviation which would call into question a prima facie case violation. Instead, the courts and legislatures appear reluctant to set fixed mathematical ranges for jury selection cases, apparently preferring an approach that evaluates the significance of any statistical disparity in context.\textsuperscript{38} Even though a definitive mathematical method would give a means of "defining the point at which a disparity between the population and the jury pool becomes significant or substantial by a computation of the probability of the disparity resulting if [sic] process were in fact unbiased or chance."\textsuperscript{39}

As previously noted, the courts have not established the point at which the range of a disparity becomes substantial or reflects the maximum unconstitutional deviation from the cross-section ideal. In response to their reluctance, Millard C. Farmer, a noted death penalty foe and attorney for death row inmates has characterized the court's approach as "I know it when I see it."\textsuperscript{40}

\begin{flushright}
\textsuperscript{38}Beale, p. 277. \\
\textsuperscript{39}Kairys et al., pp. 772 and 786. \\
\textsuperscript{40}Farmer, pp. 52-53. 
\end{flushright}
More explicitly, in Alexander v. Louisiana, 405 U. S. 625 (1972), the court refused to adopt a mathematical standard because "a factual inquiry is necessary in each case that takes into account all possible explanatory factors." 41

Additionally, the sundry of mathematical tools used to measure disparity significance in a prima facie case are not directly comparable. A case holding that a 30 percent comparative disparity is not significant would not necessarily hold true for a 30 percent absolute disparity case. In sum, amid the use of various mathematical measures and the lack of clear guidelines in determining when the range of a disparity becomes substantial; a rule of thumb has emerged with regards to the absolute and comparative disparity, and standard deviation mathematical measures. 42 In the case of absolute disparity, if a difference is 10 percent or less, it is not sufficient for a prima facie case. However, there are instances where it may be a bases for minimal relief. But if the disparity is between 10 and 15 percent, it may or may not constitute a prima facie violation of the law. But if the disparity range is between 15 and 20 percent, the difference is

41 Ibid.

42 Beale, p. 277.
generally determined significant enough for judicial relief; this also applies to a range of 20 percent plus. In cases where the comparative disparity is used, the "rule of thumb" states that if a disparity is over 15 percent between a cognizable class in the population and the source list, this variation can serve as a bases for judicial relief. However, the U. S. Civil Rights Commission has suggested a 20 percent maximum before an inference of jury underrepresentation; but still, there is no designated maximum difference. Finally, with the statistical significance test or standard deviation, the general rule is that more than three standard deviations is statistically significant to warrant the court's attention. In other words, the difference between the cognizable class and the source list probably did not occur by chance.

In summation, Chapter III has dwelled on the use of mathematical tools in evaluating jury representativeness. In this regard, there are three questions which will be focused on herein:

1) What are the mathematical tools used to measure jury representation?

2) What are the basis of comparison used in measuring jury selection cases? and

3) What is the degree of disparity necessary for a prima facie violation of the statutes governing jury selection?
At present, there are five mathematical tools used to measure jury disparity for a prima facie violation of the Sixth and Fourteenth Amendments. The five are:

1) Absolute Disparity;
2) Comparative Disparity;
3) Standard Deviation;
4) Chi-square Analysis; and
5) Proportion of the Eligibles.

Of these measures, the courts are divided on the proper method to apply in analyzing data in jury selection and composition cases. However, of these tools, the absolute disparity and comparative standards are mostly preferred. In the second dimension, the issue evolves around what mathematical proof or comparison is necessary in jury selection and discrimination cases. In this matter, there are two convergent point of views, one is based on a comparison of the entire population as opposed to the eligibility standard favored by prosecuting attorneys.

The third phase purports to examine the disparity or significance necessary to establish a prima facie case. In determining the disparity of proof, two variables are particularly important:

1) The total population for jury service; and
2) The population eligible for jury service.

In addition, in order to determine the significance or
substantiality of a disparity; there are two main factors to consider:

1) The size of the sample used to determine the population of the pool; and

2) The range at which the disparity appears.

In this matter, there is no set range from which it might be inferred that a disparity is unconstitutional, rather the courts and legislative bodies have been hesitant to fix a mathematical range for jury selection cases, but preferring an avenue which evaluates the significance of any statistical disparity in context. On a closing note, given the various mathematical tools to measure disparity significance in prima facie cases, none are directly comparable.

The next chapter to follow spotlights jury selection processes and procedures in the State of North Carolina and Mecklenburg County, and, hopefully, serves as a backdrop for Chapter V, which represents the empirical field study for the master thesis.
CHAPTER IV

JURY SELECTION PROCESSES AND PROCEDURE IN
NORTH CAROLINA AND MECKLENBURG COUNTY

This chapter will center on jury selection processes and procedure in North Carolina and Mecklenburg County. As a result, the emphasis will be on the invested powers of the state in a federal system; state statutory law which deals with jurors and the trial by jury system; and the final part will focus on jury selection records and procedure in (Charlotte) Mecklenburg County from a historical glance, and then to be followed by an examination of jury selection records for the biennium periods as a basis for the empirical phase of this project. Under the powers reserved to the states from our Federal and Constitutional system of government, the State of North Carolina was empowered to operationalize the Anglo-American

1See the following materials for information on queries about jury selection processes and procedures: applicable statutes, memorandums, regulations, and other sources of law concerning a particular system. These documents are normally obtainable from selection officials.

2Amendment X (1791) to the Constitution holds, "the power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people."
concept of trial by jury by dictating how the jury system will function; and who will participate, and under what conditions, circumstances and requirements. North Carolina case law confirms this view: "absent discrimination by race or other identifiable group or class, a state is at liberty to prescribe such qualifications for jurors as it deems proper without offending the Fourteenth Amendment."  

At the Federal level, former Associate Justice Potter Stewart stated in *Carter v. Jury Commission of Greene County* that,

> The States remain free to confer the selection of jurors to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character.  

Prior to Carter, in *Brown v. Allen*, a 1953 case of judicial import, the Supreme Court decreed:

> Our duty to protect the federal Constitutional rights of all does not mean we must or should impose on States our conception of the proper source of jury lists, so long as the source reasonably reflect a cross-section of the population suitable in character and intelligence for that civic duty.  

With this legal precedence in force, the State of North Carolina has established North Carolina General

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5344 U. S. 443 (1953).
Statute Chapter 9 titled "Jurors" to actualize the concept of trial by jury in Anglo-American Jurisprudence. In Chapter 9, there are four articles detailing thirty-one dimensions or phases of the law. Article I is headed "Jury Commission, Preparation of Jury List and Drawing of Panels"; Article II is titled "Petit Jurors"; Article III is titled "Peremptory Challenges"; and Article IV is titled "Grand Jurors." However, for purpose of this project, only Article I, sections 9-1 through 9-5 will be discussed; the remaining portion will note only parts and name designation. This is useful for brevity reasons, as some areas are more applicable to our purpose, while others are peripheral and external at best.

North Carolina General Statute 9-1 stipulates that as of July 1, 1967, within each of the one hundred counties in the State, a jury commission board of three members shall oversee the States' obligation to provide qualified jurors within the framework of a trial by jury system at the local level. Each of the said commission members was to be a qualified voters of the county and appointed to two-year terms or successive years by major local judicial and political leaders. That is, each slot was placed under the control of either the senior Regular Resident

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6For the other segments of Article I, see Appendix V.
Superior Court Judge, the Clerk of Superior Court, and the Board of County Commissioners. A vacancy or resignation by an appointee was to be filled in the exact manner as the original appointment, for the unexpired term.\(^7\)

Prior to assuming their duties, commissioners had through oath or affirmation, declare in performance of their duty not to prejudge or show partiality during their time of service. Generally, the oaths or affirmation, take on several forms, viz.:

I, ________, solemnly swear I will support the Constitution of the United States; so help me, God;\(^8\) or

I, ________, do further solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the Constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of the United States; to the best of my knowledge and ability; so help me, God;\(^9\) and

I, ________, do solemnly swear that I will without favor or prejudice honestly perform the duties of a member of the ________ Jury Commission during my term of office; so help me, God.\(^10\)

\(^7\)North Carolina, General Statutes (1967), 9-1.

\(^8\)Ibid.


The closing points of G. S. 9-1 emphasize juror remuneration or compensation; and states that the local county commission would support the jury commissioners from the general fund of the county, as well as the Clerk of Superior Court was to supply clerical assistance to this important body, where necessitated.\textsuperscript{11}

General Statute 9-2 is designated, "Preparation of Jury List; Sources of Names," also became state law in 1967 with direction that the county master jury list be comprised of names randomly accumulated from the county property tax rolls and local voter registration list. Other dependable and reliable sources of names were suggested as well. However, as a consequence of few counties and their jury commissioners availing themselves of this unprecedent opportunity to compile representative and equitable jury pools and panels from a broad-based source of names, the question of jury selection fairness and partiality arose statewide with the sources set by law, viz., property tax list. In other words, prior to modification of G. S. 9-2 which declared that master jury list be composed of names from county property tax rolls and local voter registration list and other sources deemed reliable, many interested parties held that these sources,\textsuperscript{11}

\textsuperscript{11} North Carolina, \textit{General Statutes} (1967), 9-1.
especially the property tax source, lead to jury unrepresentativeness, in that certain groups (i.e., women, blacks, and the poor) were excluded from jury selection processes and procedure in the state. This gloomy forecast aroused public concern and efforts were made to make drastic changes in G. S. 9-2.\footnote{North Carolina, General Statutes (1967), 9-2. The section on G. S. 9-2 will require more explanation in view of legislative changes in sources used to prepare jury list or rolls in North Carolina.} In the first of many outcry efforts to modify G. S. 9-2, or the sources for juror selection, Attorney J. Reid Potter wrote a commentary to \textit{The Charlotte Observer} which stated: "We must recognize that a fair trial must also have the appearance of being just. While the right to trial by jury must be preserved, the method of selecting the jurors should be changed." Additionally, he state, "the jury selection process has been under attack inside the courthouse for years. Changes has been slow to the point of being ridiculous. Unless changes are made soon, the entire system may collapse."\footnote{J. Reid Potter, "Inside the Courthouse--Fair Jury Selection Needed," \textit{The Charlotte Observer}, 7 June 1980, 19(A). For a compilation of source material, i.e., newspapers clippings, articles and studies examining sources and jury representativeness in North Carolina, see J. O'Reilly, "Measuring Jury Representation by Neighborhoods," paper presented at the Research Symposium on Social Indicators of Institutional Racism-Sexism, University of California at Los Angeles, April 1977; Mark Michael, Courtney Mullin, James O'Reilly, "Challenge to Jury Composition in North Carolina," \textit{North Carolina Central}}
In an editorial titled "Picking Jurors: The Process Needs Fixing," it states honestly and forthrightly that "Mecklenburg County's Jury Selection Process Does Not Produce Jury Lists That Accurately Reflect This Community." And with the authority of jury commissioners, this can and should be changed. In other points, the editorial writers stated that a good jury trial is the heart of American justice which ought to reflect its community, as well as supporting a need to modify the selection process in Mecklenburg County with drivers license list, which has received accolades, as expanding jury representativeness. Especially, since, in the words of then jury commission Chairman Charles Williams, "...That's the way things have always been done." Finally, the article closes with,

Some may argue that people who fail to register to vote should forfeit their opportunity to serve as jurors. But that's not the point. . . .We're not talking about the right of Blacks to serve as juries. We're talking about the right of a defendant to be tried by a jury that fairly and accurately reflects a cross-section of the community. This is a principal of fairness Mecklenburg County should adopt.14


14The Charlotte Observer, 26 December 1978, 2(B).
In other action, the Director of the Administrative Office of the Courts forwarded a memorandum to all jury commissioners and Clerks of Superior Courts dated September 9, 1975 with regard to preparation of jury list. In that document, Mr. Montague reminded jury commission bodies across the state that they should use care in determining the proportionate number of names drawn from sources used, viz., voter registration list and tax list. He goes on to say that most counties use the tax list and voter registration records for a majority of names placed on the list; in some cases, these sources are used exclusively. In furtherance of this point, Mr. Montague reminded the state's jury commissioners to act fairly in deciding the proportionate numbers to take from these sources. This preventive measure was taken as a result of some county jury commissioners taking 90 percent of names placed on the list from tax list and only 10 percent from voter registration records. This being done in view of the argument that tax list have a disproportionately small number of women and blacks, which makes the taking of a majority of names from the source discriminatory. Mr. Montague states that whether the argument is sound or not, it will produce litigation and "we ought not to voluntarily permit needless litigation." Also, to further stress the theme of his memoranda, he cites a county
reportedly taking 100 percent of its names from the tax list. "This is patently a violation of the statute." On this point, it is suggested to Clerk of Superior Court officials, "if in the past your commission has taken substantially more than 50 percent of names (e.g., 60 percent or more) from tax list, you (Clerk of Superior Court) should strongly encourage them to alter the process so that a substantially larger proportion of names [sic] taken from voter registration..."15 In two final actions which received public complaint over fair jury representation and the source list issue was the cases of Bernard Avery and Barry Wright. In the Avery case, defendant was charged with two true bill indictments alleging first degree murder and armed robbery. Prior to trial, Avery's attorney filed motions eighteen and nineteen to quash the indictment on unconstitutional selection of grand jurors, jury venire, and master jury panel. Defense Attorney Fuller noted that Mecklenburg's population was 24 percent black, though only 15 percent of the registered voters were black. Resulting in a statistical disparity of 40 percent, but depending on whether one uses comparative or absolute disparity as a measuring

tool. Commenting on the particular sources (e.g., voter registration list and tax list), Fuller said, for unexplained reasons, whites register to vote more, while only 51 percent of blacks do likewise. And that tax list had a disproportionate number of whites, due to their economic stronghold and strength, and "scientific sociological determinators." Fuller concurred that the jury commissioners complied with statutory procedures, in view of Mecklenburg County's history and the commissioners personal knowledge that the selection process was not "neutral" as they knew from the outset that the voter registration list would produce juries disproportionately white. To justify defense allegations of jury commissioner's collusion in maintaining racially imbalanced juries, Fuller states:

1) They had knowledge of the county's history of underrepresentation;

2) They were cognizant that the voter's list underrepresented blacks, although they had an affirmative duty to provide a "representative sample of all people of all sexes and all races." This was not the yielded effect;

3) They had actual and inferred knowledge of inherent discrimination possible from using these standard lists through various communication received. For example, in 1974 and 1976, Robert M. Blackburn, Clerk of Superior Court, received a letter from Bert Montague, and later was sent a Report from Duke University Graduate Student James O'Reilly, in a paper titled "Analysis Of Six Urban Areas, Detailing Serious Underrepresentation Of Racial And Economic Classes on the Jury in Charlotte-Mecklenburg."
Along with this report was an analysis of representation in all areas along with commentary and conclusions about the vexing problem of jury representation. Both the jury commissioners and Blackburn were mailed this report in their respective functions as "County's Agent of Jury Selection," and "Body Counselor and Mentor of Applicable Statutes and Procedures." Also, the County's Head Computer Programmer, Sam Cesena, who is responsible for preparing jury list, had among his personal effects a 1971 news article revealing statistical imbalance of 14-12 percent. Programmer Cesena clipped, stored and saved these articles without revealing them.

In sum, the Clerk of Superior Court, Max M. Blackburn, County Jury Commission and Head Programmer (Computer) Cesena had privy and access to gross and serious underrepresentation confronting the county jury selection; yet each and all recognized, notably, the jury commissioner's affirmative duty to provide a fair as accurate fair cross-section of the community. No one took, according to present record, any substantive or negligible action to modify, alter, or inspire a study to improve this dearth state of affairs. Though the law allows amendments with added sources, besides one prescribed by law, to ensure accurate and fair appraisal of the community's composition.16

16 See also #41, Infra. Transcript of State v. Bernard Avery, held in Superior Court of Mecklenburg County, October through December 1978, 26th Judicial District at 78-Cr-3455 and 78-Cr-3456.
While holding steadfast on their motion to quash indictments in this case and to strike the existing jury venire and master jury panel, Fuller adduced that:

Black persons, women, and persons of lower economic status have been systematically excluded and are substantially underrepresented in the panel of prospective jurors (G. S. 9-2) by virtue of [sic] fact that the use of tax list of the county and voter registration records results in the disproportionate exclusion of identifiable groups, especially racial minorities, women and lower-income citizens and produce a master panel which is not representative of the community-at-large, and particularly not of the Black residents in Mecklenburg County, in violation of [sic] Due Process and Equal Protection Clause of the 14th Amendment to the Constitution of the United States and Article I, Section 19 of [sic] Constitution of the State of North Carolina.\[^{17}\]

In response to the motions and facts presented, officiating Senior Judge Frank Snepp denied defense' contentions by recounting the evidence shown; detailing the selection process; and citing legal case precedence. In so doing stated: the master jury list for the 26th Judicial District, for 1978-79, at the direction of jury commissioners came from the tax list and voter registration list. All of the voter's list was retained in the list make-up. And as of October 9, 1978, there was no account of county eligibles to vote; but, presently, there were 240,000 eligible voters, though 184,293 were registered.

\[^{17}\]Ibid.
Eighty-four percent of qualified Caucasians were actual voters, while 51 percent eligibles or actual voters were black. Yet, there was sufficient chance to register to vote at the county's 45 registration sites. The list was designated by race, in compliance with Federal law, and names and addresses were the only information used in computer computation. On command from jury commissioners, the Data Processing Department (DPD) integrated into the master jury list every fourteenth person from the county tax billing file, after deleting business and multiple individual listings. The "throw-aways" consisted of duplications and citizenship forfeiting on accounts of felony convictions, non compos mentis, and those on jury duty in the preceding two years. The unculled jury list, hence, had 160,716 names. On instruction, again, from the jury commissioners, the DPD extracted by computer every second, fourth, eighth, twelveth, and fifteenth name of each fifteen names in sequence for a culled list of 53,572 names. Computer cards were made for the 53,572 names, and then numbered, alphabetized and locked in a file and put in custody of the register of deeds. The "numbered discs, corresponding to numbers of the list were cut and placed in the jury box under the supervision of [sic] jury commission; locked and placed in custody of the Clerk of Court. Jury panels thereafter drawn from
the box." Now with an up-to-the-date jury list created, the population of Mecklenburg County was 24 percent black and 15 percent of the names on the voter registration list was black. While extrapolating and discriminating the evidence shown by the defense, Judge Snepp, perceptively, I might add, held: that Attorney Fuller was not disputing "North Carolina General Statute 9-2 in fixing the jury list, nor the drawing of jurors." But, defense, does say that "the fact that only 15 percent of names on [sic] voter registration list are those of blacks results in unconstitutional discrimination, since 24 percent of [sic] population of Mecklenburg is black." Nor does the defense show "evidence of discriminatory acts by anyone in preparing [sic] jury lists, or drawing of panels, or selection of the grand jury nor the number of black citizens actually serving as jurors during the period." From a personal glance, the researcher is impressed that, perhaps, Attorney Fuller should have attacked the validity of certain jury sources, and then point to the negative results which arises from them. As opposed to the avenue taken in pre-trial hearings. In profiling the role of the courts at both the national and state levels, Snepp held: all defendants, under the Constitution of the United States and North Carolina, are to be indicted by a grand jury and tried by a petit jury where the state has not
deliberately and systematically excluded members of a race or sex. However, following through with Alexander v. Louisiana, Snepp stated:

This court has never announced mathematical standards for the demonstration of "systematic exclusion" of Blacks, but has, rather, emphasized that a factual inquiry is necessary in each case that takes into account all possible explanatory factors.\(^1\)

Perusing through the North Carolina Supreme Court history on claims of racial discrimination in the selection of juries, Snepp found:

1) In State v. Brower, p. 644, to show prima facie case of systematic racial exclusion; defendant must show statistical evidence establishing that blacks underrepresented on juries; evidence that selection procedure not racially neutral; that for a substantial period in past few Negro served on juries of county, notwithstanding a substantial Negro population therein, or both;

2) In State v. Foddrell, p. 546, after defendant conceded that the jury panel drawing was done in accord to state law, and, above all, offered no statistical evidence to show systematic exclusion on basis of race, "Challenge to jury panel on Constitutional grounds must fail;"

3) In State v. Rogers, p. 411, certiorari denied, 396 U. S. 1024, the Court said that jury list with only names of property owner not per se discriminatory;

4) In State v. Cornell, p. 20, the Court ruled that the North Carolina statutory plan for selecting and drawing of jurors is constitutional and provides a jury system free of discrimination

\(^{1}\)Alexander v. Louisiana, p. 625.
towards any cognizable group. As well, that such holdings were in conjunction with Supreme Court rulings, that statistical underrepresentation alone is not sufficient for a showing of prima facie case of racial discrimination.

Through inference, Judge Snepp said, the jury commission of Mecklenburg County punctiliously observed procedures laid down by North Carolina Statutes 9-2 and discounted race, sex or age of persons whose names appears on the basic list. Defendant did not show a prima facie case of systematic racial exclusion; therefore, it was not incumbent upon the state to introduce evidence. The jury panel from which members of the grand jury returning to indictments in these cases were drawn and the members of the venire who will be drawn for the trial were selected in conformity with the requirements of the Constitution of the United States and State of North Carolina. It is therefore, ordered that the motions of the defendant be and they are denied, November 8th, 1978.

