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PROTECTING THE INTERESTS OF THE COMMUNITY BY LOCALIZING THE JURY

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Abstract: *In the wake of the high-profile non-indictments of the police officers involved in the Michael Brown and Eric Garner cases, the structure of the judicial system has been brought into question. Both legal minds and lay peoplewere confused and outraged by the failure to hold police officers accountable. There are many possible reasons for these unfavorable grand jury decisions, one of which is the breadth of the jury pool. The American legal system guarantees that the jury reflects a "fair cross-section of the community"; andthis article will interrogate the meaning of "community" and argue that creating jury pools from such large areas as entire counties or states is over-broad. Instead, juries should be localized—comprised of citizens from the same area where the alleged offense occurred. Such a construct creates a system of community justice asa localized jury will have more insight into the situations before them, more of a stake in a just and equitable outcome, and a jury composition that actually reflects the community involved (i.e., black community = black jury). Indeed, the jury is the guardian of the public trust and the voice of the community's values inside a legal system dominated by lawyers and judges*[1].

INTRODUCTION

The origins of the American criminal justice system are found in English common law.[2] Throughout its existence, it has been a tool of white supremacy, capitalism, and patriarchy. Pontifications of fairness have been belied by pronounced injustice and inequality. The phrase 'The White man speaks with a forked tongue', an observation often attributed to the Native Americans, eloquently characterizes the decrees of lawmakers and judicial officers alike who have been comfortably tone-deafto the blatant hypocrisy of their own language. Take for example the immortal declaration that "All men are created equal."[3] Thomas Jefferson penned those words during the height of slavery and within the same document, would go on to equate the King's support of slave insurrections as an example of tyranny[4], and justification to rebelfor American independence.

The analysis above provides a contextual framework within which the actual subject matter of this article can be considered. In reading American jurisprudence, one must be hyper-aware

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that the language used may not always be practically applied. For instance, "all", when practically applied, often means 'some' at best and 'a few' at worst. Racial minorities, women, and the poor have historically been politically invisible and therefore excluded from language that confers political rights. This invisibility coupled with the application of what appears to be objectivity creates a dangerous camouflage for insensitivity to or deliberate disregard of the needs of suspect classes and minority groups.

This article concerns the matter of representative jury composition and suggests a method that can increase the chances of petit juries[5] truly reflecting their respective communities. The Supreme Court has interpreted the Sixth Amendment to require only the opportunity to have a representative jury. Specifically, that the jury venire be composed of a "fair cross-section"[6] of the community from which it is drawn[7].

In an objective sense, this may seem reasonable, because unfortunately, it may be practically impossible to guarantee a truly representative petit jury for every trial. However, the insensitivity of this objectivity is exposed when one considers that as the majority demographic in this country, white Americans, are insulated from the cruelty of chance that may deprive them of a jury of their peers. Indeed, the chance of a white defendant being confronted with an all-black jury is so unlikely as to make it a ridiculous thought.[8]

The reality that minority groups and suspect classes are the ones at greater risk of having an unrepresentative jury, should be a central consideration in working towards a solution. Different ideas have previously been proposed[9] and some creative strategies have previously been employed[10] to ensure that the jury pool is representative of the community from whence the accused came, but none have yet been successful. The solution being offered here is deliberately simple: localize the jury pool by shrinking the vicinage.

This is not a novel concept.[11] In fact, "the United States Constitution expressly mandates the provision of local juries in Article III[12] and the Sixth Amendment.[13] While the venue provision in Article III requires that all criminal trials be within the state in which