One black sat on the jury that convicted Avery on first-degree murder in the September 1977 robbery and shooting of cabdriver Robert Moses. He got life in prison because the jury split eight to four for the death penalty, which requires a unanimous verdict. On appeal, Defense Attorney Jim Fuller, stated that deliberate discrimination is not necessarily required for the practice to be unconstitutional. He claimed that the Sixth Amendment
assurances of juries representing a community cross-section prohibits even unintention discrimination, Fuller implied to North Carolina Supreme Court Justices. "It's a fundamental right. Either you have or you don't." Even with these words, Fuller was not optimistic that Avery would win a new trial from the conservative North Carolina Supreme Court. Defendant did not, and Judge Snepp's Court ruling was upheld. However, Fuller did offer some noteworthy comments, which are worth pondering cover:

Lawyer Jim Fuller placed bluntly to Justices of the Supreme Court: How comfortable would white people such as them feel to [sic] be on trial in Harlem, with a black judge, black prosecutor and black jury? Exaggeration? Not really, in Mecklenburg County black defendants face courtrooms as whites would be in Black Harlem [sic]. . . .This [sic] situation occurs in Mecklenburg as list from which jurors are chosen does not include enough Blacks.19

Fuller added,

. . . it's not only fairness of trial but the "appearance of fairness"--to give some assurance to people who've been the victim of discrimination for years and years that it's still not happening. Also, it's not a good thing for white society or society in general to have people walking away from the courthouse where a guilty person has been convicted with the feeling that they'll never know for sure because the trial wasn't fair.20

20 Ibid.
Attorney Fuller does think future Mecklenburg County juries ought to be drawn from a pool of residents that accurately reflects the population. Blacks would face all-white or nearly all-white juries less frequently, Fuller argues, if the jury list had the same proportion of blacks as the population. 21

The next case involves Barry White, who was convicted of involuntary manslaughter charges by an all-white jury which prompted charges of racism against Wake County, Raleigh, North Carolina jury system. However, court officials, lawyers and editorialist have responded by saying aspects of the Wright case belie charges of racism. Nevertheless, the fact is that blacks are substantially underrepresented on juries in Wake County, as well as those in most other North Carolina counties. Blacks are seriously underrepresented in North Carolina not due to overt racist manipulation by prosecutors or court officials; but to indifference and ignorance of judges and court bureaucrats who have a constitutional duty to provide juries that are a fair cross-section of the community. Indifference to a rising volume of evidence that major problems exist in jury representation; and

ignorance of effective and inexpensive ways available to solve the problem. According to James O'Reilly, the magnitude of black jury underrepresentation in Wake County is easy to determine. The official state figures show the county adult population is 21 percent black. So, if the master jury list, from which all trial juries in the county are drawn in 1980 and 1981, is the representative cross-section that the Constitution requires, it too would be approximately 21 percent black. However, the county jury commission, then making the 1980-81 master jury list, chose to take virtually all names (ninety-nine plus) from the county voter registration rolls. So, the master jury list is not very up at all, according to O'Reilly. Last fall, according to Wake County Board of Elections, blacks comprised 14 percent of the registered voters. That means blacks on average will be underrepresented on juries in 1980 and 1981 by 33 percent. It means the average black in Wake County is a third less likely to be picked as a juror than the average white. The implication of these dry statistics are that they may strike many as confusing or irrelevant to whether Justice is done. But to a black defendant they can be critical. There is substantial evidence, both in social science studies and in the actions of lawyers picking jurors, that the race of jurors can make a difference in the verdict. And the underrepresentation
of blacks on the 1980-81 list means that in the average
venire of twenty-five jurors, from which the trial jury
is selected, there will be too fewer blacks. And on the
average trial jury of twelve, there will be one less
black. Unfortunately, most other counties in North
Carolina also operate jury systems in which blacks are
substantially underrepresented. James O'Reilly and
Richard Campbell have measured representation of blacks
in the master jury list of a variety of counties across
the state in recent years. Some of these counties rely
heavily on voter list as a source for the master list,
while others use substantial numbers from the tax rolls,
and other source required by state law. But the results
are always the same. Blacks are underrepresented in these
counties by the following percentages: Alamance, 39
percent; Catawba, 19 percent; Craven, 40 percent; Duplin,
19 percent; Durham, 25 percent; Lenoir, 49 percent; Nash,
39 percent; New Hanover, 21 percent; Sampson, 19 percent;
and Union, 36 percent. In response, O'Reilly says, some
sectors may seek to dismiss this problem by arguing it is
the blacks' fault--because more blacks than whites do not
register to vote or pay taxes.

But, as every court recognizes, that is
irrelevant. Defendant's have a fundamental
right to a trial by a representative jury.
And it is up to the state to provide repre-
sentative juries. The most frustrating
aspect of this problem is that it is so unnecessary. Tried and tested ways are available to ensure adequate representation of Blacks, as well as the poor and young, who are also largely left off juries.  

The more immediate solution to this situation is to supplement substantially the voter and tax list, as sources of the master list, with names from the state's list of licensed drivers. While not perfect, the drivers license list is the nearest thing to a universally representative list that exist. A much higher and more nearly equal proportions of every race, class, sex and age group are licensed drivers than either registered voters or persons listed for taxes. State drivers license records are computerized, so for a very modest cost the state could send county jury commissions a list of names of a randomly selected group of county residents eighteen years and older to be merged with local lists of voters and tax names. Such a system is operative in Colorado and elsewhere, and would cost the state little and save counties money in preparing the master lists. The prospect for reconciliation of the problem remains dim. A more likely explanation can be borrowed from author Ralph Ellison:

To whites, blacks and black problems are important enough to warrant serious attention.

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22 James O'Reilly, "Blacks Underrepresented on Juries," The News and Observer, 17 August 1980, 6(4)
They are vague, peripheral matters, not seen as more or less invisible to whites whose field of vision is focused elsewhere. 23

After the public consternation, several state politicians, particularly the Chairman of the North Carolina Courts Commission, Democrat Representative H. Parks Helms of Charlotte-Mecklenburg County, Thirty-sixth District, had to acknowledge that jury reforms were needed statewide and was sensitive to making the state court system more credible and equitable. In fact, according to Helms, he had spoken to court and judicial groupings about the necessity. And, as Chairman of the Commission, his priority was to make juries more representative. Also, one source quoted Helms as saying:

What is at stake is more than token representation. It's [sic] important element is the public perception of justice. Under prevailing procedure, many black defendant's routinely come to trial before juries made-up entirely of whites. Reform of such procedures is long overdue. 24


The legislative commission that Representative Helms chairs was enacted by Chapter 1027, Session Laws of 1979, G. S. 7A-506, et. seq., which was empowered to make a continual study of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and the General Court of Justice; and to make the necessary recommendations that would advance the Administration of Justice. This mission was also assigned to the original North Carolina Court's Commission which existed from 1973 to 1975. The original Commission came into force through Article IV (The Judicial Department) of the State Constitution, and adopted by the "people" in a 1962 statewide referendum which gave birth to a Court of Appeals, designed the District Court Division of the General Court of Justice, revised divers jurisdictional and procedural statutes and modified the new courts system with improvements. The 1979 Commission filled in the gap with studies and supervision of the court system, after the void was left by the expiration of the original commission in 1975.25

Under Helms, once the commission was in session, it studied, inter alia, the source representativeness issue under G. S. 9-2, and concluded in a bill titled "An Act to Amend G. S. Chapter 9 to Facilitate the Juror Selection Process" that overdue alterations were needed in the composition of the master jury list. The commission initially encouraged retaining both voter registration list and property tax rolls although "preliminary research indicates that the property tax rolls maybe biased in favor of men, whites and the more affluent" to comprise jury pools. The negative effect of the property tax roll use are that blacks, women and the poor are underrepresented. Besides these two sources, the drivers licenses list would make up the third choice. For it was assumed then and now that the drivers license list would be more representative of both sources combined. But, ultimately, the North Carolina Courts Commission did recommend to then Governor James B. Hunt that only drivers license list and voter registration list be used as sources selecting names for the master jury list in each county--to the total exclusion of property tax listings. Based on Helm's North Carolina Courts Commission work, a legislative bill entitled "An Act to Amend G. S. Chapter 9 to Facilitate the Juror Selection Process" was introduced into the 1981 General Assembly. The bill mandated drivers license list
in lieu of property tax rolls, as soon as the Commissioner
of Motor Vehicle(s) could acquire and make open to each
county a list of licensed drivers in that county. In the
General Assembly, under Chapter 720, Session Law of 1981,
House Bill 915 as so created by the North Carolina Courts
Commission, was enacted into state law July 1, 1981. There-
fore, General Statute 9-2 was amended from its 1967 version
to make county tax rolls optional, rather than the required
source of names for the jury list. Beginning biennium
period 1981-83, the only mandatory source of names was
the voter registration list. As of July 1, 1983, a list
of licensed drivers in each county was to be used as a
second required source list. Other components of House
Bill 915 stated the drivers license list shall be supplied
to each county by the Division of Motor Vehicle.26 This
new act alters the method of random selection of names

26See Article 3, N. C. G. S. 20.43.4 which states:
"Current list of licensed drivers to be provided to jury
commissions. The Commissioner of Motor Vehicles shall
provide to each county jury commission an alphabetical
list of all persons that he has determined are residents
of the county, 18 years of age and older, and licensed to
drive a motor vehicle as of July 1, 1983, and as of July
1 of each biennium thereafter. The list shall include
those persons whose license to drive has been suspended,
and those former licensee who license has been cancelled.
The list shall contain the address and zip code of each
driver, plus his date of birth and sex, and maybe in
either printed or computerized form, as requested by each
county."
when more than one source list is used. It was decided in the General Assembly to eliminate the tax roll as a required source of names due "to established difficulties in using that list and its use adds only marginally to representativeness of a list of voters." The voter's list is adequate in representativeness terms but it excludes persons of all or some cognizable demographic groups such as blacks and women as a list composed of voters and drivers. The drivers list could not be made available to counties in time for use in 1981-83, but at least 50 percent of the drivers will be identified by counties in 1983, and in 1985 all drivers to be truly identified. It is anticipated that by 1985, any jury list compiled by this law will be broadly representative of all segments of the community as possible and well-beyond constitutional challenge.27

In compendium, with regards to G.S. 9-2, the North Carolina State Supreme Court has upheld the states 1967 law on random selection of names for the master jury list from the property tax rolls and the voter registration records as facially neutral and non-discriminatory that

27Campen and Hinsdale, pp. 1-3 and 7. For illustration on how to prepare the jury list from sources of names in North Carolina in light of modifications in G. S. 9-2, see Appendix VI.
produces jurors sufficiently representative of the community to meet constitutional standards. Even still, research does indicate that these sources, especially the property tax list, does sometimes overrepresent whites and males and, maybe, underrepresent other cognizable groupings. Further confirmation is available that a) the voter registration list is almost representative itself of both taxpayers and voters, and b) a list of both voters and licensed drivers is more representative than a list with taxpayers, or voters, or a combination of taxpayers and voters. This revelation, and well-known complications and expenses incurred by using the tax rolls (e.g., multiple listings of the same name, corporate listings, husband-wife listings, absentee-owner listings; all require screening) created incentive for the Courts Commission to recommend passage of Chapter 720 (H 915, effective July 1, 1981) which passed without major overhaul. This new law, for biennium 1981-83, deletes tax rolls as a mandatory source of names for the jury list and approves sole use of voter registration lists for the biennium. Starting July 1, 1983, the Division of Motor Vehicle(s) began furnishing all counties with a list of its licensed drivers over age eighteen, and subsequently the county must use both voters and drivers lists as sources for the master list. The resulting list should more accurately
represent the number of women, blacks, and perhaps other groups in the community from which panels of prospective jurors will be drawn. The delay in authorizing use of the list of drivers was necessary to enable, the Division of Motor Vehicle to acquire each driver's county of residence. Yet, Representative Helms had to concede that passage of this revised law would mean, "there will still be plenty of ground to cover before the selection of North Carolina juries becomes fair for all." He proceeded to state a few stumbling blocks to overcome:

- . . .more fine-tuning will be needed before jury rolls accurately reflect representation of state's racial mix. . . . ;
- . . .even with the use of voter registration list; the number of black persons on those list are still not commensurate with their respective populations. Therefore, there is still a slight disparity. However, he noted that some state officials had recommended using welfare rolls to fill the void. This is a far-fetched possibility. 


Lastly, Helms, in total candor said:

Political reality, . . . is probably one of the factors in the court commission consideration. . . . I think you have to tread slowly. . . . But, we're more interested in doing something that will be fair—and fair, I think, means representative.30

Other facets of Article I, Chapter 9 are: G. S. 9-2.1 which pertains to "Alternate procedure in certain counties"; G. S. 9-3 deals with "Qualification of prospective jurors"; G. S. 9-4 is headed "Preparation and Custody of List"; and, finally, G. S. 9-5 is designated "Procedure for drawing panel of jurors; numbers drawn."

In order to unravel these parts of Chapter 9, each will be discussed in order of succession. G. S. 9-2.1 addresses the problems which might occur in counties using advanced technology or electronic data processing equipment, in addition to the need for human judgement and instinct in jury selection processes and procedures. For example, this statute states that E. D. P. or technological tools may enhance the selection process by:

1) Preparing and maintaining custody list of prospective jurors;

2) In the preparation of drawing and summoning panel of jurors; and

3) Record maintenance of juror names having served, been excused, delayed in service or disqualified.

In using electronic data and technological equipment in certain counties, the procedures applied were to be in writing, adopted by the commissioners themselves and open for public inspection in the Clerk of Court's office. The underlining assumption of this policy or procedure is to "preserve legitimately sanctioned grounds for disqualification, the right of public curiosity and access to the list of potential jurors and the concomitant drawing and summoning of jury panels." Human factors as discernment, insight and instinctive knowledge were to play a role in evaluating the physical and mental competency (i.e., non compos mentis) of prospective jurors at the jury commissioner's discretion.\(^{31}\) In G. S. 9-3, the law states explicitly that all persons are qualifiable as jurors and subject to be included on jury list provided they are citizens of the state and a resident of their county locale. Moreover, this regulation was to hold true, provided the prospective juror did not fall into one of many exemption classes. In other words, a possible juror could not have served on a jury during the preceding two years; they had to be of majority age or eighteen years of age and over; physically and mentally proficient; have knowledge of the English language; not convicted of a

felony or pleaded guilty or nolo contendre (no contest) to an indictment alleging a felony ("or if convicted of a felony or having pleaded guilty or nolo contendre to an indictment charging a felony have had their citizenship restored pursuant to law"), and not having been adjudged non compos mentis. All prospective persons not disqualified herein, were to fall under the rubric, challenge for cause.  

In Article II, G. S. 9-4 maintains that as jury list are arranged, the name and locale of each capable or qualified person elected for the master list shall be recorded on a separate card. After this, each card was to be alphabetized and numbered with each number running successively with a different number on each card. These cards grouped together were to constitute the jury list for a particular county. Two final points with regards to G. S. 9-4 are:

1) The finalized jury list was to be under the guardianship of the Register of Deeds of the County, together with a statement of sources used and procedure applied in creating the list; and

2) The list is to be kept under lock and key, subject, of course, to public inspection during regular office hours.  

Lastly, G. S. 9-5 asserts that the board of county commissioner in each area was to provide the Clerk of Superior

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Court with a jury box, with construction and dimensions approved by the Administrative Office of the Courts.

At least 30 days prior to January 1 of any year for which a list of prospective jurors has been prepared, a number of discs, squares, counters, or markers equal to the number of names on the jury list shall be placed in the jury box.\textsuperscript{34}

The stated designators are to be uniform in size, appearance and weight, and, of course, made of any suitable material. These discs, markings were to be numbered consecutively to conform with numbers on the jury list. The jury box should be sufficient to hold the squares, inter alia, so as to be easily shaken and mixed, and the box shall have a hinged lid through which the discs, squares, counters or markers can be drawn. The lid shall have a lock, the key to which shall be kept by the Clerk of Superior Court. At least thirty days before any session(s) of Superior or District Court demands a jury, the clerk of court or deputy or assistant shall, in public view, upon thoroughly shaking the box, draw therefrom the number of discs, etc., equal to the number of jurors required for session(s) calendared.

\textsuperscript{34}North Carolina, General Statutes (1967), C.9-5. The procedure outlined in N. C. G. S. 9-4 and 9-5 maybe slightly modified in Charlotte-Mecklenburg County, North Carolina in light of electronic data processing systems usage in jury selection processes and procedure.
For each week of Superior and District Court session(s), judges of the Superior and District Courts, namely the Senior Resident Superior Court Judge and the Chief District Court Judge; shall specify the number of jurors to be drawn. Pooling of jurors between or among concurrent sessions of various courts is authorized in the discretion of the Senior Regular Resident Superior Court Judge. When pooling is utilize, the Senior Regular Resident Superior Court Judge, after consultation with the Chief District Judge when a district court is required, shall specify the total number of jurors to be drawn for such concurrent sessions. When grand jurors are needed, nine additional numbers shall be drawn. These divergent disc, et al. shall be separately conserved by the Clerk of Superior Court until new jury list is prepared. The Clerk is further accountable to deliver list of numbers drawn from the jury box to the Register of Deeds, whose duty is to match numbers received with numbers on the jury list. Within three days hence, the Register of Deed is to notify the sheriff to summon for jury duty persons on jury list whose numbers that matched. The summoned person may serve at one or both levels for the week which summoned. Jurors summoned shall be discharged at the close of their session, unless a participant in the trial of a case, and then
discharged upon completion of jury service. In looking at Chapter 9, "Jurors" with four articles having thirty-one points of law, the researcher is persuaded that only Articles I and II, sections 9-1 through 9-5 should be integrated into this thesis. So, in analysis, section 9-1 addresses the jury commission board with emphasis on selection, appointment, duty and obligations, and the last point on compensation and funding of the board's activity. General statute 9-2 explores the use of sources of names in preparing jury list with importance attached to technology and electronic data processing in this endeavor, e.g., drawing and summoning of jurors, juror recordance and maintenance of list. Portion 9-3 deals with prospective jurors and certain exempt categories. G. S. 9-4 looks specifically at maintenance of the jury list. Finally, G. S. 9-5 pertains to the duty of county commissioners and Clerk of Superior Court in jury records management and summoning.


36In July 1980, the judges of Charlotte-Mecklenburg County, Twenty-Sixth Judicial District of the State of North Carolina, reduced the term of jury service from one week to "one day or one trial." Now, fewer prospective jurors have to wait to be selected for a jury while being paid for idle time. Each night during their term of service, jury pool members just telephone into the courthouse and a recording gives a list of numbers. If your
number is not on the list, you do not serve that day. Harry Hoover, Jr., "One Day/One Trial," The Charlotte Weekly Uptown, 28 July 1981, 10. "The 'one day/one trial' concept is the one innovation most likely to draw the broadest spectrum of the community into the jury pool if managed correctly. Under 'one day/one trial,' a citizen is called in for jury duty for just one day unless he is seated on a jury. If seated, he serves until the trial is completed; if not seated, he has fulfilled his obligation and is excused until again selected from the population. The appeal of this system to the citizen is obvious. But the criminal justice system also benefits from the service of an individual who, with inconvenience and uncertainty minimized, is eager, not loath, to perform his civic responsibility. Another advantage is improvement in the intangible quality of citizen respect for the justice system. More importantly, . . . 'one day/one trial' offers a court a very real opportunity to bring a true cross-section of the community into the jury box, and to save money while doing it. Quite simply, the representativeness of the jury pool is increased by implementing the 'one day/one trial' concept because it increases the number of different people brought in to serve. The difference in the number of persons brought in is particularly dramatic in jurisdictions that previously required jurors to serve lengthy terms such as thirty days. For instance, in Wayne County (Detroit), Michigan, 9,975 [sic] people were involved in jury duty during the first six months of their 'one day/one trial' program. Over a comparable period during the previous year, when thirty-day service was required, only 1,348 [sic] citizens served, 13.5 percent as many as served under 'one day/one trial.' The representation of the jury pools also mirrored the racial and sexual makeup of the Wayne County population. Variations on 'one day/one trial' that emphasize other reduced periods of service, such as one week, have had a similar positive impact on community participation. The second key reason that 'one day/one trial' is likely to produce a better cross-section of the community is that fewer excuses are requested. In both Wayne County and in Oklahoma the reduced terms of service resulted in a significant decrease in excuses. Not only does this help produce the higher number of people actually serving, it also tends to bring in more women, more blue-collar workers, and more of the young and the old--those groups most frequently excused for hardship or inconvenience. 'One day/one trial' has the additional appeal of saving courts substantial sums of money. In Wayne County, the operational cost of the system was 228,214 [sic] less than
The overview of jury selection records portion of this paper will occur in two stages. First, a look at two local cases of importance, and, secondly, a study of the jury selection records (i.e., processes and procedures) for two biennium periods in Charlotte-Mecklenburg County. The time span covered will be from the 1960s to 1980s. The applicable cases are State v. Harris and State v. Hawkins; this case examination is done in order to focus on jury selection procedures before the statutory enactments of 1967, supra, and to show that complaints or questions of fair jury representativeness in Charlotte-Mecklenburg County, can be traced back to the early 1960s and even earlier times.37 Secondly, it is sine qua non, the previous system, chiefly as a result of lower payments to idle jurors. As 'one day/one trial spreads to new jurisdictions, information demonstrating its impact on representativeness, and court budgets, should become more available. A partial list of the jurisdictions using 'one day/one trial' includes: Allegheny County (Pittsburgh), Pennsylvania; Anchorage, Alaska; Asheville, North Carolina; Dallas County, Texas; Delaware County (Media), Pennsylvania; East Lansing, Michigan; Harris County (Houston), Texas; Maywood, Illinois; Middlesex County (Cambridge), Massachusetts; Montgomery County, Maryland; Montgomery County, Pennsylvania; Philadelphia County, Pennsylvania; Wake County (Raleigh), North Carolina; and Wayne County (Detroit), Michigan." Henry S. Dogin and David I. Televin, "Jury Systems of the Eighties: Toward a Fairer Cross-Section and Increased Efficiency," University of Toledo Law Review, no. 11 (Summer 1980):952-954, 954 n. 68.

37There are a number of judicial cases spanning from the late nineteenth century to contemporary times which have dealt with jury selection representation matters in Charlotte-Mecklenburg County, e.g., State v. Dunlap, 65
that our research foci would explore the intrinsic and
detailed aspects of jury selection biennium periods 1976-77
and 1980-81—as these times frames represent the empirical
dimension of this action-experimental study.

In *Harris v. State of North Carolina*, appellant was
indicted by an eighteen member grand jury which returned
bill of indictments for six counts of breaking and entering
and six counts of larceny of personal property valued at
less than $200. Some charges were felonies and some were
misdemeanor counts. A twelve member petit jury convicted
petitioner of these offenses in the March, 1962 term of
Superior Court of Mecklenburg County; and of a possible
statutory sentence of eighty-eight years, defendant
received 19.2 years to thirty years. On appeal, Harris
alleged that the gross racial disparity at the grand and
petit jury levels constituted a prima facie violation of
the Fourteenth Amendment. Both grand and petit jury
panels were selected in the identical manner. In both
instances, the jury was all-Caucasian, although there was
no direct evidence to show the racial composition of both
panels. But the facts disclosed that blacks were on both

N. C. 441 (1871); State *v.* Peoples, 131 N. C. 784 (1902);
State *v.* Tommie Walls, 211 N. C. 487 (1937); State *v.* Bell,
212 N. C. 20 (1937); State *v.* Inman 260 N. C. 311 (1963);
State *v.* Westbrook, 279 N. C. 18 (1971); State *v.* Avery
299 N. C. 126 (1980).
grand and petit juries prior to and subsequent to selection of the grand jury in *Harris v. State of North Carolina.*

In the role as fact-finder and trier of law or conclusion of law, the presiding judge stated that the original jury list of 1960 was derived from the 1957 list, in addition to names from the tax list and scrolls, as well as voter registration list, both of which maintain racial identity. The final source of names was the telephone directory, which was not blatantly racial, though through address deduction one could reasonably speculate to race. There was no evidence available to show how the 1957 list was prepared and composed, consequently race may have been a factor then. But with the 1960 listing being composed of four divergent sources, the lingering effect of the earlier procedure, would be negligible at best, according to the Judge. Even with these "newer" sources, three did have racial designations, namely the tax list and scrolls and voter registration list. "Obviously no systematic exclusion can result from the use of all the names available," in the words of the presiding Judge.

The entire jury list had ninety-thousand names. Also, 120 names were selected from the ninety-thousand member jury list by the county commissioners, but there was no partiality shown at the moment 120 names were taken from the jury panel or list. Though, the fact remains, that
all members of the County Board of Commission were able to purge that list and anyone from the jury list of their own volition. There is no evidence, however, that this occurred. What modifications were done to the list was to assure inclusiveness; hence, race was not a factor in the overall composition of the jury list. On a concessionary note, the judge held that in the county commissioner's purging of the jury list, there was the omnipresent potential for exclusion by race--given the sources had racial indications. But, there was no concrete evidence that the commissioners had purged the list in order to systematically exclude Negroes or for any other reason. In addition, the Court held that it was an awesome task to behold, given that the jury list had 90,000 individual slips of paper and there was no racial designations on these slips, "it can be seen that to ask the Court to find this as a method used to prejudicially and systematically exclude black from jury, is to ask the Court to speculate on matters about which there is no evidence and which do not appear reasonable." The 120 names were placed in a hat where a ten-year old child drew the respective grand juror name. This drawing was held in open court before a judge of the Superior Court Division. Between the 120 in the hat and eighteen ultimately serving on the grand jury indicting Harris, certain names were eliminated
from the jury panel due to criminal infractions and felonies. The method of name exclusion proceeded henceforth: A city of Charlotte and Mecklenburg County police officer, namely, J. A. Nichols, was given the jury panel list prior to the sheriff office summoning persons on the list. Officer Nichols checked it against the criminal record file and circled names having such offenses as written above. Then, he informed the sheriff, by phone of the names so circled. Officer Nichols in court testified that he did not know if the encircled jurors were summoned or not, but it was reasonable to assume that jurors circled were not summoned. After which, he held vigorously, that no consideration was given to race of potential jurors. And, at the time, no evidence was shown that the race of the prospective jurors was on criminal records researched and checked by Nichols. Upon receipt of the list, the sheriff employed the exact process as Nichols did above. And potentially, there were as many as ten or twelve names circled in each panel drawn by the commission due to criminal records. And, those who passed the panel screening process were summoned through the mail at their last known address. Mulling over their testimony, the Court stated that there were four possible occasions which could have provided the opportunity to exclude blacks. That is, there existed a real possibility
that Officer Nichols and his counterparts in the Sheriff Office, while encircling the names of unqualified veniremen due to past criminal altercations, could have arbitrarily and unjustifiably eliminated blacks. Moreover, according to the Court, such a determination has to assume that such officials had knowledge of the race of all prospective jurors. But there is no evidence of this knowledge, although it may have been indicated on criminal records checked. If, therefore, the race of some of the jurors was before them, this would not negative the need for some form of selecting only those jurors qualified, and there was no evidence that these men considered race of jurors, if they were able to determine it. The Court also held to ask the Court to hold that four possibilities resulted in systematic exclusion of Negroes would be asking the Court to venture into and wander in the realm of speculation and abandon the test of probability. "This the Court will not do." In other findings, the Court held that factual situations do not present a prima facie case of systematic exclusion of Negroes. None of the statistics before this Court approach those of a case in which a prima facie case was found. The list from which the grand jury was selected had both racial groupings, though the percent [sic] of Negroes to whites on list [sic] not equivalent to the overall racial composition of the county; hence,
there was a lesser percent [sic] of Negroes on the grand jury list than were Mecklenburg County's racial composition, the numerical figures are 76 percent [sic] Caucasian to 24 percent [sic] non-white (black), while the jury list ratio of Caucasian approximated 7.3 percent [sic]--this is a differential of 16.7 percent [sic]. None of the statistics before the Court approach those of a case in which prima facie case was found.\(^{38}\)

**Overview of Jury Selection Records in Charlotte-Mecklenburg County**

The two biennium periods to follow will serve as the cornerstone of this project, particularly with regards to


\(^{39}\) State v. Hawkins, Superior Court of Mecklenburg County, Fall Term, 1964, Docket No. 42-237 and 43-238. Although the facts of the case are dissimilar to Harris, but the motion to quash bill of indictment on grounds of racial inequality in grand and petit jury composition is synonymous to the Harris claim, supra. The case focused on preparation and sources for jury list composition, and an overall examination of the jury selection system in Charlotte-Mecklenburg County in the years 1963-64. In refusing to support defendant's motions, the Court held "there was not systematic exclusion from names into jury box or in names summoned to serve as jurors, after having been drawn from said box, because of race, creed, or color." However, other violations were found odious to State law, in this respect, in eliminating names of persons charged with criminal infractions from the jury list, with the approval and authorization of the County Board, it acted without statutory power, and was improper and a vast departure from State law. Still, this was "not tantamount to discrimination in petit and grand jury selection with regards to race, color or creed."
the jury composition study of the Charlotte-Mecklenburg County jury selection (i.e., process and procedure) system.

The 1976-77 Biennium Period

In biennium period 1976-77, the Mecklenburg County Jury Commission, supra, n. 11, was composed of R. Cartwright Carmichael, Jr., Chairman; C. A. Williams, III, Secretary; and the only black member, Alvin V. Kennedy. The jury commissioners chose to select only two required sources from which to summon prospective jurors: a) the voter registration list with 175,972 persons; and b) the city and county tax list with 155,000 persons for composition of the jury pool—often these lists overlapped. These two sources were selected from an array of other possibilities because they were most up-to-date and most unbiased in that every citizen had an equal right to become a registered voter. To make this determination, jury commissioners are required to meet in October of odd-numbered years (i.e., every two years) to choose a jury pool for the next two years. In this case, October of 1975.

Three documents will be examined to gauge the jury selection and process in Charlotte-Mecklenburg County for the years 1976-77. The first is a fifteen step memorandum detailing the computerized steps taken by Data Processing
Department of Mecklenburg County to compile the master
jury wheel, jury pool, and so forth. The steps involved
are:

1) The use of the 1975 city and county tax billing
files from the Tax Supervisor's Office, where
every sixteenth alphabetical name on this list
is used. This stage was called program CJRS 15
with 25 spaces for names.

2) The most up-to-date voter registration file from
the Mecklenburg County Board of Elections was
sorted alphabetically and the entire file was
printed. The cut-off date was September 12, 1975,
and the Program was titled CJRP40.

3) At the discretion of the Mecklenburg County Jury
Commission, the Mecklenburg County Personnel
Department employed eight temporary clerks to
eliminate duplicates from both the county property
tax list and county voter registration list.

4) Upon the direction of commissioners, again, the
clerks checked every name on the voter registra-
tion list. If a duplicate name appeared, the
number was circled on the tax listing. In the
event, both wife and husband's names appeared on
the tax listing which correspond to the same name
on the voter registration list, both names and
numbers were encircled on the tax listing.

5) Cards were received from the Register of Deeds
Office stating whether a person had served on
jury duty previously from January 1, 1974 through
September 30, 1975 and, if so, those persons were
sorted alphabetically through CJRP50. Tape number
50 was placed into the computer and a list was
printed under program number CJRP30.

6) The list of persons having served previously was
checked by the Clerks against both the tax and
voter registration files. In the event of a
matching among the three listings, name(s) on
either tax or voter registration circled and the
letter "J" was placed next to the circle.
7) Through a disqualifying process, all persons convicted of felonies in Mecklenburg County from 1945 to September 30, 1975, and a list of all those found mentally incompetent by the Clerk of Superior Court or by heads of state hospitals from 1957 to September 25, 1975 in the Clerk's Office were eliminated. These names along with a code showing if the person was felon or non compos mentis and the actual data were keypunched onto data processing cards. They were alphabetized and placed on tape CJRP50. This went into the computer and generated a printed list program number CJRP30.

8) This list was checked with the clerk against the tax and voter registration file. If a match occurred, the name of the tax and voter registration file was circled and the letter "F" was placed next to the circle.

9) The voter registration and tax listings were forwarded to the keypunch section where deletion cards were punched with individual numbers for those marked or circled. Also, cards were punched for wives circled with black flair pens to add to the raw jury list.

10) Tape CJRF15, which came from the tax file and deletion cards from tax listings, was stripped sorted to produce CJRFT Tape 2--Program. CJRP70 then printed the tax list alphabetically.

11) Jury F3 (Tape 3) and VOTJR 2 was sorted into raw jury list tape (CRJFY) then used to print raw jury list with 142,860 names (unculled list).40

12) The jury commissioners met and decided (they are required to have a jury list two or three times as many names called in each previous two years) that one-third of raw jury list (47,605) would be the number of potential jurors needed for the final jury list for January 1, 1976 through

December 31, 1977. To arrive at 47,605, every first, third, seventh, eleventh and fourteenth person of fifteen on raw jury list of 147,860 unculled names chosen to make final jury list (the number sequence alters every two years).

13) For every 47,620 names from the culled list a card was punched by computer for each name on the final jury list. Therefore, program CJRP80 produced the final jury list, tape and card file.

14) Lastly, tape program CJRP90 produced a "report" which was cut into one inch squares under authority of the Jury Commission on November 20, 1975 in the Register of Deeds Office, and later the squares or disc were taken to the Clerk of Superior Court's Office in the County Courthouse and placed in the jury box. These squares or discs numbered from 1 to 47, and there were 620 items cut uniformly. On these one-half inch square pieces of paper are numbers which correspond to names on the master jury list retained in the Register of Deeds Office. The box was locked by the jury commissioners and the key was relinquished into the custody of an administrator of the Clerk of Superior Court Office on November 20, 1975. The metal box was five feet long and two feet high in measurement. Additionally, the forestated "report" generated cares for all the persons on the final jury list and passed them on to the Register of Deeds. The names were numbered and placed in alphabetical order in the metal file. The list was locked and the key was given to the Register of Deeds. The metal file was labeled Mecklenburg County Property Number 3565.

15) Thirty to forty days before the session of either the District or Superior Court, the Clerk of Superior Court or one of his subordinates shall draw the appropriate number of disc or squares.

41From January 1974 to September 1976, 50,524 names were chosen from the jury box which had 145,000 names, and 8,269 actually served as jurors.
from the jury box, contingent on the number of jurors needed. Normally, the required number of jurors has ranged from two hundred to seventy, and it often fluctuates according to the weekly juror dictates set by the Senior Resident Superior Court Judge and the Chief District Judge. Once the drawing stage has been fulfilled by the clerk's office, the Register of Deeds matches the number on cards with the names and addresses of potential jurors. The chosen names are given to the sheriff, who informs the person on the date they are to begin jury duty. Failure to appear as summoned for jury duty or to acquire the legal excuses allowed by law can result in a penalty.42

In memorandum or document two, the Register of Deeds of Mecklenburg County, Mr. Charles Crowder, stated that the master jury list in force from January 1, 1976 to December 1, 1977 had 47,620 names; and from this master jury list or box located in the Clerk of Superior Court Office, only 18,143 prospective juror names were drawn from January 1, 1976 through September 30, 1977. Of this figure, only 18,276 jurors actively served; 181 jurors were deceased; 3,293 jurors were not found or the summon was undeliverable; 855 jurors were no longer residents; and 285 jurors were permanently disabled.43

In the third memorandum from his desk, Mr. Charles Crowder discusses the role of the Register of Deeds in the

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42 Mecklenburg County, Data Processing Center, Procedure Used in Preparing List of Eligible Jurors Names for the Years 1976-77.

43 Memorandum from Charles Crowder, Register of Deeds of Mecklenburg County to the County Jury Commissioners, List of Prospective Jurors and Breakdown, 3 October, 1977, Charlotte, North Carolina.
jury selection preparation. He stated:

1) The Office of the Register of Deeds received a list of numbers (i.e., disc and squares) from the Clerk of Superior Court Office, and these numbers were keypunched and verified.

2) A worksheet is completed for the Data Processing Department, after which, a list of members and keypunched cards are carried to the Data Processing Center to obtain a list of juror's names. The Data Processing Department also supplies a list of labels for mailing jury summons for the Sheriff Department.

3) Separate weeks of prospective jurors having two original and three carbons of each week (special venire, three original and three carbons). One original and one carbon list of jurors delivered to the Sheriff Department with delivery letter to be signed by the Deputy Sheriff.

4) A list of prospective jurors for each week is passed to the Clerk's Office (viz., one original and two carbons).

5) The Register of Deeds Office receives one copy of delivery letter, a copy of the numbers, and a duplicate or computer printout of potential jurors.

6) A list of prospective jurors cards are drawn from the files of computer print-out sheets, which are kept in weekly order until reports come from the Courts as to whether or not they are served or the reason they were not served. For those not serving, a reason is written on the back of the card and filed under deferred, excused, non-resident, armed serviced, deceased and permanently disabled.

7) The Registrar of Deeds gets from the Sheriff Department a weekly list of permanently disabled persons. The cards are retrieved from the excused stack of permanently disabled is written on the back of each card and then placed on the total list which is kept weekly.

8) Cards are filed and records maintained of persons who serve or did not serve on a jury within the previous two years.
9) And, finally, the Register of Deeds of occasionally requested to check records for any previous two years to see if a person is eligible to serve on the jury. 44

1980-81 Biennium Period

In the years 1980-81, the Mecklenburg County Jury Commission Board consisted of three members: Mrs. Hugh Campbell, Chairman; Mrs. Mary Bogus, Secretary; and Dr. Spencer Durante, Afro-American member. This determinative body in the county jury selection process met in October of 1979, in order to fulfill its statutory mandate that the master jury list be compiled by the first of December before the new biennium period. Unlike other biennium periods, this body of commissioners faced new challenges in determining what sources to utilize in Mecklenburg County, beyond the established voter registration list and property tax listings; as a new State law eventually made the drivers license list and voter registration list mandatory for source selection--and reversed the 1968 Act by making the county property tax optional.

In this, the last part of the Overview of Jury Selection Records, five distinct documents will be analyzed. The first paper explores the various steps used to compile

44 Memoranda on the Role of the Register of Deeds in Selection Process.
the master jury list for 1980-81; the five major steps are:

1) Step one utilizes the billing tax master files and creates the adjusted tax file entries as follows: a) all individual real estate and personal property owners; b) if the property is co-owned, an entry is made for the co-owner(s); c) corporations and companies are rejected; and d) all non-Mecklenburg County citizens are rejected.

2) Step two compares the records of the voter drivers license and property tax files. All names on the voters file are seen as unique. Names on the other two lists are compared as follows: a) the drivers license file is compared against the adjusted tax file--only names unique to the selected driver duplication; b) the drivers license file is compared against the voter master file--only names unique to the selection drivers license file are retained; c) the tax file is compared against the voter master file--only names unique to the selected tax file are kept. Also, in procedure two, the names from the three files are combined and sorted alphabetically. This disqualified file from the previous two years is compared against the jury file and duplicates are deleted from the file. The jury service file is compared against the jury file and if duplicates appear the record is deleted from the jury master file. As a result of the above action, a jury master file listing is yield, which has the proceeding information--Driver Record (10,000), Tax Record (100,000), and Voters Record (40,000), for a total record on file of 150,000.

3) In step three, random numbers are generated for all names on the jury master file and placed in random order.

4) At stage four, the jury master file is updated weekly. This information comes from the data recorded on the juror panel form by the jury clerk which is keyed into the system and applied against the jury master file. The maintenance is applied against records by jury master record number. The records posted are as follows: a) juror served--days served (not recorded for
grand jurors), and service date (expiration date for grand juror is recorded; for petit jurors service date written on the record at the time of selection; b) deferred-new date (recorded as service date if venire for deferred date has already been selected); c) excused; d) disqualified; e) failed to appear; f) undeliverable; and g) name and/or addresses connection. In addition, once a month both the voter master file and tax master file updates are noted on the jury master file. Maintenance applied against the jury master file records by voter master file number and tax master file number. These particular additions include address and name changes added to either master file. The voter master file updates are based on death, felony conviction, non compos mentis, or a notice of cancellation proceeding from a voter change of county residence and registration in that county. And monthly a jury yield report is made during the maintenance process.

5) In the final step, as requested by the Trial Court Administrator, the step involves the selection of jurors from the top of the jury master file, to the exclusion of those who would have served within the preceding two years. When a juror record is chosen, data selected is entered into a master file record and a juror selected record is generated and written into an intermediate work file. A three digit juror number is assigned to the juror selected for particular work in order in which juror selected. The juror number is entered into the juror selected record. The intermediate work file is sorted by zip code and juror summonses are printed. When the work files are printed, they are sorted by juror number for each week and panel forms are printed. The work files are then separated alphabetically by juror's last name and service date and a listing is generated of jurors summoned by the month.45

The second paper generated on the 1980-81 biennium period is the "Jury System Report," wherein the following tabulations and breakdowns are recorded:

1) The number of persons summoned for jury duty - 43,760;
2) The number of disqualified, undeliverable, or excused prospective jurors and summonses - 21,686;
3) The number of persons excused by telephone - 80,627;
4) The number of persons on jury duty - 13,447;
5) The total jury days served - 27,544;
6) The average time on jury duty - two days; and
7) The number of jury trials started - 691. 46

The third form which details jury selection processes and procedures for 1980-81 biennium years is headed Filed Entries, and it has the following data:

1) Tax Billing - 207,563;
2) Tax Records Generated - 69,899;
3) Drivers License File - 302,504;
4) Voter Registration File - 190,011;
5) Disqualified File - 14,935;
6) Jury Served File - 9,037;
7) Raw Jury File - 339,450;
8) Jury Master File - 100,000;

In summary, Chapter IV has covered areas applicable to the jury selection process and procedure in the State of North Carolina and Charlotte-Mecklenburg County. As such our coverage has studied the role of states in a Federal system as it relates to jurors and the trial by jury system; and, last, a historical and recent look at jury selection records and procedures in Charlotte-Mecklenburg. Within each of these categories some summary points of analysis may be offered—which will be stated in the proceeding sections. Under the role of states in a Federal system and the Anglo-American concept of trial by jury, one has to recognize that states do determine how jury systems will function, who will participate, and under what conditions, circumstances and requirements. To regulate

47Mecklenburg County, Data Processing Center, Procedure Used in Preparing List of Eligible Jurors for the Years 1980-81. The Data Processing Center also generated other documents detailing the steps used to compile the master jury list for 1980-81, and the procedure used to generate random numbers and the procedure for deleting duplicates. However, such items will not be discussed in this section due, in part, to the intricate technical details and complications. Also, a definition of the various files is included.
how jury systems will function on a state and local level, states have enacted statutory laws to govern such, e.g., N. C. G. S. 9. This enacted law has four articles and many sub-areas which addresses the jury system. However, for our objective only Article I, sections 9-1 through 9-5 will be mentioned. Section 9-1 addresses the composition, appointment, qualifications and compensation for jury commission board members across the state. Section 9-2 represents the backbone of jury selection statutes in the state, it mentions jury list preparation and sources. This phase is extensive due to public dissension over source list usage and jury selection fairness and partiality. In other words, state law was altered in the selection of sources for jury selection after claims of racial, sexual, and economic discrimination stemming from those in force. In a testament of this effect, editorialist, commentators, news articles, administrative memos and trial transcripts attested to this dilemma. Eventually statutory modifications were made in G. S. 9-2, such that now the primary sources for juror selection are the voter list and drivers license list, in opposition to property tax list which is more blatantly responsible for jury unrepresentation. Other facets of Chapter 9 are: G. S. 9-2.1 regulates the use of advanced technology in jury selection processes; G. S. 9-3 looks at the qualification
for prospective jurors; G.S. 9-4 explores the preparation and custody of jury list; and G. S. 9-5 studies the procedure for drawing panel of jurors. In the last two categories for this chapter, a look at historical and recent records of jury selection processes in Charlotte-Mecklenburg, one sees the following points: in examining jury records from a historical and recent perspective, one can view jury representation issues from the past, and understand the processes of jury selection for two biennium period—which is the foundation for our empirical project (see Chapter V). In the cases of State v. Harris and State v. Hawkins, both defendants challenged the jury selection process as racist. But both were overruled at trial and subsequent appeal. And, in the last portion, an overview of jury selection records for two biennium period—details and documents selection procedure for the applicable years. For biennium period 1976-77, the three member Mecklenburg County Jury Commission chose prospective jurors from the voter registration list and city and county tax list. To document this process, three sources were examined. The first is a fifteen step memorandum detailing computerized steps to compile the master jury list. The second memo is from the Register of Deeds discussing the master jury list, those summoned, jurors actively served, and so forth. The third document highlights the role of
the Register of Deeds in the selection process. During the 1980-81 biennium period, the Commissioners utilized the voter and drivers lists for juror selection, in view of recent changes in G. S. 9-2. In order to delve into this section, five documents were perused. The first looks at steps used to compile the master jury list for 1980-81; the second is a jury system breakdown report and so forth.

This summary and analysis of Chapter IV is intended to capsize the main points of Chapter VI; but also to offer a backdrop and preface to Chapter V—a jury composition study of two biennium periods. In essence, both Chapters IV and V should be viewed as interconnected.
CHAPTER V
JURY COMPOSITION STUDY OF TWO BIENNIAL PERIODS

Research Design

Outline of the Study

This chapter will explain the process, procedure and results of a jury composition study conducted in Charlotte-Mecklenburg County, North Carolina for the years 1976-77 and 1980-81 at the jury pool level. However, before this is done, the socioeconomic status of the field site will be discussed in succinct terms. The socioeconomic status factors will be explained according to set categories of age, gender, families, household type and relationships, marital status, nativity and place of birth, class of workers, employed and unemployed, education, racial breakdown, and, last, the general population. However, as a caveat, it should be noted that the Mecklenburg figures--such will automatically include the Charlotte population--as Charlotte is the largest political and territorial entity in Mecklenburg County. In the age category, the median age for Charlotte and Mecklenburg County is 29.3 and 29.8 respectively; for whites it is
31.8 and 31.5; and for blacks it is 24.5 and 24.7. Between the ages of eighteen and twenty-four, there were 54,657 persons, and for those sixteen years and older there were 306,694 persons. In the gender category for 1980 for 15 years and over, there were 166,590 females in Mecklenburg County and in Charlotte proper 131,346 such persons; for males fifteen years plus--there were in Mecklenburg 147,131 and in Charlotte 112,588. The other SES figures for this section will be listed chronologically: male, twenty-five plus, 109,689; females, twenty-five plus, 127,600; male, eighteen to twenty-four, 26,262; female, eighteen to twenty-four, 28,395; female, sixteen plus, 163,342; female, sixteen to nineteen, 15,234; female, twenty to twenty-four, 20,508; female, twenty-five to fifty-four, 87,126; female, fifty-five to sixty-four, 19,205; female, 65 plus, 21,269; male, sixteen to nineteen, 14,736; male, twenty to twenty-four, 18,927; male, twenty-five to fifty-four, 80,946; male, fifty-five to sixty-four, 16,281; male, sixty-five plus, 12,462.

The third section pertains to families in Charlotte-Mecklenburg for 1980, where there were a total of 188,600 families. Of this total, 146,750 were married couples, 138,203 were white families, and 47,989 were black families. In the former instance there was an average of 3.4 person per family, and in the latter case there was
an average of 3.66 persons per family; but for all families the average was 3.21. In the next category--household types and relationships--one sees that the average person per household in Charlotte-Mecklenburg has 2.66 members. In other situations, there are 35,109 female households in Charlotte-Mecklenburg. But, overall, there are 395,757 households in Mecklenburg County, and 310,575 in Charlotte with this figure being included in the former figure. As for the persons per household of Mecklenburg County, it was 2.69, and in Charlotte 2.64. The number of white households in Mecklenburg County was 285,500, while in Charlotte it was 209,436--with this figure being immersed into the former category. In white households, the average person per household is 2.56 for Mecklenburg County, and 2.47 for Charlotte. In opposite terms, black households number at 105,027 in Mecklenburg, and 96,269 with the latter figure being immersed into the former. The average person per household in Mecklenburg County is 3.09, but in Charlotte it was 3.07 with this figure included in the first. In another category, nativity and place of birth, Mecklenburg County has 394,123 persons of native origin, of which the 305,705 Charlotte figure is included. Of the Mecklenburg County residents, 251,317 were born in North Carolina and in Charlotte, 190,621. For those born in another state, but reside in Mecklenburg
County, that figure is 141,155 and in Charlotte it is 113,746. In the final two sub-areas of this category, born abroad, at sea, etc. or foreign born, there were 1,651 in Mecklenburg of which 1,338 were in Charlotte; and of the foreigners, 10,147 were in Mecklenburg of which 8,742 were in Charlotte. In the next category, class of workers for Charlotte-Mecklenburg, there were 170,161 private wage and salary workers, approximately 5,000 employees of own corporation, 4,000 federal government workers, 7,300 state government workers, 15,300 local government workers, 9,000 self-employed workers, 400 self-employed agriculturalist, 500 unpaid family workers, and 50 unpaid family workers in agriculture. The next classification pertains to the employed and unemployed and will be separated into the following sectors: persons, gender, and age.

1) Persons 16 years plus in labor force - 215,621
   Civilian labor force - 215,309
   Employed - 206,236
   Unemployed - 9,073 or 4.2 percent of civilian labor force
   Not in labor force - 91,073

2) Female, 16 years plus in labor force - 97,807
   Civilian labor force - 97,767
   Employed - 93,129
Unemployed - 4,638 or 4.7 percent of civilian labor force
Not in labor force - 65,535

3) Female, 16 to 19 years
   Employed - 6,410
   Unemployed - 994
   Not in labor force - 7,830

4) Female, 20 to 24 years
   Employed - 14,293
   Unemployed - 1,107
   Not in labor force - 5,101

5) Female, 25 to 54 years
   Employed - 60,182
   Unemployed - 2,237
   Not in labor force - 24,674

6) Female, 55 to 64 years
   Employed - 9,607
   Unemployed - 237
   Not in labor force - 9,361

7) Female, 65 years and over
   Employed - 2,637
   Unemployed - 63
   Not in labor force 18,569

8) Male, 16 to 19
   Employed - 7,633
Unemployed - 940
Not in labor force - 6,163

9) Male, 20 to 24
   Employed - 14,815
   Unemployed - 1,109
   Not in labor force - 2,952

10) Male, 25 to 54
    Employed - 74,733
    Unemployed - 2,049
    Not in labor force - 3,956

11) Male, 55 to 64
    Employed - 12,572
    Unemployed - 221
    Not in labor force - 3,488

12) Male, 65 years and over
    Employed - 3,354
    Unemployed - 116
    Not in labor force - 8,979

In this section, the emphasis will be on education as of the 1980 Census:

1) Persons, 18 to 24
   High school graduates - 75.4 percent
   Four or more years of College - 8.8 percent

2) Males, 18 to 24
   High school graduates - 72.6 percent
Four or more years of college - 8.7 percent

3) Female, 18 to 24
   High school graduates - 78.0 percent
   Four or more years of college - 8.9 percent

4) Male, 25 and over
   High school graduates - 70.4 percent

5) Female, 25 and over
   High school graduates - 68.4 percent

6) Persons, 25 and over - 237,289
   Less than 5 years elementary school - 3.2 percent
   High school graduates - 69.3 percent
   Four or more years of college - 21.2 percent
   Median years of school completed - 12.7 percent

7) Persons 3 and over enrolled in school - 116,719
   3 to 4 years old - 54.9 percent
   5 to 6 years old - 90.0 percent
   7 to 13 years old - 98.7 percent
   14 to 15 years old - 98.3 percent
   16 to 17 years old - 89.2 percent
   18 to 19 years old - 58.9 percent
   20 to 21 years old - 37.7 percent
   22 to 24 years old - 17.2 percent
   25 to 34 years old - 8.2 percent

With respect to the racial composition of Charlotte-Mecklenburg as of 1980, the proceeding figures apply:
Total, 404,270; white - 291,442; black - 107,006; American Indian - 1,404; Eskimo - 3; Japanese - 225; Chinese - 507; Filipino - 157; Korean - 191; Asian Indian - 1,245; Vietnamese - 425; Hawaiian - 31; Guamanian - 18; Samoan - 5; and other - 1,606. The last two portions of the SES will address the marital status and general population figures. With respect to marital status, the following applies:

1) Male, 15 and over
- Single: Mecklenburg - 44,297; Charlotte - 34,656
- Married but Separated: Mecklenburg - 86,990; Charlotte - 64,595
- Separated: Mecklenburg - 3,038; Charlotte - 2,410
- Divorced: Mecklenburg - 7,337; Charlotte - 6,203

2) Female, 15 and over
- Single: Mecklenburg - 41,392; Charlotte - 33,761
- Married but separated: Mecklenburg - 86,763; Charlotte - 64,498
- Separated: Mecklenburg - 7,895; Charlotte - 7,104
- Widowed: Mecklenburg - 18,568; Charlotte - 10,539
- Divorced: Mecklenburg - 11,972; Charlotte - 10,539

This final stage will offer a general population portrayal of Charlotte-Mecklenburg in summary: 1970 - 354,656; 1980 - 404,270; 1970, 18 plus years - 228,024; 1980, 18 plus years - 291,883; 1970 median age, 26.6; 1980 median age - 29.5.
1) Total population - 404,270
   Total household - 395,757
   Persons per household - 2.69
   Persons per family - 3.21
2) White persons - 291,442
   White households - 285,000
   Persons per household - 2.56
   Persons per family - 3.06
3) Black persons - 107,006
   Black households - 105,027
   Persons per household - 3.09
   Persons per family - 3.67
4) Spanish origin person - 3,962
   Spanish households - 3,905
   Persons per household - 3.02
   Persons per family - 3.53

The basic nature of this study involves the use of a social science technique entitled jury composition studies, which is often employed to challenged unrepresentative grand and petit jury pools. Also, the use of inferential statistical theory will be employed to make the systematic comparisons between the jury pools (observed frequency) and census data (expected frequency). In effect, jury composition studies compares the jury pool and the population of the jurisdiction under examination to find out if certain
cognizable classes of persons are represented in the jury pool and to what extent.¹ The study compared the socio-demographic characteristics of the total population of Charlotte-Mecklenburg County to those persons who served in the jury pool in Charlotte-Mecklenburg County for years 1976-77 and 1980-81. The alternative hypothesis (H₁) was that the socio-demographic composition of the jury pool was not representative of the Charlotte-Mecklenburg community.

In Charlotte-Mecklenburg, North Carolina, the selection of the jury pool is compiled from the voter registration rolls, the property tax list, and the North Carolina drivers license list. The United States Census Bureau Report for 1970 and 1980, and intercensus data from the North Carolina State Data Center will be used to establish the profile of Charlotte-Mecklenburg County as the community under examination (expected frequency). Once this profile is established in terms of sex, age, race, income, occupation and education; this data will be compared to the data found by telephone survey interviewing all four hundred persons who were chosen via systematic random

sampling from a file and computed printout of person who have actually been in the jury pool (observed frequency). Of the various sampling techniques, that is, the simple random, stratified proportion, multi-stage stratified proportion, stratified disproportion, multi-stage stratified proportion, cluster, quota, convenience, and snowball --the systematic random was chosen because it is most viable for a population size of one hundred to one thousand; accuracy and cost ranges from medium accuracy or medium cost and low accuracy or low cost; the population listing is available; the geographic area encompasses large (regions, states) medium (cities, counties) small (school, community); the population diversity is low; prior knowledge of population characteristics and data availability is little known; and, finally, it involves simple research issues. Thus, a chi-square statistical basis was established as a credible method of evidence for evaluating the representative principle with respect to jury pools in Charlotte-Mecklenburg County.

**Selection of the Sample**

Generally, statisticians prefer the drawing of a sample (which is a subset of a population or universe since populations can rarely be studied exhaustively, so samples are useful to estimate the parameters of the population as
a basis for arriving at an hypothesis concerning various characteristics of the population) in preference to an actual counting as a superior and more accurate method of determining differences between two population (which is a complete set of individuals, objects or measurements having some common observable characteristics). Therefore it is possible to compare the sample with another measure, in this case with the census data, to determine whether the sample from the jury pool reflects the overall population of Charlotte-Mecklenburg County. The number of prospective jurors in Charlotte-Mecklenburg selected for the jury pool for 1976-77 numbered at 8,276 while those in 1980-81 totalled 13,447, for a total population of 21,723 persons during both periods. The 1976-77 figures were gathered from the Mecklenburg County Register of Deeds Office and Mecklenburg County Clerk of Superior Court Office under the file titled "Jurors Served." The 1980-81 figures were taken from the Mecklenburg County Courts Administrative Office under the direction of Jim Drubart, titled "Jury Master File." The sample subjects were chosen via systematic sampling from the computer created and file list containing the North Carolina Voter Registration List, Property Tax Listings, and the North Carolina Drivers Licenses List. Four hundred were chosen for the final sample list to be interviewed—with two hundred for each
biennium period. It should also be added that the sample size is determined by the researcher's own common sense, in light of cost factors; and the inverse relation of sample size affecting clerical task, red-tape, printing, phone charges, keypunching, and computer time. Also, in most dissertations, sample sizes of sixty to three hundred are common, with most averaging about two hundred respondents. However, as a "rule of thumb," the nature of the study dictates the specific sample sizes within each dissertation or project.

Data Collection and Instrumentation

The four hundred persons systematically selected were contacted by telephone. The subjects were informed how their names were selected and the details of the study. They were then asked if they would respond to some general questions. If the reply was negative, they were thanked for the time taken. If the reply was positive, six questions were asked:

1) What is your occupation?

Professional
Manager/Administrator
Sales/Clerical
Craftsman/Foreman
Equipment Operator
Laborer
Farm/Farm Labor
Service Worker
Occupation Not Above 2

2) Gender
   Male
   Female

3) What is your education level?
   Less than one year of schooling
   2 to 4 years
   5 to 7 years
   8 years
   1 to 2 years of high school
   4 years of college and above

4) Yearly Income
   Under $5,000
   $ 5,001 - $ 9,999
   10,000 - 14,999
   15,000 - 20,000
   20,001 - 29,999
   30,000 - Above

5) Caucasian
   Black
   Indian
   Japanese
   Chinese
   Filipino
   Other 3

6) Age Group
   18 to 19 4

2 The professional and occupation not above categories were deleted from the occupational analysis because of the unavailability of expected frequency data.

3 Hawaiians, Koreans, East Indians, Indochinese, and Polynesians, etc.

4 The baseline figure used for this category was considered a more relevant figure as the law entitles eighteen years as a minimum age for jury service (N. C. G. S. 9-3, 1967), and also for the franchise.
20 to 24
25 to 29
30 to 34
35 to 39
40 to 44
45 to 49
50 to 54
55 to 59
60 to 64
65 to 69
70 to 74
75 plus

The data was recorded as the responses were given. For the years 1976-77 all questions were posed; while for biennium years 1980-81 only two questions were concerned with, i.e., race and sex (see Appendix VII).

Limitation - Reliability and Validity

The use of a chi-square statistical tool did not identify causal relationships. It indicated only that a significant difference did or did not exist between two groups of variables. Also, depending on the sample size (i.e., small), there can be problems with chi-square as a statistical tool. Moreover, the ideal study would have sampled every jury pool member for these respective periods. But this seems impossible given the limited resources of the investigator, and is unnecessary given the inferential statistical procedure employed. Also, legal restrictions forbid the interviewing of actual jury pool members, hence, the study can be viewed as an after
matter as opposed to a "right now" situation. There was also the possibility that the interviewees did not answer factually when interviewed. One factor which may contribute to this result is that the respondents' emotions influenced their decisions in stressful situations.

In the case of an alternative hypothesis, which asserts that the population parameter is different from the one hypothesized in a one-tail or two-tail test, the direction of that difference is explained. Such will not occur in this jury composition study.

**Statistical Inference Hypothesis Testing**

There are two predominant statistical formats used in drawing conclusions from data. The first class of statistics is titled "descriptive" and includes values such as frequencies, proportions, percentages, means, standard deviation and correlations. The primary function of these qualities is to describe characteristics and patterns in the data. The other class of statistics, labeled "inferential" is employed to discriminate between empirical relationships which are reliable or systematic or those that are probably spurious, chance variation or haphazard. There are two areas of statistical inference: a) estimating parameter values, and b) hypothesis testing. Example of inferential statistics are the F-test and
chi-squares test, which is rooted in the basic assumption about the relationship between the random sample of subjects observed in the study and the potential population of subjects who can be sampled if the experiment was repeated under basically the same conditions. For the purpose of this paper, the inferential statistic, particularly hypothesis-testing and chi-square and mathematical probability will be utilized.

Statistical inference hypothesis testing is a mathematical, statistical, or probabilistic model of a real-world problem. It aids in the making of systematic comparisons of the drawing of conclusion about population parameters (or characteristics of a population which are measurable). These comparisons and conclusions are born of two distinguishing categories of data, i.e., expected frequencies from the appropriate census date (independent variable) and observed frequencies deriving from a systematic survey sample of the jury pool (dependent variable). With regards to this jury composition study, the expected population frequencies were extracted from the statistical tables of the 1970 and 1980 United States Census Reports in the Census Bureau in the Northwestern Building on South

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Tryon Street in Charlotte, North Carolina and intercensus data from the North Carolina State Data Center, Raleigh, North Carolina. Taken as a baseline of how the county appeared in terms of education, sex, race, income, age and occupation, these figures then represented the independent variable. The observed frequencies for 1976-77 are derived from the County Voter Registration List, County and City Tax Listings of Billings, excluding businesses; and for 1980-81 from the Voter Registration List, Property Tax Listings, and North Carolina Driver License List. The observed frequencies were taken from the data found by interviewing four hundred persons who were selected via systematic sampling from a list of persons who actually made up the jury pool. Observed frequencies constituted the dependent variable. They were dependent on the make-up of the community.

The groupings used throughout this study for both the expected and observed frequencies were the same as those of the United States Census Report. Census data are usually used to prove the composition of the community. There is generally a presumption that the United States Census data defines a cross-section of the community, infra. Duren v. Missouri, 439 U. S. 365. Moreover, Elissa Krauss and Beth Bonora stated in Jurywork: Systematic Techniques that census data are often inadequate given the ten-year
interval between censuses, and the significant changes that may have occurred since the last count. Also, most demographers, and the Census Bureau itself have noted a number of inadequacies in the methods and procedures used, including: differential undercounting of blacks and other minorities; the poorly coordinated concept of race, national origin, and ethnicity as applied to those of Hispanic background; and failure to gather citizenship data from all respondents. Difficulties may also arise because of locally important distinctions are not picked up by the census. For example, in some areas neighborhood or election precinct boundaries do not coincide with census boundaries. There are established methods for evaluating and quantifying the errors that result from many of the inadequacies. There are also numerous sources of demographic data in addition to the census data including state and local planning and social service agencies, chambers of commerce, board of realtors, tax and voter registration officials, political candidates and electoral organizations, and knowledgeable local residents. But corrections of the census and alternative sources often do not yield results significantly different from easily proved and readily accepted census data.6

6National Jury Project, Inc., Clark Boardman Company, Ltd., New York, pp. 5-44.3 and 5-45.
Statistical inference-hypothesis testing has certain essential qualities:

A) Mutually Exclusive Hypothesis Established. A hypothesis of no difference called a null hypothesis and its alternative are formulated.

The null hypothesis \( (H_0) \) of this study is that the Charlotte-Mecklenburg County jury pool for 1976-77 and 1980-81 did reflect the socio-demographic characteristics of the county population due to the jury commission use to the voter registration list, county property tax listings, and the North Carolina Driver License List as sources to constitute the Master Jury List from which prospective jurors are chosen. This procedure, in turn, has served to represent the ensure jury service to constitutionally entitled groups as females, older and younger persons, racial minorities, the poor and less-educated, and blue-collar workers. Careful analysis of the logic of statistical inference reveals that the null hypothesis can never be proved or established. It states that there is no difference between two or more classes with respect to some characteristics. However, investigators often do believe there is a real difference in fact existing between two classes. Stating such an hypothesis as a null hypothesis the investigator then hopes that collected data will permit the rejection of the null hypothesis. A
satisfied test of a null hypothesis consists essentially of a calculation of the likelihood, or probability that a set of observed data could have resulted (by chance) from a "no difference" relationship between two classes.

Alternative hypothesis is a statement specifying that the population parameter is some value other than the one specified under the null hypothesis. The alternative hypothesis \((H_1)\) of this study is that Charlotte-Mecklenburg County's jury pool for 1976-77 and 1980-81 did not reflect the socioeconomic characteristics of the county population due to the jury commissions use of the voter registration list, county property tax listings, and the drivers license list as sources to constitute the Master Jury List from which prospective jurors are chosen. This procedure, in turn, has served to underrepresent and deny jury service to constitutionally entitled groups as females, racial minorities, the poor and less-educated and blue-collar workers. We cannot directly prove the alternative hypothesis. However, if we can reject the null hypothesis, we can assert its alternative, namely, that the population parameters is some value other than the one hypothesized. Support of the alternative hypothesis is always indirect. We have supported it by rejecting the null hypothesis. On the other hand, since the alternative hypothesis can neither be proved or disproved
directly, we can never prove the null hypothesis by rejecting the alternative hypothesis. The strongest statement we are entitled to make in this respect is that we failed to reject the null hypothesis.

B) Inferential Test Statistic to Evaluate Null Hypothesis - Chi-square ($X^2$). Of the various inferential statistical tools available the chi-square is the one opted for because:

1) It is a statistical test used to compare two frequency distributions or two cross-tabulations to determine if a significant or non-significant difference exist between the characteristics of the population and the sample on expected frequency and observed frequency.

2) The data in question fall naturally into discrete categories and are summarized in what is called a contingency table. Individual entries in the table are called cells.

3) It does not identify causal relationships. The method indicated only that a significance difference (disparity, imbalance) did or did not exist between two groups of variables. The analysis was performed by a computer operation.

In brief, a comparison is made by means of a chi-square statistical test to determine whether or not the differences detected in the jury pool population and the population of the county are occurring by chance alone or the result of systematic discrimination. The chi-square formula should be used wherever the characteristic being examined is definable by more than two categories.
C) **Alpha (A) Level \( p = .05 \) Significance and Probability.** The level of significance set by the experimenter for inferring the operation of nonchance factors. The significance level is a probability value that is considered so rare in the sampling distribution specified under the null hypothesis that one is willing to assert the operation of nonchance factors. Probability theory gives principles and rules for determination of the statistical significance of any particular selection outcome. Common significance levels are .05 and .01. The lower one set the rejection level, the less is the likelihood of a type I error, and the greater is the likelihood of a type II error. Conversely, the higher one set the rejection level, the greater the likelihood of a type I error, and the smaller the likelihood of a type II error. When employing the .05 level, as in this case, if the computed probability \( p \) exceeds the chosen level of significance .05 then, evidently the data is significant and the null hypothesis can be rejected. On the other hand, if \( p \) is smaller than .05 level, then the data evidently is not significant and the null hypothesis can be accepted. Stated otherwise, if the outcome of the statistical significance is .05 or less at the Alpha level, the assumption of the null hypothesis is accepted making us reject the alternative hypothesis. However, if
the outcome is without a statistical significance at the .05 probability of the null hypothesis and therefore can be said to have resulted from a selection process giving everyone an equal chance of being chosen, notwithstanding the role of chance, or spurious results.

D) Two Types of Error: Type I and II. All statistical inference hypothesis testing is probabilistic in mature, the investigator can never be certain his/her action (acceptance or rejection) of the null hypothesis was correct. There is always a chance error was made, in this capacity, there are two types--Type I and Type II. Type I error (type A error) is the rejection of the null hypothesis (H₀) when it is actually true. In this case, the probability of a type I error is given by the level or that the observed result could have occurred by chance. Type II error (type B error) is the probability of accepting H₀ or the null hypothesis when it is actually false--the probability of a type II error is given by B. If the hypothesis is false, there are usually many alternatives that could be true. This type of error is far more common than a type I error. In succinct terms, there are four possibilities:

1) One may fail to reject a false hypothesis--and err;

2) One may fail to reject a true hypothesis--and err;
3) One may correctly reject a false hypothesis; and
4) One may fail to reject a true hypothesis.

E) For the Sample (Observed) Data, the Test Statistic is Calculated - $X^2$ - Assumes Null Hypothesis Is True.

In the following pages, tables and analysis will be given for the empirical results of the null hypothesis. The tables are numbered from sixteen to twenty-three.

**Analyses**

Table 16 shows the expected frequency and the observed frequency of a chi-square analysis by gender. The expected frequency was the Charlotte-Mecklenburg County population from the United States Census Report and the North Carolina State Data Center and the observed frequency was the sample from the Charlotte-Mecklenburg County July pool for 1976-77. This yielded a 0.587 chi-square for one degree of freedom at a level of 0.443 which was significant at the .05 level. Fail to reject null hypothesis or the null hypothesis was accepted. Thus, the alternative hypothesis was rejected.

Reviewing the findings of Table 16, the alternative hypothesis that the Charlotte-Mecklenburg County jury pool for 1976-77 was not representative of the gender distribution of the population that was not accepted. The difference was not significant at the .05 level.
TABLE 16

GENDER COMPARISON OF CHARLOTTE-MECKLENBURG COUNTY POPULATION (EXPECTED) AND THE CHARLOTTE-MECKLENBURG COUNTY JURY POOL (OBSERVED) 1976-77

<table>
<thead>
<tr>
<th>Sex</th>
<th>Category</th>
<th>C-M Population Expected</th>
<th>C-M Jury Pool Observed</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>1</td>
<td>169,802</td>
<td>90</td>
<td>95.41</td>
<td>5.41</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>2</td>
<td>186,127</td>
<td>110</td>
<td>104.59</td>
<td>5.41</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>355,929</td>
<td>200</td>
<td>200</td>
<td></td>
<td>0.587</td>
</tr>
</tbody>
</table>


Table 17 shows the expected frequency and the observed frequency of a chi-square analysis by race, omitting other groups of persons aged eighteen to sixty-nine. The expected frequency was the Charlotte-Mecklenburg County population from the United States Census Report, General Population Characteristics, N. C. 35-125, Table 34, Race by Sex for Counties: 1970 Census, and the observed frequency was the sample from the Charlotte-Mecklenburg County jury pool for 1976-77. This yielded a 9.081 chi-square for one degree of freedom at a significance level of 0.003 which was significant at the .05 level. The null
TABLE 17

RACE COMPOSITION OF CHARLOTTE-MECKLENBURG COUNTY POPULATION (EXPECTED) AND THE CHARLOTTE-MECKLENBURG COUNTY JURY POOL (OBSERVED) 1976-77

<table>
<thead>
<tr>
<th>Sex</th>
<th>Category</th>
<th>C-M Population Expected</th>
<th>C-M Jury Pool Observed</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>1</td>
<td>269,129</td>
<td>170</td>
<td>151.77</td>
<td>18.23</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>2</td>
<td>85,527</td>
<td>30</td>
<td>48.23</td>
<td>-18.23</td>
<td>9.081</td>
</tr>
<tr>
<td></td>
<td></td>
<td>354,656</td>
<td>200</td>
<td>200</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


The hypothesis was rejected and the alternative hypothesis was accepted.

Table 17 shows that the alternative hypothesis that Charlotte-Mecklenburg County jury pool for 1976-77 was not representative of the radical distribution of the population was accepted. The difference was significant at the .05 level.

Table 18 shows the expected frequency and the observed frequency of a chi-square analysis by education. The expected frequency was the Charlotte-Mecklenburg County Population from the United States Census Reports and the
TABLE 18
EDUCATION PROFILE OF CHARLOTTE-MECKLENBURG COUNTY POPULATION (EXPECTED) AND THE CHARLOTTE-MECKLENBURG COUNTY JURY POOL OBSERVED 1976-77

<table>
<thead>
<tr>
<th>Years of Education</th>
<th>Category</th>
<th>C-M Population Expected</th>
<th>C-M Jury Pool Observed</th>
<th>Expected Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-1</td>
<td>1</td>
<td>2,129</td>
<td>0</td>
<td>2.29</td>
<td>-2.29</td>
</tr>
<tr>
<td>2-4</td>
<td>2</td>
<td>8,292</td>
<td>0</td>
<td>8.92</td>
<td>-8.92</td>
</tr>
<tr>
<td>5-7</td>
<td>3</td>
<td>19,679</td>
<td>4</td>
<td>21.16</td>
<td>-17.16</td>
</tr>
<tr>
<td>8-9</td>
<td>4</td>
<td>11,171</td>
<td>3</td>
<td>12.01</td>
<td>-9.01</td>
</tr>
<tr>
<td>1-3 High School</td>
<td>4</td>
<td>91,908</td>
<td>62</td>
<td>98.81</td>
<td>-36.81</td>
</tr>
<tr>
<td>1-3 College</td>
<td>5</td>
<td>27,034</td>
<td>64</td>
<td>29.07</td>
<td>34.93</td>
</tr>
<tr>
<td>4 plus College</td>
<td>6</td>
<td>25,810</td>
<td>67</td>
<td>27.75</td>
<td>39.25</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>186,023</td>
<td>200</td>
<td>200</td>
<td>28.620</td>
</tr>
</tbody>
</table>


The observed frequency was the sample from the Charlotte-Mecklenburg County jury pool for 1976-77. This yielded a 143.102 chi-square sample for six degrees of freedom at a highly unusual significance level of 0.0000 which was significant at the .05 level. The null hypothesis was rejected and the alternative hypothesis was accepted.
Table 18 affirms the alternative hypothesis that the Charlotte-Mecklenburg County jury pool for 1976-77 was not representative of the education distribution of the population was accepted. The difference was significant at the .05 level.

Table 19 shows the expected frequency and the observed frequency of a chi-square analysis by occupation. The expected frequency was the Charlotte-Mecklenburg County Population from the United States Census Report, and the observed frequency was the sample from the Charlotte-Mecklenburg County jury pool from 1976-77. This yielded a 28.620 chi-square for six degrees of freedom at a significant level of 0.00 which was significant at the .05 level. Certain categories were deleted from the computation, i.e., professional and technical (43) and none of the above (37), though the observed frequencies totaled 80, so, only 120 observed figures were involved in these results. The researcher could not locate comparable expected population figures. The null hypothesis was rejected.

The table supports the alternative hypothesis that the Charlotte-Mecklenburg County jury pool for 1976-77 was not representative of the occupation distribution of the population was accepted. The difference was significant at the .05 level.
TABLE 19


<table>
<thead>
<tr>
<th>Occupation</th>
<th>Category</th>
<th>C-M Population Expected</th>
<th>C-M County Jury Pool (Observed)</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager or Administrator</td>
<td>1</td>
<td>15,801</td>
<td>27</td>
<td>16.93</td>
<td>-10.07</td>
<td>28.620</td>
</tr>
<tr>
<td>Sale/Clerical</td>
<td>2</td>
<td>49,181</td>
<td>41</td>
<td>52.70</td>
<td>-11.70</td>
<td></td>
</tr>
<tr>
<td>Farmer and Farm Labor</td>
<td>3</td>
<td>687</td>
<td>3</td>
<td>.74</td>
<td>2.26</td>
<td></td>
</tr>
<tr>
<td>Craftsman/Foreman</td>
<td>4</td>
<td>18,280</td>
<td>18</td>
<td>19.59</td>
<td>-1.59</td>
<td></td>
</tr>
<tr>
<td>Equipment Operator</td>
<td>5</td>
<td>6,966</td>
<td>13</td>
<td>7.46</td>
<td>5.54</td>
<td></td>
</tr>
<tr>
<td>Laborer</td>
<td>6</td>
<td>6,746</td>
<td>12</td>
<td>7.23</td>
<td>4.77</td>
<td></td>
</tr>
<tr>
<td>Service Worker</td>
<td>7</td>
<td>14,321</td>
<td>6</td>
<td>15.35</td>
<td>-9.35</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>111,982</td>
<td>120</td>
<td>120</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Chi-square statistic is questionable here. In one, cells have expected frequencies less than 5. Minimum expected cell frequency is 0.7.

Table 20 indicates the expected frequency and the observed frequency of a chi-square analysis by income. The expected frequency was the Charlotte-Mecklenburg County Population from the United States Census Reports, and the observed frequency was the sample from the Charlotte-Mecklenburg County jury pool for 1976-77. This yielded a chi-square of 119.825 for five degrees of freedom at a level of 0.00 which was unusually significant at the .05 level. The null hypothesis was rejected.

This table supports the alternative hypothesis that the Charlotte-Mecklenburg County jury pool for 1976-77 was not representative of the population and, thus, was accepted. The difference was significant at the .05 level.

Table 21 points out the expected frequency and the observed frequency of a chi-square analysis by age. The expected frequency was the Charlotte-Mecklenburg County population from the United States Census Reports and reports from the Charlotte-Mecklenburg County jury pool for 1976-77. This yielded a chi-square of 73.050 for twelve degrees of freedom at the significance level of 0.000 which was noticeably significant at the .05 level.

Table 21 upholds the alternative hypothesis that Charlotte-Mecklenburg jury pool for 1976-77 was not representative of the various age groupings within the population of Charlotte-Mecklenburg County.
<table>
<thead>
<tr>
<th>Income</th>
<th>Category</th>
<th>C-M Population (Expected)</th>
<th>C-M County Jury Pool (Observed)</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 5,000</td>
<td>1</td>
<td>15,651</td>
<td>16</td>
<td>34.36</td>
<td>-18.26</td>
<td></td>
</tr>
<tr>
<td>5,001 - 9,999</td>
<td>2</td>
<td>29,076</td>
<td>29</td>
<td>63.84</td>
<td>-34.84</td>
<td></td>
</tr>
<tr>
<td>10,000 - 14,999</td>
<td>3</td>
<td>25,931</td>
<td>54</td>
<td>56.94</td>
<td>-2.94</td>
<td></td>
</tr>
<tr>
<td>15,000 - 20,000</td>
<td>4</td>
<td>3,749</td>
<td>44</td>
<td>17.01</td>
<td>26.99</td>
<td></td>
</tr>
<tr>
<td>20,001 - 29,999</td>
<td>5</td>
<td>8,535</td>
<td>28</td>
<td>18.74</td>
<td>9.26</td>
<td></td>
</tr>
<tr>
<td>30,000 - Above</td>
<td>6</td>
<td>4,147*</td>
<td>29</td>
<td>9.11</td>
<td>19.86</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>200</td>
<td></td>
<td></td>
<td>119.825</td>
</tr>
</tbody>
</table>

*Income expected above 15,000 inferred.

### TABLE 21

Comparison of the age distribution of the Charlotte-Mecklenburg population and the observed frequencies of age distribution of the Charlotte-Mecklenburg county jury pool for 1976-77

<table>
<thead>
<tr>
<th>Age</th>
<th>Category</th>
<th>C-M Population (Expected)</th>
<th>C-M Jury Pool Observed</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-19</td>
<td>1</td>
<td>12,533</td>
<td>0</td>
<td>11.10</td>
<td>-11.10</td>
<td></td>
</tr>
<tr>
<td>20-24</td>
<td>2</td>
<td>29,326</td>
<td>2</td>
<td>25.98</td>
<td>-23.98</td>
<td></td>
</tr>
<tr>
<td>25-29</td>
<td>3</td>
<td>28,142</td>
<td>14</td>
<td>24.93</td>
<td>-10.93</td>
<td></td>
</tr>
<tr>
<td>30-34</td>
<td>4</td>
<td>23,473</td>
<td>24</td>
<td>20.79</td>
<td>3.21</td>
<td></td>
</tr>
<tr>
<td>35-39</td>
<td>5</td>
<td>22,509</td>
<td>26</td>
<td>19.94</td>
<td>6.06</td>
<td></td>
</tr>
<tr>
<td>40-44</td>
<td>6</td>
<td>23,083</td>
<td>29</td>
<td>20.45</td>
<td>6.06</td>
<td></td>
</tr>
<tr>
<td>45-49</td>
<td>7</td>
<td>21,695</td>
<td>21</td>
<td>19.22</td>
<td>8.55</td>
<td></td>
</tr>
<tr>
<td>50-54</td>
<td>8</td>
<td>17,704</td>
<td>22</td>
<td>15.68</td>
<td>1.78</td>
<td></td>
</tr>
<tr>
<td>55-59</td>
<td>9</td>
<td>14,359</td>
<td>18</td>
<td>12.72</td>
<td>6.32</td>
<td></td>
</tr>
<tr>
<td>60-64</td>
<td>10</td>
<td>11,734</td>
<td>13</td>
<td>10.39</td>
<td>5.28</td>
<td></td>
</tr>
<tr>
<td>65-69</td>
<td>11</td>
<td>9,067</td>
<td>21</td>
<td>8.03</td>
<td>12.97</td>
<td></td>
</tr>
<tr>
<td>70-74</td>
<td>12</td>
<td>6,194</td>
<td>8</td>
<td>5.49</td>
<td>2.51</td>
<td></td>
</tr>
<tr>
<td>75+</td>
<td>13</td>
<td>8,205</td>
<td>4</td>
<td>7.27</td>
<td>-3.27</td>
<td></td>
</tr>
</tbody>
</table>

Table 22 explains the expected frequency and the observed frequency of a chi-square analysis by race, omitting other races aged eighteen to sixty-nine. The expected frequency was the Charlotte-Mecklenburg County population from the United States Census Reports and reports from the North Carolina State Data Center, and the observed frequency was the sample from the Charlotte-Mecklenburg County jury pool for 1980-81. This yielded a chi-square of 1.417 for one degree of freedom at a level of 0.234 which was not significant at the .05 level. We failed to reject the null hypothesis or the null hypothesis was accepted; the alternative hypothesis was rejected.

Table 22 supports the null hypothesis that the Charlotte-Mecklenburg County jury pool for the years 1980-81 did adequately represent the various races of persons in the Charlotte-Mecklenburg Community. The difference was significant at the .05 level.

Table 23 depicts the expected frequency and the observed frequency of a chi-square analysis by gender. The expected frequency was the Charlotte-Mecklenburg County population from the United States Census Reports and reports from the North Carolina State Data Center, and the observed frequency was the sample from the Charlotte-Mecklenburg County jury pool for 1980-81. This yielded a chi-square of 0.454 for one degree of freedom at a
TABLE 22

RACE COMPOSITION OF CHARLOTTE-MECKLENBURG COUNTY POPULATION (EXPECTED) AND THE CHARLOTTE-MECKLENBURG COUNTY JURY POOL (OBSERVED) 1980-81

<table>
<thead>
<tr>
<th>Race Category</th>
<th>C-M Population (Expected)</th>
<th>C-M Jury Pool (Observed)</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>291,442</td>
<td>153</td>
<td>145.56</td>
<td>7.44</td>
<td>1.417</td>
</tr>
<tr>
<td>Black</td>
<td>107,006</td>
<td>46</td>
<td>53.44</td>
<td>-7.44</td>
<td>1.417</td>
</tr>
</tbody>
</table>


level of 0.501 which was not significant at the .05 level. Fail to reject the null hypothesis, or null hypothesis was accepted; the alternative hypothesis was rejected.

Table 23 confirms the null hypothesis that the Charlotte-Mecklenburg County jury pool for the years 1980-81 did adequately represent the gender of persons in the Charlotte-Mecklenburg Community. The difference was not significant at the .05 level.

Discussion and Analysis: Findings of the Study

This section concludes with the results of eight variables within the study and test of the null hypothesis.
TABLE 23
GENDER COMPOSITION OF CHARLOTTE-MECKLENBURG COUNTY POPULATION (EXPECTED) AND THE CHARLOTTE-MECKLENBURG COUNTY JURY POOL (OBSERVED) 1980-81

<table>
<thead>
<tr>
<th>Gender Category</th>
<th>C-M Population (Expected)</th>
<th>C-M Jury Pool (Observed)</th>
<th>Expected</th>
<th>Residual</th>
<th>Chi-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>192,390</td>
<td>98</td>
<td>93.25</td>
<td>4.75</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>210,880</td>
<td>102</td>
<td>106.75</td>
<td>-4.75</td>
<td>0.454</td>
</tr>
</tbody>
</table>

Source: Age by Race, Spanish Origin, and Sex for Counties, 1980 Census Population: General Social and Economic Characteristics, Table 45.

The null hypothesis ($H_0$) of this study is that Charlotte-Mecklenburg County jury pools for 1976-77 and 1980-81 did reflect the socio-demographic characteristics of the county population due to the jury commissions use of the voter registration list, county property tax listings, and the North Carolina drivers license list as sources to constitute the master jury list from which prospective jurors are chosen. This procedure, in turn, has served to represent and ensure jury service to constitutionally entitled groups as females, older and younger persons, racial minorities, the poor and less-educated, and blue-collar workers.
The central and alternative hypothesis \( (H_1) \) of this study is that Charlotte-Mecklenburg County jury pools for 1976-77 and 1980-81 did not reflect the socio-demographic characteristics of the county population due to the jury commissions use of the voter registration list, county property tax listings, and the North Carolina drivers license list as sources to constitute the master jury list from which prospective jurors are chosen. This procedure, in turn, has served to underrepresent and deny jury service to constitutionally entitled groups as females, older and younger persons, racial minorities, the poor and less-educated, and blue-collar workers.

For the eight socio-demographic variables explored in this jury composition study to determine the representativeness of the Charlotte-Mecklenburg County jury pools for 1976-77 and 1980-81--race will be looked at first. In the racial category for 1976-77, with sources for the jury pool from the voter registration list and property tax list--the null hypothesis of no difference was rejected, in favor of the alternative hypothesis of a difference. For 1980-81, with the sources for the jury pool from the drivers license list and voter registration list, the results are dissimilar to biennium 1976-77, in that the null hypothesis was accepted, and the alternative hypothesis was rejected. Therefore, it would appear that
modifications in G. S. 9-2, which changed the sources from which jurors are chosen—did appreciably alter the racial make-up for biennium 1980-81; in contrast to biennium years 1976-1977. In the gender category, for 1976-77, the null hypothesis was accepted, to disfavor of the alternative hypothesis. Also, in the gender category for 1980-81, the results are the same as 1976-77; the null hypothesis was confirmed; the alternative hypothesis disavowed. The total effect of legal changes in the source list use for 1976-77 and 1980-81 with respect to race and gender is: There was no change for gender, for race—jury pool representation improved in 1980-81. It should be noted that for biennium 1980-81, only two socio-demographic variables were studied—race and gender. However, for the years 1976-77, the variables included race, gender, occupation, income, education, and age. In these categories for 1976-77, i.e., occupation, income, education and age, the following holds true:

1) Occupation-null hypothesis was rejected;

2) Income-null hypothesis was rejected; the alternative hypothesis was accepted;

3) Education-null hypothesis was rejected; the alternative hypothesis was accepted; and

4) Age-null hypothesis was rejected; the alternative hypothesis was accepted.

The results of this project confirms that Charlotte-Mecklenburg's jury selection system has a problem with
jury representation for certain categories for the years examined. However, given the time gap between now and then, the situation could have changed. Thus, a follow-up study would be in order. Yet, for jury representation of certain groupings as race and gender, the Charlotte-Mecklenburg jury selection system deserves recognition and kudos. Furthermore, it must be emphasized, that these findings are not absolutely generalizable, given that the minimum number of years for such a study should encompass at least ten years. But for the researcher's purpose, the goal was to examine the jury selection system pre and post the change in jury selection sources in the state of North Carolina with a minimum four-year time frame. In this regard, the results of this project are valid; but, once again, not relative to depth and breadth of discovery possibilities. Moreover, the findings of this empirical study are of such nature that one may reasonably infer that it reflects the state of jury selection processes and procedure in Charlotte-Mecklenburg County, North Carolina for the period examined.
CHAPTER VI
SUMMARY AND CONCLUSION

This thesis has evolved around the sub-field of judicial process, with a specific look at jury selection and representation. There were four avenues used to explore this topic:

1) A study of jury selection systems and sources retained to summon and impanel jurors;

2) Jury selection processes and procedure in the state of North Carolina and Mecklenburg County;

3) An empirical jury composition study of two biennium periods was performed; and

4) Mathematical tools to measure and evaluate fair jury representation.

Further, this chapter will unfold in two parts: a summary of major points within the text of the paper, and followed by the writer's personal insights and suggestions-at-large will be offered.

The raison d'être for jury selection systems lies within the purview or domain of the Anglo-American concept of trial by jury. Jury selection systems are quite diverse and are affected by statutes, court rules, administrative procedures and informal policies. Their main function is to narrow the pool of jurors until a single panel remains.
for a particular duty, whether civil or criminal in nature. The first stage injury selection systems is the qualification process. The next is the summoning procedure, which is then followed by a process of impaneling. The Charlotte-Mecklenburg jury selection system, not unlike other judicial entities, is designed to impanel impartial jurors from a fair cross-section of the community. In the administration of jury selection systems, state law and constitutions established boundaries in which they must operate. Therefore, the State of North Carolina, as the implementor and regulator of the trial by jury Anglo-American law connection, has enacted North Carolina general statute Chapter 9 titled "Jurors." Chapter 9 governs the Charlotte-Mecklenburg jury system by focusing on various aspects of the trial by jury-jury selection nexus; for example, petit jurors, jury commission body, preparation of jury lists, and so forth. Hence, after enactment of N. C. G. S. 9 in 1967, in all one hundred counties of the state, a jury commission board of three members was to oversee the state's obligation to provide qualified jurors within the framework of a trial by jury system at the local level. The commissioners had to be qualified voters of the county and were appointed Superior Court Judge, the Clerk of Superior Court, and the Board of County Commissioners. In order to conduct
their official duties, they were to be supported by the County Commission from a general fund, as well as receiving clerical support from the Clerk of Superior Court.

The mode of operating jury selection systems stems from sources used to obtained potential jurors. In preparing the jury list, as of 1967, commissioners were directed to create a master jury list with names randomly gathered from the county property tax rolls and local voter registration list. Other sources were to be consulted as well. Although this was a provision within the 1967 law, few, if any, jury commission bodies statewide seized the opportunity to provide equitable and representative juries from a broad-based source of names, especially in view of the disproportionate impact of property tax list with regard to gender, race and economic class. This bleak state of affair changed after the issue was raised in two capital punishment cases, one in Charlotte-Mecklenburg, public editorials, i.e., Charlotte and Raleigh newspapers, internal memos, and a graduate study to this effect. After these reactions, the then chair for the North Carolina courts commission, Charlotte-Mecklenburg Representative H. Parks Helms acknowledged a need for change, and his commission proceeded in that direction. Once in session, the commission studied the source representation issue under G. S. 9-2, and concluded
with a bill designed to force changes in the sources used in composition of the master jury list statewide, including Charlotte-Mecklenburg. It stated that only the drivers license list and voter registration list be used as sources for the selection of names for the master jury list in each county—to the exclusion of property tax listings. The latter became optional. This Act also altered the method of random selection of names when more than one source list is used. In more specific terms, other parts of Chapter 9 are: "Alternative Procedure in Certain Counties"; "Qualifications of Prospective Jurors"; "Preparation and Custody of List"; "Procedure for Drawing Panel of Jurors"; and "Numbers Drawn." N. C. G. S. 9 has four articles with thirty-one points of law, but only Articles I and II, sections 9-1 through 9-5 are a part of the thesis. Section 9-1 addresses the Jury Commission Board with emphasis on selection, appointment, duty and obligations, compensation and finding. Section 9-2 looks at sources of names in preparing jury list and technology; 9-3 looks at prospective jurors and exemption categories; and 9-4 and 9-5 focus on jury list maintenance, and roles of the County Commissioners and Clerk of Superior Court. Also, in 1980 the Charlotte-Mecklenburg jury selection system altered its policy of jury service from one week to "one day or one trial"—with shorter time served.
Given that this section is geared to a comparison with the purposes of this thesis, juxtaposed to the Charlotte-Mecklenburg Community, the present emphasis will be on the mechanics of the jury wheel composition and background information on the application of relevant statutes. The Charlotte-Mecklenburg County jury commission body for 1976-77 and 1980-81 strictly abided by state law in deciding a number of jury issues. They range from state sanctioned source list, as well as their ability to view other sources of names. On this point, the commissioners have not shown much imagination, creativity and progression. Still, this body exercises a deal of power and authority in areas as: prior jury service; removals for felony convictions and non compos mentis; sequence removal, matchings and order; cut-off dates and personnel; duplications; computer generated random numbers; standards for jury list such as the numbers on the jury list must be two or three times as many names called in each previous two years, and one-third of the raw jury list required for jury service; cutting of disk and jury box, interaction with the Clerk of Superior Court and Register of Deeds; merger of newer sources; drawing of summoned jurors; and so forth. The major players within the Charlotte-Mecklenburg system must abide by statutory enactments created for an objective jury selection system. These personalities and
offices include the jury commission body, the Clerk of Superior Court, Register of Deeds, the County Commission Board, Chief Resident Superior Court Judge, Chief District Court Judge, Sheriff Office, Mecklenburg County Electronic Data Processing Department, the Board of Elections, County Tax Office and the Department of Motor Vehicles.

As previously stated, the main mode of operating jury selection systems is the source lists; in this context, the most widely single source is the voter registration list. But, of late, more multiple sources of names is being utilized--in the hopes of making selection more inclusive (diverse) and balance (representative) of the population. In Charlotte-Mecklenburg, the primary list is the voters registration list, and the supplement or multiple list is the drivers license list. So that the only source used as a supplement or multiple source is the drivers license list. No commission body statewide has appeared innovative enough to consider other source list as telephone numbers, welfare rolls, utility bills, income taxes and etcetera. By exploring these choices, multiple list systems would expand, and serve to broaden the base for more inclusion and balance.

An effective way to determine if a primary source and supplements creates fair jury representation, one should focus on the jury pool, panel or venire. In this
study, such a task was undertaken, and entitled "A Jury Composition Study of the Charlotte-Mecklenburg Jury Pool for Two Biennium Periods - with a Four Year Gap." The studies aim was to compare the socio-demographic characteristics of Charlotte-Mecklenburg County to those persons serving in the jury pool for the years 1976-77 and 1980-81. The quintessential goal was to evaluate if source changes for jury selection impacted upon the jury pool for 1980-81, which came from the voters list and drivers license list; while the 1976-77 jury pool derived from voters and property tax lists. In addition to locating the significance and non-significance between features of the population, and the samples on expected and observed frequencies. The techniques and methods involved telephone survey interviewing, statistical inference-hypothesis testing, chi-square and mathematical probability. Results from the empirical study showed that the jury pool composition was racially more equitable; but the gender situation was the same, after juror sources were changed from the property tax list to the drivers license source. Also, of the mutually exclusive hypothesis, the alternative hypothesis of a difference was accepted for race, income, gender, occupation, and education in 1976-77; the null hypothesis of no difference applied to gender for both biennium periods, and race, 1980-81.
The issue of fair jury representation can be discerned from a source list-empirical dimension, or from one, which looks exclusively at judicial relief, reasoning and analysis; but undergirded by mathematical or quantitative principles. This phase will assume the latter, in order to give continuity to the subject theme. The Charlotte-Mecklenburg jury selection system has a history of fair jury representation cases stretching from the 1870s to modern times. In each situation, racial parity in jury processes aid procedure was the bone of contention. Some of these cases are:

1) **State v. Dunlap**, 65 N. C. 441 (1871);
2) **State v. Peoples**, 131 N. C. 784 (1902);
3) **State v. Tommie Walls**, 211 N. C. 487 (1937);
4) **State v. Bell**, 212 N. C. 20 (1937);
5) **State v. Inman**, 260 N. C. 311 (1963);
6) **State v. Westbrook**, 27 N. C. 18 (1971);
7) **State v. Avery**, 299 N. C. 126 (1980);
8) **State v. Hawkins**, Superior Court of Mecklenburg County, Fall Term, 1964; and

In most instances, plaintiff raised the issue of systematic racial exclusion on the grand and petit juries--at both the indictment and conviction stages; a negative aspect stemming from the source list, jury pool and venire.
narrow interpretation of the law and rooted in the Fourteenth Amendment analysis. But, of late, there are more sixth Amendment challenges.

However, unlike yesteryear, when fair jury representation claims were brought before judicial bodies--only with legal reasoning and narration. Now, such claims, are couched in complex quantitative and mathematical data. In other words, in order to translate legal goals and principles governing jury selection systems into mathematical or quantitative terms, tools are used to measure jury representative or disparity. In this capacity, there are, at present, five standard methods. Also, other side issues when employing mathematical tools in jury representation are:

1) What figures or comparisons will be used in the mathematical analysis? and

2) What mathematical limits violates the constitutional cross-section principle?

Of the five tools, only the chi-square analysis will be employed in the empirical phase; the others will be listed:

1) Absolute disparity;

2) Comparative disparity or ratio approach;

3) Standard deviation or statistical significance; and

4) Proportion of the eligibles and substantial impact.

These cases are usually decided by standards or principles of law grounded in the Sixth and Fourteenth Amendments.
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The Federal and Uniform Jury Selection Statutes

1968 Federal Jury Selection and Service Act

§ 1861. Declaration of policy. [U.S. Code, Title 28]

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district court of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

§ 1862. Discrimination prohibited.

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

§ 1863. Plan for random jury selection.

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel shall examine the plan to ascertain that it complies with the

not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remediating the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time but it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel: the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies thereof. Modifications of the plan made at the instance of the district court shall become effective after approval by the panel. Each district court shall submit a report on the jury selection process to the Administrative Office of the United States Courts at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plan formulated under this title.

(b) Among other things, such plan shall -

(1) either establish a jury commission or authorize the clerk of the court to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one or more to serve with the clerk of the court as the jury commission. However, that the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commission shall not belong to the same political party as the district court. Each member of the commission shall act under the supervision and control of the chief judge of the district court or other judge of the district court to which he is assigned. Each citizen jury commission shall receive compensation to be fixed by the district court at a rate not to exceed $60 per day for each day necessary in the performance of his duties, in addition to travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commissioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall preserve some other source of names in addition to
plans for the districts of Puerto Rico and the Canal Zone may prescribe some other sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title.

(3) Specify detailed procedures to be followed by the jury commission or clerk to select names from the sources specified in paragraph (2) of this section. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or other political subdivisions with the judicial district or division are placed in a master jury wheel, and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionately represented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division may be used.

(4) Provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially in the master jury wheel, which shall be not less than one-half of 1 percent of the total number of persons on the list used as a source of names for the district or division; but if this number of names is believed to be cumbersome and unnecessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or each other district court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as necessary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5) Specify the procedures to be followed by the clerk of jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(6) Specify such groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons:

(a) Members of the armed forces of the United States;
(b) Members of the fire or police departments of any State, district, territory, possession, or subdivision thereof;
(c) Public officials in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

(7) Fix the distance, either in miles or in travel time, from each place of holding court beyond which prospective jurors residing shall, on individual request therefor, be excused from jury service on the ground of undue hardship in traveling to the place where court is held.

(8) Fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(9) Specify the procedures to be followed by the clerk of jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(10) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The plan shall provide for the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the
§ 1864. Drawing of names from the master jury wheel: completion of juror qualification form.

From time to time as directed by the district court, the clerk of a district court shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master jury a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk of jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute such form was willful, be entitled to receive for such appearance such fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

§ 1865. Qualifications for jury service.

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is qualifed for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

1. is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

2. is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

3. is unable to speak the English language;

4. is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

5. has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

§ 1866. Selection and summoning of jury panels.

(a) The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined
From time to time, the jury commission or the clerk shall publicly draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors.

Each person drawn for jury service may be served personally, or by registered or certified mail addressed to such person at his usual residence or business address.

If such service is made personally, the summons shall be delivered by the clerk or the jury commission or their duly designated deputies to the marshal who shall make such service.

If such service is made by registered or certified mail, the summons may be served by the clerk or jury commission or their duly designated deputies who shall make affidavit of service and shall file with such affidavit the addresser's receipt for the registered or certified summons. If such service is made by the marshal, he shall attach to his return the addresser's receipt for the registered or certified mail.

Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5), (6), or (7) of section 1863 (b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors. Provided, That any person summoned for jury service may be (1) excused by the court, upon a showing of undue hardship or extreme inconvenience, for any period as the court deems necessary, at the conclusion of which such person shall be summoned again for jury service under subsections (b) and (c) of this section or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the security of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such an exclusion of the person will not be inconsistent

with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one percentum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive filings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions executed under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

When a person is disqualified, excused, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his jury qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefore.

In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

Any person summoned for jury service who fails to appear as directed shall be ordered by the district court to appear forthwith and show cause for his failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than $100 or imprisoned not more than three days, or both.

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor,
Section 1668. Maintenance and inspection of records.

After the master jury wheel is emptied and refilled pursuant to section 1663(b)(1) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any juror.

Section 1669. Definitions.

For purposes of this chapter—

(a) "clerk" and "clerk of the court" shall mean the clerk of the district court of the United States or any authorized deputy clerk;

(b) "chief judge" shall mean the chief judge of any district court of the United States;

(c) "voter registration lists" shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiners pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands,
(d) "lists of actual voters" shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) "division" shall mean (1) one or more statutory divisions of a judicial district, or (2) in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: Proceeded. That each county, parish, or similar political subdivision shall be included in some such division;

(f) "district court of the United States", "district court", and "court" shall mean courts constituted under chapter 5 of title 28, United States Code, section 22 of the Organic Act of Guam, as amended (61 Stat. 139; 48 U.S.C. 1124), section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611), and section 1 of title 4, Canal Zone Code; except that for purposes of sections 1861, 1862, 1866(c), 1866(i), and 1867 of this chapter such terms shall include the Superior Court of the District of Columbia;

(g) "jury wheel" shall include any device or system similar in purpose or function, such as a properly programmed electronic data processing system or device;

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offence punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) "public officer" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.
SECTION 1. [Declaration of Policy.] It is the policy of this state that all persons selected for jury service shall be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this Act to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

SECTION 2. [Prohibition of Discrimination.] A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

SECTION 3. [Definitions.] As used in this Act:
(1) "court" means the [court(s) of this state], and includes, when the context requires, any [judge] of the court.
(2) "clerk" and "clerk of the court" include any deputy clerk;
(3) "master list" means the [county] of this Act in order to foster the policy and protect the right secured by this Act (Sections 1 and 2);

*Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all states at its annual conference meeting on its seventy-ninth year at St. Louis, Missouri, August 17, 1970, 1971 edition, with preporatory note and comments."
in the master jury wheel and the whole number next greater than the quotient shall be the "key number," except that the key number shall never be less than 2. A "starting number" for making the selection shall be determined by a random method from the numbers from 1 to the key number, both inclusive. The required number of the names shall then be selected from the master list by taking under the key number on the master list the names corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, re-commencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, if additional names are subsequently to be selected for the master jury wheel, names previously selected from the master list shall be disregarded in selecting the additional names. The jury commission may use an electronic or mechanical system or device in carrying out its duties.

SECTION 7. [Drawings from Master Jury Wheel, Jury Qualification Form]

(a) From time to time and in a manner prescribed by the court, the jury commission publicly shall draw at random from the master jury wheel the names or identifying numbers of as many prospective jurors as the court by order requires. The clerk shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this Act or specific order of the court. The clerk shall mail to every prospective juror whose name is drawn from the master jury wheel a jury qualification form accompanied by instructions to fill out and return the form by mail to the clerk within 10 days after its receipt. The jury qualification form shall be subject to approval by the court as to matters of form and shall elect the name, address of residence, and age of the prospective juror and whether he (1) is a citizen of the United States and a resident of the [county] [district], (2) is able to read, speak and understand the English language, (3) has any physical or mental disability impairing his capacity to render satisfactory jury service, and (4) has lost the right to vote because of a criminal conviction. The juror qualification form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgement that a willful misrepresentation of a material fact may be punished by a fine of not more than [$500] or imprisonment for not more than [30] days, or both.

(b) Any prospective juror who fails to appear as directed by the commission pursuant to subsection (a) shall be ordered by the court to appear and show cause for his failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for his failure to appear as directed by the jury commission, he is guilty of criminal contempt and upon conviction may be fined not more than [$100] or imprisoned not more than [30] days, or both.

(c) Any person who wilfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a misdemeanor and upon conviction may be fined not more than [$500] or imprisoned not more than [30] days, or both.

SECTION 8. [Disqualifications from Jury Service]

(a) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel.

(b) A prospective juror is disqualified to serve on a jury if he:

1. is not a citizen of the United States, [21] years old, and a resident of the [district] [county]:

may do it for him and shall indicate that he has done so and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within 10 days after its second receipt.
SEC. 9. [Qualified Jury Wheel, Selection and Summation of Jurors Panels]

(a) The jury commission shall maintain a qualified jury wheel and shall therefrom select the names of qualified jurors at random, to fill any vacancies of qualified jurors of such county, *date*.

(b) The court administrator of any court or any other state or county shall, at such times, select such number of qualified jurors as are drawn from the master jury wheel who are not disqualified (Sec. 34).

(c) If a grand, petit, or other jury is ordered to be drawn, the clerk shall cause each person drawn for jury service to be served with a summons either personally or by registered or certified mail, return receipt requested, addressed to him at his usual residence, business, or post office address, requiring him to report for jury service at a specified time and place.

(d) If, as a result of the drawing, there shall be a shortage of available petit jurors drawn from a qualified jury wheel, the court may require the sheriff of the county to summon a sufficient number of petit jurors selected at random from the names of qualified jurors of such county, on a specified day.

(e) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors shall be made available to the public unless the court determines that this information can be kept confidential in a manner prescribed by the court.

SEC. 10. [No Exemption] No qualified prospective juror is exempt from jury service.

Comment

The Federal Act, 28 U.S.C.A. § 1863(b)(6), permits the court in each district to "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt" provided that "the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent" with the policies declared in the first and second sections of the Act. The Federal Act goes on to require that exemption be provided for the following:

- All members of the Armed Forces of the United States;
- Members of the fire or police departments of any state, district, territory, possession of subdivision thereof, and public officers in the executive, legislative, or judicial branches of the Government of the United States, or any state, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

Many states also have a long list of exempt classes of persons. For example, Maine exempts all public officers of the United States, officers of colleges, and cashiers of incorporated banks, as well as ministers, teachers, physicians, dentists, nurses and attorneys. 11 M.R.S.A. § 1201.

Exemption of particular classes of persons by statute is believed inadvisable. The public policy declared in Sec. 1 is better achieved by individual excuses pursuant to Section 11 hereinafter described in the individual case of undue hardship, extreme inconvenience, or public necessity. Moreover, since petit juror service, except in the unusual case, limited by Section 15 of the Uniform Act to a specified number of court days in any two-year period, the burden of jury service upon the individual is minimized. The individual should not be given an automatic exemption merely because he comes within a particular class, but rather should be required to make out a case of hardship to the court.

SEC. 11. [Exemptions from Jury Service]

(a) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service (Sec. 8) may be excused from jury service by the court only upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.
Comment

The Federal Act permits the plan of each district to specify groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service and also to fix the distance either in miles or travel time beyond which prospective jurors would not be required to travel to court. 28 U.S.C. A. § 1867(a) (1) and (2). Many plans adopted under the Federal Act give automatic excuse upon request to a long list of classes of groups, as, for example, the following list quoted from the plan for the District of Maine:

(1) all persons over seventy years of age;
(2) all ministers of the gospel and members of religious orders, actively so engaged;
(3) all attorneys, physicians, surgeons, dentists, veterinarians, pharmacists, nurses, and funeral directors, actively so engaged;
(4) all persons who have served as a grand or petit juror in a State or Federal court within the preceding two years;
(5) all school teachers in public, parochial or private schools, actively so engaged;
(6) all persons who do not have adequate means of transportation to the place of holding court;
(7) all women who are caring for a child or children under the age of sixteen years;
(8) all sole operators of businesses.

Other plans have strictly limited the automatic excuses, as, for example, that for the Western District of North Carolina, which grants automatic excuse upon individual request only in the following:

(1) persons over seventy-five years of age;
(2) women who have legal custody of a child or children under the age of ten years;
(3) any person who resides more than one hundred (100) miles from place of holding court.

Section 11 of the Uniform Act is based upon the same principle as Section 10, namely, that there should be no automatic exemptions or excuses from jury service, but rather that excuse should be only upon a showing of actual need or public reason therefor. The Uniform Act proceeds on the principle that jurors should be selected by random methods from the widest possible list of citizens. The compulsory is that actual service on the jury should be shared as widely as possible, and in particular that professional and business groups should be excused only in cases of demonstrated need. The so-called "blue ribbon jury" is outlawed by the Uniform Act. At the same time, business and professional groups within the community should not be permitted to avoid jury service. It is also believed that citizens in general will be more willing to perform jury service if it is known throughout the community that jury service is universal, barring only particular hardship in specific cases.

The Uniform Act does not refer to those other ways in which pursuant to other provisions of law prospective jurors may be excluded from service, namely, (a) exclusion upon peremptory challenge, (b) exclusion for good cause, and (c) exclusion because the requisite number of jurors, including alternate jurors, have already been impaneled in a particular case. Those other occasions for the exclusion of qualified jurors are well defined in the law. Otherwise than by exclusion under those circumstances, if a qualified juror is drawn from the qualified wheel and he is not excused upon a showing of undue hardship, extreme inconvenience, or public necessity, he has the obligation to serve and is guaranteed the opportunity to serve. See Section 1.

SECTION 12. [Challenging Compliance with Selection Procedures]

(a) Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this Act in selecting the grand or petit jury.

(b) Upon motion filed under subsection (a) containing a sworn statement of facts which, if true would constitute a substantial failure to comply with this Act, the moving party is entitled to present in support of the motion the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with this Act, the court shall stay the proceedings pending the selection of the jury in conformity with this Act, quash an indictment, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the State, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this Act.

(d) The contents of any records or papers used by the jury commissioner or the clerk in connection with the selection process and not made public under this Act (Section 5(c) and 9(e)) shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (a) until after the master jury wheel has been emptied and refiled (Section 5) and all persons selected to serve as jurors before the master jury wheel was emptied have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (a).

SECTION 13. [Preservation of Records] All records and papers compiled and maintained by the jury commissioner or the clerk in
connection with selection and service of jurors shall be preserved by
the clerk for 4 years after the master jury wheel used in their
selection is emptied and refilled (Section 6) and for any longer
period ordered by the court.

shall be paid mileage at the rate of [10] cents per mile for his travel
expenses from his residence to the place of holding court and return
and shall be compensated at the rate of [20.00] for each day of
required attendance at sessions of the court.

SECTION 15. [Length of Service by Jurors] In any [2] year
period a person shall not be required to:
(1) to serve or attend court for prospective service as a petit
juror more than [10] court days, except if necessary to complete
service in a particular case;
(2) to serve for more than one grand jury, or
(3) to serve as both a grand and petit juror.

Comment

This section is derived from the Federal Act, 28 U.S.C.A. § 1866(e), although a
maximum of 10 days service on a petit jury is suggested in!against the thirty day
limitation of the Federal Act. The purpose of the section is stated in the Senate
Committee Report on the bill which became the Federal Act.

"This provision is designed to distribute the burden of jury service and to
enhance the representative quality of jurors. Moreover, since jury service
involves direct participation in the democratic process, a many citizen as
possible ought to have the chance to serve."

SECTION 16. [Penalties for Failure to Perform Jury Service] A
person summoned for jury service who fails to appear or to complete
jury service as directed shall be ordered by the court to appear
forthwith and show cause for his failure to comply with the
summons. If he fails to show good cause for noncompliance with the
summons, he is guilty of criminal contempt and upon conviction
may be fined not more than [100] or imprisoned not more than
[3] days, or both.

SECTION 17. [Protection of Jurors' Employment]

(a) An employer shall not deprive an employee of his employment,
or threaten or otherwise coerce him with respect thereto,
because the employee receives a summons, responds thereto, serves
as a juror, or attends court for prospective jury service.
In compiling the master list the jury commission shall avoid duplication of names.

(1) Whoever has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection (a) by the Supreme Court, Attorney General, or any other authorized as supplementary sources of names, shall make the list available to the jury commission for inspection, reproduction, and copying at all reasonable times.

(c) The master list shall be open to the public for examination.

Comment

The Federal Act, 28 U.S.C.A. § 1.60.1(b) (2), uses the voter registration lists as the most inclusive list of names of potential jurors, providing, alternatively in those situations where registration lists are not maintained, that lists of actual voters will be used. The Federal Act leaves it up to the plan adopted in each federal district to "provide some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured" by that Act. The Uniform Act leaves such responsibility for supplementing the voter lists to either the Supreme Court or the Attorney General, and it makes such supplementation mandatory.

Exclusion of voter lists as the basis for selecting citizens to be called for jury service may have a chilling effect upon exercise of the franchise, particularly by wage-earners for whom jury service may be a particular economic hardship. Principally for that reason the Report of the President's Commission on Registration and Voting Participation (November, 1963) recommended that voter registration lists be used only for electoral purposes. Furthermore, voter lists typically constitute far from complete lists of the citizens qualified for jury service. Considerable filling out of the master list to be more inclusive than the voter lists necessary to carry out the declaration of Section 1 that "all qualified citizens shall have the opportunity...to be considered for jury service". Despite these disadvantages of use of voter lists in jury selection, the Federal Act and a great many states now use voter lists for that purpose—undoubtedly because it is the most conveniently available public list.

In most instances the high court of the State should be the agency to prescribe the supplementary sources of names for the master list. Such would be consistent with the rulemaking power also granted to that court by Section 18. In some states, however, the legislature may conclude that the office of the Attorney General is better fitted to determine the availability and practicality of supplementary lists. Whatever agency is given the responsibility must act within 90 days of the effective date of the Act and must maintain a continuing watch over the master list to assure the adequacy of the supplementation. In particular the supplementary sources should be reviewed shortly before December each

SECTION 6. [Master Jury Wheel]

(a) The jury commission for each county district shall maintain a master jury wheel, into which the commission shall place the names or identifying numbers of prospective jurors taken from the master list. If the total number of prospective jurors on the master list is 1,000 or less, the names or identifying numbers of all of them shall be placed in the master jury wheel. In all other cases, the number of prospective jurors to be placed in the master jury wheel shall be 1,000 plus not less than one percent of the total number of names on the master list. From time to time a larger or additional number may be determined by the jury commission or ordered by the court to be placed in the master jury wheel. In December of each even-numbered year the wheel shall be emptied and refilled as prescribed in this Act.

(b) Unless all the names on the master list are to be placed in the master jury wheel pursuant to subsection (a) the names or identifying numbers of prospective jurors to be placed in the master jury wheel shall be selected by the jury commission at random from the master list in the following manner: The total number of names on the master list shall be divided by the number of names to be placed
Affirmative Cases for the Voter Registration List

U. S. v. Quinn, 364 F. Supp. 432, 436 (N. D. Georgia, 1973). It was held that: "... no source list will be an exact statistical abstract of the community. . . ."

People v. Williams, 50 Michigan Appeal 763, 213 N. W. 2d 754, 755, 1973. "It is no less reliable than alternate methods that might be employed. . . ."

In the proceeding cases, the voter registration list was upheld but it was not to be used as a subterfuge for discrimination:

1) Simmons v. U. S., 406 F. 2d 456, 5th Cir., 1964;


In U. S. v. Greenberg, 200 F. Supp. 382, 395, S. D. N. Y., 1961, it was stated that "the test is not whether voter registration lists are used, exclusively or otherwise, as a source of qualified jurors. The test is whether or not the use of such lists (or other sources) results in an array which is a representative cross-section of the community or from which a cognizable group or class of qualified citizens is systematically excluded. . . ." Id. at 392, n. 41. Cf. U. S. v. Bowe, 360 F. 2d 1, 7, 2d Cir., 1966.

U. S. v. Butera, 420 F. 2d 564, 573, 1st Cir., 1970;
Kemp v. U. S., 415 F. 2d 1185, 5th Cir., 1969;
U. S. v. Caci, 401 F. 2d 664, 2nd Cir., 1968;
Chance v. U. S., 322 F. 2d 201, 203, 5th Cir., 1963;
State v. Leichman, 286 So. 2d 649, 652, La. 1973;
APPENDIX III

Court Cases Questioning the Voter Registration List

U. S. ex rel Goldsby v. Harpole, 263 F. 2d 71 (5th Cir., 1959)

White v. Crook, 251 F. Supp. 401 (Ala., 1966)

Harper v. State, 251 Miss. 699, 171 So. 2d 129 (1965)
(..."voter list themselves a product of discrimination, though this is true, it could be used as source but not the only source in compiling jurors.")

King v. Cook, 298 F. Supp. 584 (N. D. Miss., 1964)
(..."voter registration list voided as clear evidence that a particular group of blacks in the South were systematically discounted from voting."

People v. Taylor, No. A-277-427, Superior Court of Los Angeles County, California, October 11, 1974, the trial court unequivocably rejected sole use of voter registration lists, reversed on appeal.

The following cases have expressed doubt about voter list representativeness:

Commonwealth v. Martinez, 380 A2d 747 (Pa., 1977)

The courts also have suggested that voters list are per se, an unconstitutional source since they are not representative of a cross-section of the community and exclude many
persons statutorily qualified for jury service. For example:

Pullman v. Greene, 396 F. 2d 251 (5th Cir., 1968)
aff'd 400 F. 2d 306 (5th Cir., 1968), cert. denied,
<table>
<thead>
<tr>
<th>State</th>
<th>Selection Process</th>
<th>Source(s) of Names</th>
<th>Age Requirements</th>
<th>Other Special Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Discretion, exercised by a 3-member citizen jury commission.</td>
<td>List of voters, tax rolls, telephone directories, city directories, civic organizations.</td>
<td>21-65</td>
<td>“Esteemed in their community for their integrity, good character, and sound judgment.” Must read English or be a householder (Ala. Code, Title 30, see 21).</td>
</tr>
<tr>
<td>Alaska</td>
<td>Random selection.</td>
<td>List of actual voters, tax rolls, list of persons with trapping, hunting,</td>
<td>19.</td>
<td>None</td>
</tr>
<tr>
<td>Arizona</td>
<td>Random selection.</td>
<td>List of actual voters, tax rolls, list of persons with trapping, hunting,</td>
<td>18-19</td>
<td>None</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Discretion exercised by a 3 to 12 member citizen jury commission appointed by a circuit judge.</td>
<td>List of registered voters. Listed on jury rolls.</td>
<td>18-19</td>
<td>None</td>
</tr>
<tr>
<td>California</td>
<td>Random selection.</td>
<td>List of registered voters. Supplemented with names of registered voters.</td>
<td>18-19</td>
<td>None</td>
</tr>
<tr>
<td>Colorado</td>
<td>Random selection (Uniform Jury Selection Act)</td>
<td>Registered voters list, list of drivers' license, city directories,</td>
<td>18-19</td>
<td>None</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Discretion, exercised by town civil servants.</td>
<td>List of registered voters and city directories.</td>
<td>18-21</td>
<td>None</td>
</tr>
<tr>
<td>Delaware</td>
<td>Random selection, but from districts that are not uniform, and from rural areas over urban areas.</td>
<td>List of registered voters; volunteers are accepted.</td>
<td>18-21</td>
<td>None</td>
</tr>
<tr>
<td>District of Columbia (the federal system)</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>18-21</td>
<td>None</td>
</tr>
<tr>
<td>Florida</td>
<td>Discretion, exercised by county commissioners or 7-member county jury commissions. (in Dade County [Miami] and a number of other counties, random selection from voter lists.)</td>
<td>No particular source.</td>
<td>18-21</td>
<td>“Law-abiding citizens of approved integrity, good character, sound judgment and intelligence” (Fla. Stat. Ann., sec 40.01).</td>
</tr>
<tr>
<td>State</td>
<td>Method</td>
<td>Criteria</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>Georgia</td>
<td>Discretion, exercised by a 6-member citizen jury commission, appointed by a judge.</td>
<td>List of voters, plus other appropriate sources, including the tax digest and personal acquaintances.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
<td>Random selection.</td>
<td>Lists of registered voters, plus optional supplemental lists, including taxpayers' and drivers' license lists. In Hawaii, the voter list is supplemented with a small selection from the telephone book.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>Random selection (Uniform Jury Selection Act).</td>
<td>Registered voters list, drivers' license lists, electric utility's list.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>&quot;Of fair character, of approved integrity, of sound judgment, well-informed&quot; (Ill. Rev. Stat., Ch. 78, sec. 2 [1965]).</td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>Random selection.</td>
<td>List of registered voters, occasionally supplemented by the tax rolls. The legislature passed the Uniform Jury Selection Act (which required supplementation) for Lake County (Gary) in 1973, but the state supreme court interpreted the statute to eliminate the requirement of supplementation.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>Random selection.</td>
<td>Lists of registered voters or state census rolls, or both.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Discretion, exercised by a 5-member citizen jury commission appointed by a judge. (In Orleans Parish, they are appointed by the governor.)</td>
<td>No particular source.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Selection Process</td>
<td>Source of Names</td>
<td>Age Requirements</td>
<td>Other Special Requirements</td>
</tr>
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<td>---------------</td>
<td>------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Massachusetts</td>
<td>Discretion, exercised by town officials and county officials followed by personal interviews.</td>
<td>Police census lists.</td>
<td>18-70</td>
<td>&quot;Sound judgment,&quot; &quot;good moral character&quot; (Mass. Gen. Laws Ann., Ch. 234, sec. 4 [Supp. 1972]).</td>
</tr>
<tr>
<td>Michigan</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Random selection.</td>
<td>List of registered voters and sometimes the city directory.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Random selection.</td>
<td>Lists of registered voters.</td>
<td>21</td>
<td>None</td>
</tr>
<tr>
<td>Missouri</td>
<td>Random selection in the major cities, discretion in the less populated counties.</td>
<td>List of registered voters, tax rolls, other sources.</td>
<td>21</td>
<td>&quot;Sober and intelligent, of good reputation&quot; (Vernon's Ann. Mo. Stat., sec. 494.010).</td>
</tr>
<tr>
<td>Montana</td>
<td>Random selection.</td>
<td>Tax rolls.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Random selection.</td>
<td>List of actual or registered voters.</td>
<td>21-70</td>
<td>&quot;Of fair character, of approved integrity, well-informed . . . of sound mind and discretion&quot; (Neb. Stat., sec. 25-1601).</td>
</tr>
<tr>
<td>Nevada</td>
<td>Random selection.</td>
<td>List of registered voters, sometimes supplemented.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Discretion, exercised by town selectmen.</td>
<td>No particular sources.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>New York</td>
<td>A permanent jury list is maintained, added to by Random Selection, followed by a personal interview.</td>
<td>Lists of registered voters, telephone books, tax rolls, and other sources. Volunteers are accepted.</td>
<td>21-75 in counties with fewer than 100,000 and New York City; 21-72 (elsewhere).</td>
<td>&quot;Intelligent, of sound mind and good character; well-informed&quot; (Judiciary Law., sec. 596).</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Discretion, exercised by a 3-member citizen jury commission, appointed by 3 local officials.</td>
<td>Lists of registered voters and tax rolls.</td>
<td>18</td>
<td>None</td>
</tr>
<tr>
<td>State</td>
<td>Method of selection</td>
<td>Source(s)</td>
<td></td>
<td></td>
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<tr>
<td>--------------</td>
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<td>---------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>Random selection</td>
<td>Lists of actual voters and drivers' licenses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>Random selection, followed by personal interviews conducted by a 2-member citizen jury commission, appointed by judges and representing the 2 major political parties.</td>
<td>18-70 None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Discretion, exercised by a jury commission composed of civil servants, or - at the discretion of the presiding judge - random selection. Oklahoma and Tulsa counties now both select randomly from the voter list.</td>
<td>18-70 List of registered voters.</td>
<td></td>
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</tr>
<tr>
<td>Oregon</td>
<td>Random selection.</td>
<td>List of registered voters. (Statute also authorizes use of tax lists.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Random selection, followed (in Philadelphia) by some personal interviews.</td>
<td>18-70 List of registered voters.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Random selection, followed by personal interviews.</td>
<td>18-70 List of registered voters.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>Discretion, exercised by a jury commission composed of civil servants.</td>
<td>18-70 List of registered voters.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>Random selection.</td>
<td>Various lists.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Discretion, exercised by a jury commission composed of civil servants.</td>
<td>18-70 List of registered voters.</td>
<td></td>
<td></td>
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<tr>
<td>Texas</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Selection Process</td>
<td>Sources of Names</td>
<td>Age Requirements</td>
<td>Other Special Requirements</td>
</tr>
<tr>
<td>------------</td>
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</tr>
<tr>
<td>Vermont</td>
<td>Discretion, exercised by town officials.</td>
<td>Various lists.</td>
<td>18-</td>
<td>&quot;Mentally, morally and physically qualified&quot; (Vt. Stat., sec. 12-1401).</td>
</tr>
<tr>
<td>Virginia</td>
<td>Discretion, exercised by 2 to 9 member citizen jury commission, appointed by a judge. Counties can use a random selection method at the discretion of the chief judge of the circuit court.</td>
<td>No particular sources.</td>
<td>18-</td>
<td>&quot;Well qualified&quot; (Code Va., sec. 8-208.10).</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Discretion, exercised by a 2-member citizen jury commission (representing the 2 major political parties).</td>
<td>No particular sources.</td>
<td>18-65</td>
<td>&quot;Sound judgment,&quot; &quot;good moral character.&quot; Paupers are excluded. (W. Vir. Code, ch. 52, art 1, sec 24 [Michie 1966].)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Random selection, followed by personal interviews conducted by a 3 member citizen jury commission.</td>
<td>List of registered voters.</td>
<td>18-</td>
<td>&quot;I esteemed in their community as of good character and sound judgment&quot; (Wisc. Stat., sec. 225.01).</td>
</tr>
<tr>
<td>The Federal Courts</td>
<td>Random selection.</td>
<td>List of registered voters.</td>
<td>18-</td>
<td>None</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>State</th>
<th>Method</th>
<th>Grand Jury Term(s)</th>
<th>Jurisdiction</th>
<th>Requirement Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>Discretion, exercised by the county sheriff</td>
<td>18/12</td>
<td>All crimes with sentence of death or life imprisonment, occasional investigations.</td>
<td>Yes; that only for crimes with a potential sentence of death or life imprisonment.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Discretion, exercised by jury commissioners who pick grand jurors according to geographical districts.</td>
<td>10-15/7/10-9/15</td>
<td>Criminal indictments, investigations, serves for one year.</td>
<td>Yes; with certain constitutional and statutory exceptions.</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>Random selection from the list of registered voters, followed by questioning by a judge and sometimes by the U.S. Attorney.</td>
<td>23/12</td>
<td>Criminal indictments. Serves at least 2 months. Frequently 9 or 10 are operating at once.</td>
<td>Yes; all crimes with a potential sentence of a year or more.</td>
</tr>
<tr>
<td>Florida</td>
<td>Discretion, exercised by county commissioners or jury commission appointed by governor. Statewide grand juries can be unpanneled.</td>
<td>15-18/12</td>
<td>Criminal indictments, investigations of county offices.</td>
<td>Capital offenses only.</td>
</tr>
<tr>
<td>Georgia</td>
<td>Discretion, exercised by commissioners, appointed by judge.</td>
<td>16-21/ majority</td>
<td>Criminal indictments, investigations of local government affairs, inspections; sets salary for certain jobs.</td>
<td>Yes;</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Random selection from the list of registered voters, which may be supplemented with some names from other lists.</td>
<td>18-23/12</td>
<td>Criminal indictments.</td>
<td>No.</td>
</tr>
<tr>
<td>Idaho</td>
<td>Random selection from registered voter list, utility list, and drivers' license list.</td>
<td>16/12</td>
<td>Public offenses.</td>
<td>No.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Usually, random selection from the registered voter list, followed by questioning about the time involved.</td>
<td>23 (20 on supplemental panel)/12</td>
<td>Criminal indictments and investigations of official misconduct.</td>
<td>Yes.</td>
</tr>
<tr>
<td>State</td>
<td>Grand Jury Selection Process</td>
<td>Size of Grand Jury</td>
<td>Number of Grand Jurors Needed to Indict</td>
<td>Scope of Grand Jury Activities</td>
</tr>
<tr>
<td>-----------</td>
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<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Indiana</td>
<td>Random selection from the registered voter list, followed by questioning by a judge and prosecutor for bias and time.</td>
<td>6</td>
<td>5</td>
<td>Criminal indictments (major felony cases).</td>
</tr>
<tr>
<td>Iowa</td>
<td>Random selection from the list of actual voters.</td>
<td>7</td>
<td>5</td>
<td>Criminal indictments, investigations of prisons, conduct of public officials, highways.</td>
</tr>
<tr>
<td>Kansas</td>
<td>Random selection from the list of registered voters and/or census list.</td>
<td>15</td>
<td>12</td>
<td>All public offenses.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Discretion, exercised by a 3-member citizen jury commission appointed by a judge.</td>
<td>12</td>
<td>9</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Discretion, exercised by citizen jury commission.</td>
<td>12</td>
<td>9</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Maine</td>
<td>Random selection from voter registration list followed by questioning by a judge and the district attorney.</td>
<td>13-23</td>
<td>12</td>
<td>Criminal indictments. In CumberLand County (Portland), the grand jury serves for one year and meets for 5-10 days every three times a year.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Random selection from voter registration lists screened to see who can spare the time.</td>
<td>23</td>
<td>12</td>
<td>Criminal indictments. Also inspects government agencies. Meets every day for four months.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>35 names are randomly drawn from the trial jury list, which is assembled by discretion, then a judge selects 23 persons.</td>
<td>23</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Michigan</td>
<td>Random selection from the list of registered voters.</td>
<td>13-17 (also 1 person [judge] grand juries.)</td>
<td>9</td>
<td>Criminal indictments (infrequent) and investigations.</td>
</tr>
<tr>
<td>State</td>
<td>Method</td>
<td>Number of Grand Juries</td>
<td>Number of Judges</td>
<td>Type of Indictments</td>
</tr>
<tr>
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</tr>
<tr>
<td>Minnesota</td>
<td>Random selection from the list of registered voters (separate list maintained)</td>
<td>16-23</td>
<td>16</td>
<td>Criminal indictments, investigations of prisons and public officials</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Discretion, exercised by the local boards of supervisors</td>
<td>15-20</td>
<td>12</td>
<td>Criminal indictments and investigations of local governmental affairs</td>
</tr>
<tr>
<td>Missouri</td>
<td>Randomly selected names are screened carefully by the judge who makes the final selection</td>
<td>12</td>
<td>9</td>
<td>Criminal indictments, investigations, inspections, inquiries into government fiscal matters</td>
</tr>
<tr>
<td>Montana</td>
<td>Random selection from tax rolls</td>
<td>11</td>
<td>10</td>
<td>Criminal indictments, investigations, public officials, prisons</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Random selection of 40 names from the list of actual or registered voters, and from that list of 40, 16 are picked by the judge and jury commissioner</td>
<td>16</td>
<td>12</td>
<td>Criminal indictments, investigations, public officials, county jail</td>
</tr>
<tr>
<td>Nevada</td>
<td>36 persons are nominated by the county commissioners and one judge; 17 are then drawn by lot</td>
<td>17</td>
<td>12</td>
<td>Criminal indictments and investigations of local governmental affairs</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Random selection from the trial jury list, which is assembled by the discretion of town officials</td>
<td>23</td>
<td>12</td>
<td>Criminal indictments and investigations of subversive activities. Meets about 4 days every 2-3 months</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Random selection from the list of registered voters. Statute authorizes statewide grand juries</td>
<td>23</td>
<td>12</td>
<td>Criminal indictments, investigations</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Random selection from the voter registration list followed by questioning by a judge</td>
<td>12</td>
<td>8</td>
<td>Criminal indictments, investigations. In Hidalgo County (El Paso), grand juries meet once a week for a 6-month term. Elsewhere, they are called infrequently</td>
</tr>
<tr>
<td>State</td>
<td>Grand Jury Selection Process</td>
<td>Size of Grand Jury</td>
<td>Number of Grand Jurors Needed to Indict</td>
<td>Scope of Grand Jury Activities</td>
</tr>
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</tr>
<tr>
<td>New York</td>
<td>Specially selected from persons who have been qualified as trial jurors and who pass a police department examination.</td>
<td>16-23</td>
<td>12</td>
<td>Criminal indictments, investigations into prisons and misconduct of public officials.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Discretion, exercised by a 3-member citizen jury commission, appointed by 3 local officials.</td>
<td>9</td>
<td>Majority</td>
<td>Criminal indictments, inspections.</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Random selection from lists of actual voters and holders of driver's licenses.</td>
<td>8-11</td>
<td>6</td>
<td>Criminal indictments, prisons, public officials. Only rarely assembled.</td>
</tr>
<tr>
<td>Ohio</td>
<td>Random selection from the registered voter list followed by questioning.</td>
<td>9</td>
<td>7</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Varies by county.</td>
<td>12</td>
<td>9</td>
<td>Criminal indictments and investigations of local governmental affairs. Can be called by petition of citizens.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Random selection from list of registered voters.</td>
<td>7</td>
<td>5</td>
<td>Criminal indictments and investigations of public prisons and offices pertaining to courts of justice.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Selected from voter registration lists, and sometimes interviewed by jury clerk, and jury masters.</td>
<td>15-23</td>
<td>12</td>
<td>Criminal indictments and investigations.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Random selection from voter registration list followed by an interview. Statewide grand juries are authorized.</td>
<td>13-23</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>State</td>
<td>Method</td>
<td>Jurors</td>
<td>Defendants</td>
<td>Inquiries</td>
</tr>
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</tr>
<tr>
<td>South Carolina</td>
<td>Discretion, exercised by a jury commission composed of civil servants.</td>
<td>18</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Random selection from the list of registered voters.</td>
<td>8</td>
<td>5</td>
<td>Criminal indictments, investigations of governmental misconduct.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Randomly selected from the trial jury lists which are compiled by jury commissioners without guidelines. Same person may serve as foreperson for several years.</td>
<td>13</td>
<td>12</td>
<td>Criminal indictments and investigations of prisons, elections, and governmental affairs.</td>
</tr>
<tr>
<td>Texas</td>
<td>Discretion exercised by citizen jury commissioners, appointed by a judge.</td>
<td>12</td>
<td>9</td>
<td>Criminal indictments, investigations.</td>
</tr>
<tr>
<td>Utah</td>
<td>Random selection from voter registration list; potential grand jurors are screened by the judges.</td>
<td>7</td>
<td>5</td>
<td>Criminal indictments, investigations, inspections (public prisons, willful and corrupt misconduct of public officials).</td>
</tr>
<tr>
<td>Vermont</td>
<td>Jury commissioners select names.</td>
<td>18</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Virginia</td>
<td>Judges choose names.</td>
<td>5-7</td>
<td>4</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Washington</td>
<td>Random selection from voter registration list.</td>
<td>12-18, 17-18 in King County (Seattle)</td>
<td>3/4</td>
<td>Criminal indictments and investigations of governmental affairs.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Discretion, exercised by a 2-member citizen jury commission (representing the 2 major political parties).</td>
<td>16</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Names selected by jury commissioners and then screened by the judges. In Milwaukee County, random selection from the registered voter list.</td>
<td>17</td>
<td>12</td>
<td>Criminal indictments.</td>
</tr>
<tr>
<td>State</td>
<td>Grand Jury Selection Process</td>
<td>Size of Grand Jury</td>
<td>Number of Grand Jurors Needed to Indict</td>
<td>Scope of Grand Jury Activities</td>
</tr>
<tr>
<td>----------</td>
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</tr>
<tr>
<td>Wyoming</td>
<td>Random selection from the voter registration list. Statewide grand juries can be assembled.</td>
<td>12-16</td>
<td>9</td>
<td>Criminal indictments, inspections, investigations.</td>
</tr>
</tbody>
</table>

*The U.S. Court of Appeals for the Third Circuit, in Zacarello v. New Jersey, said that the use of statewide grand juries in New Jersey was unconstitutional because it deprived defendants of their right to a grand jury selected from the local vicinity. New York Times, Nov. 21, 1975, pp. 1, 45.
APPENDIX V

Article I - Jury Commissions, Preparation of Jury List and Drawing of Panels

Section 9-6 - Jury Service a public duty; excuses to be allowed in exceptional cases; procedure.

Section 9-6.1 - Excuses on Account of age.

Section 9-7 - Removal of names of jurors who have served from jury list; retention.

Section 9-8, 9-9 - Repealed.

Article II - Petit Jurors

Section 9-10 - Summons to jurors.

Section 9-11 - Supplemental jurors; special venire.

Section 9-12 - Supplemental jurors from other counties.

Section 9-13 - Penalty for disobeying summons.

Section 9-14 - Jury sworn; judge decides competency.

Section 9-15 - Questioning jurors without challenge; challenge for cause.

Section 9-16 - Exemption from civil arrest.

Section 9-17 - Jurors impaneled to try case furnished with accommodation; separation of jurors.

Section 9-18 - Alternate jurors.

Article III - Peremptory Challenges

Section 9-19 - Peremptory challenges in civil cases.

Section 9-20 - Civil cases having several defendants; challenge apportioned; discretion of judges.

-330-
Section 9-21 - Peremptory challenges in criminal cases governed by Chapter 15A.

Article IV - Grand Jurors

Section 9-22 to 9-31. [Repealed]
§ 9-2. Preparation of jury list; source of names.

(a) It shall be the duty of the jury commission beginning July 1, 1981, (and each biennium thereafter) to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning January 1, 1982, (and each biennium thereafter).

(b) In preparing the list, the jury commission shall use the voter registration records of the county. The commission may use fewer than all the names from the voter list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c) Effective July 1, 1983, the list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G. S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list.

(d) When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.

(e) As an alternative to the procedure set forth in subsection (d), the jury commission may merge the entire list of names of each source used,
remove the duplicate names, and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter items and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the jury list.

(g) The custodian of the appropriate election registration records in each county shall cooperate with the jury commission in its duty of compiling the list required by this section.

(h) As used in this section "random" or "randomly" refers to a method of selection that results in each name on a list having an equal opportunity to be selected. (1806 c. 694, P. R.; Code, ss. 1722, 1723; 1889, c. 559; 1897, cc. 117, 539; 1899, c. 729; Rev., s. 1957; C. S., s., 2312; 1947, c. 1007, s. 1; 1967, c. 218, s. 1; 1969, c. 205, s. 1; c. 1190, s. 491/2; 1973, c. 83, ss. 1, 2; 1981, c. 430, s. 1; c. 720, s. 1.).

Procedure in Counties that Use Only the Voter Registration List

For the 1981-83 biennium, the jury commission may choose to use the voter registration list as the sole source of names from the jury list. The only provision of the new law that may affect counties that exercise this option is G.S. 9-2 (h). This defines the random selection method that must be used as one that results in giving each name on the list "an equal opportunity to be selected." In other respects, the procedures outlined in the Manual for Jury Commissioners, 1973 edition, are still applicable. The effect of this provision on counties that select the names manually and those that use a computer for this purpose is described below.
A. Manual Counties - This provision will not affect counties that use the procedure set out in the old law to select names--for example, every second name from the voter list. However, the procedure (used by some counties) of selecting by alphabetical sequence--for example, all names beginning with A-K (only)--will not meet the test of randomness in the new law.

B. Computer Counties - Counties in which the internal selection method (every second name) has been programmed into a computer to select names or in which a "random number generator" computer program is used may continue this procedure.

Procedure in Counties that Use More than One List

While the jury commission is required to use only the voter registration list in 1981-83, G. S. 9-2 (b) provides that the commission may use additional sources "deemed by it to be reliable." The new law specifies the procedure that must be used to combine lists. The composition of the tax list (e.g., corporations, joint ownership records, etc.) will make it very inconvenient and expensive to apply these procedures to that list, and there is very little to be gained from it. The new law outlines two methods that may be used to combined lists.

Illustration of Sample List Combination
Method under G. S. 9-2 (d)

For the purpose of illustration, consider a fictitious county with the following:

- Number of names needed for the jury list: 8,000 (equals A)
- Number of names on list "X": 30,000 (equals B)
- Number of names on voter registration list: 20,000
- Number of names on registration list after comparison with list "X" and removal of duplicates: 10,000 (equals C)
Step 1 - The percentage of names to be drawn randomly from each list must be selected from both lists. By using the same percentage, individuals on each list have the same chance of being picked. The percentage is determined in the following manner:

*(1)* Estimate the percentage of names on the voter list that will be duplicated on list X (for example, 50 percent).
*(2)* Using this estimate, determine the number of unduplicated names on the voter list (50 x 20,000 = 10,000 = C).
*(3)* Apply the following formula:

\[
\frac{A}{B + C} = \text{Percent of names to be selected each list}
\]

\[
\frac{8,000}{30,000 + 10,000} = \frac{8,000}{40,000} = 20\%
\]

Step 2 - The percentage determined above is applied to both lists to select a sample from each list:

- List X .20 x 30,000 = 6,000 names
- Voter list - .20 x 20,000 = 4,000 names

Step 3 - The 4,000 names from the voter registration sample are then compared with the entire contents of List "X." In this illustration, approximately 50 percent of the names on the voter sample are duplicated on list X and will be rejected for this reason.

\[.50 \times 4,000 = 2,000\]

The remaining names are combined with those on the sample list of "X" to form the jury list:

- 2,000 unduplicated names from the voter sample = 6,000 names from the "X" sample;
- total 8,000 name jury list

1. G. S. 9-2 (d) provides that samples from the lists may be combined. To illustrate:

- (a) a random sample is selected from the voter list and from list "X." The same percentage of names must be selected from list, e.g., 20 percent.
(b) the names forming sample "X" are initially set aside.

(c) the names from the voter sample are checked against the entire list from which sample "X" was drawn.

(d) names include in the voter sample, which are also on list "X," are rejected. These are "duplicate names" present on both lists. (Rejecting these names ensures that these individuals have only one chance of being included on the jury list.)

(e) the remaining non-duplicated names from the voter sample are then combined with the names from sample "X." This process does away with duplicate names. (An illustration of this procedure is included. . .).

When three lists are used, the procedure described above is supplemented by checking a sample from the third against the entire contents of both lists 1 and 2.

2. An alternative method for combining lists is outlined in G. S. 9-2 (e). The jury commission may choose to combine all of the names on all the source lists used, remove duplicate names, and then randomly select the desired number of names from the jury list. This procedure will be practical only for counties that use computers. Even for computerized counties, the first procedure will probably be more efficient.

Either of these methods may be done manually or programmed for computer selection under the direction of the jury commission. While the procedures described here are more involved than those in the old law, they enhance the fairness of the selection process. They ensure that citizen A, whose name appears on two source lists—e.g., voter list and driver list (tax list)—has the same opportunity to be included on the jury list as citizen A was twice as likely to be on the jury list, and therefore twice as likely to be summoned for jury duty.

* This figure simply predicts the number of names that will later be purged as duplicates. If this figure were not taken into account, the number selected would fall short of the number needed when duplicates were identified and rejected in Step 3. The 50 percent figure used in the
illustration would be a safe estimate for counties that choose to use the tax list for the 1981-83 cycle.

APPENDIX VII
DATA COLLECTION AND INSTRUMENTATION

INSTRUMENTATION

Sample Data Sheet

Sample # __________________

Name:
Address:
Telephone #:

Good Evening (Morning, Afternoon)

My name is Norman Smith (whatever). And I am doing a study on the composition of the trial jury (jury selection) in Charlotte-Mecklenburg County for jury years 1976-77 and 1980-81 as a part of my master degree in Political Science. And, according to court records, you served as a juror during this time; therefore, I was wondering if you would give me a few moments of your time to answer some questions in relation to your jury service. All information will remain anonymous, as names will not appear on the data tabulation. The only persons to be exposed to the information will be myself and thesis advisors in Atlanta, Georgia.

Addendum: If a reply is negative, the respondent will be thanked for their time. If it is positive, the proceeding questions will be asked: 
A. What is your occupation, please?

- Professional [ ]
- Manager/Administrator [ ]
- Sales/Clerical [ ]
- Craftsman/Foreman [ ]
- Equipment Operator [ ]
- Laborer [ ]
- Farmer/Farm Labor [ ]
- Service Worker [ ]
- Occupation Not Above [ ]

B. What is your highest education level completed?

- 0-1 year [ ]
- 1-4 year [ ]
- 5-7 years [ ]
- 8-9 years [ ]
- 1-3 years high school [ ]
- 1-3 years of college [ ]
- 4/or more years of college [ ]

C. What is your age, please?

- 18-19 [ ]
- 20-24 [ ]
- 25-29 [ ]
- 30-34 [ ]
- 35-39 [ ]
- 40-44 [ ]
- 45-49 [ ]
- 50-54 [ ]
- 55-59 [ ]
- 60-64 [ ]
- 65-69 [ ]
- 70-74 [ ]
- 75-over [ ]

D. What is your race, please?

- White [ ]
- Black [ ]
- Indian [ ]
- Japanese [ ]
- Chinese [ ]
- Filipino [ ]
- Other [ ]
E. What is your yearly income?

0 - 5,000 [ ]
5,001 - 9,999 [ ]
10,000 - 14,999 [ ]
15,000 - 20,000 [ ]
20,001 - 29,999 [ ]
30,000 - above [ ]

F. What is your sex?

Male [ ]
Female [ ]*

*Do not ask in phone conversation, rather mark off sex according to first name.

I certainly would like to thank you for your cooperation and patience; and I do apologize for interrupting your schedule. Should you like to know the results of this study, you may contact me at 704/376-3269 any evening after May 10, 1980. Again, thank you. Good night, morning, or evening.

Note: Interview should last for ten to thirteen minutes and should be strictly abided by.
APPENDIX VIII

Court Cases Using Absolute Disparity Standard

U. S. ex rel Barksdale v. Blackburn, 639 F.2d 1115, 1126-27
(5th Cir., 1981).
State v. Robinson, 417 A.2d 953, 959-60 (Del. Superior
Court, 1980).
Jones v. Georgia, 389 U. S. 24 (1967) (14.7%).
Sims v. Georgia, 389 U. S. 404 (1967) (14.6%).
Preston v. Manderville, 428 F.2d 1392 (5th Cir. 1970)
(14.3%).
Turner v. State, 258 Ark. 425. 527 S. W. 2d 580 (1975)
(12.5%).

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Alexander v. Louisiana, 405 U. S. 625, 629-632 (1972) (16.4%).

Whitus v. Georgia, 385 U. S. 545, 552 (1967) (18%).


Taylor v. Louisiana, 419 U. S. 522, 524-26 (1975) (43%).


Glasser v. United States, 315 U. S. 60 (1942) (federal jury).


Broadway v. Culpepper, 439 F.2d 1253 (5th Cir., 1971).


Labat v. Bennett, 365 F.2d 698 (5th Cir.) (en banc).


U. S. v. Test, 550 F.2d 577, 589 (10th Cir., 1976).


Gibson v. Zant, 705 F.2d 1543 (11th Cir., 1983-20%-38%).

Machetti v. Linahan, 679 F.2d 236 (11th Cir., 1982-36% and 42%).

U. S. v. Maskeney, 609 F.2d 183, 190 (5th Cir.) (1980).


Porter v. Freeman, 577 F.2d 329 (5th Cir., 1978) (20.4%).

Spartley v. Paderick, 528 F.2d 733 (4th Cir., 1975) (28%).


U. S. v. Armstrong, 621 F.2d 951, 956 (9th Cir., 1980).


U. S. v. Potter, 552 F.2d 901, 905-906 (9th Cir., 1977).


APPENDIX IX

Comparative Disparity: Applicable Court Cases

Quadra v. Superior Court of San Francisco, 403 F. Supp. 486, 495 and n. 9 (N. D. Cal., 1975).

People v. Guzman, 89 A. D. 2d 14, 24 and n. 8, 454 N. Y. S. 2d 852, 859 (1982) (The court also expressly relied on testimony that the chance of the result in the case occurring randomly was less than one in one thousand).

State v. Acosta, 125 Arizona 146, 148, 608 P. 2d 83, 85 (Arizona Court of Appeal, 1980: without explanation to groups making up 14.6% and 19.9% of the population).

State v. Barrow, 239 Georgia 162, 236 S. E. 2d 257, 260 (1977) (to the underrepresentation of blacks, which made up 37.3% of the population).

U. S. v. Butler, 615 F. 2d 685 (1980), rejected for specific application (5th Cir.), certiorari denied, 449 U. S. 830 (1980) (leaving open the question whether comparative disparity should be used in case of minority groups making up less than 10% of the population).

Jordan v. State, 293 So. 2d 131 (Fla., District Court Appeal, 1974) (applying the general reasoning comparative disparity).


U. S. v. Test, 550 F. 2d 577, 589 (10th Cir., 1976).
Alexander v. Louisiana, 405 U. S. 625, 629 (1972) (describing reduction from 21% to 14%, and from 14% to 7% in comparative terms).


U. S. v. Maskeney, 609 F. 2d 183 (5th Cir., 1980).


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Strauder v. West Virginia, 100 U. S. 303 (1880).

State v. Peoples, 131 N. C. 784 (1902).


State v. Hawkins, Superior Court of Mecklenburg County, Fall Term, Docket Number 42-237 and 42-238, 1960-61.


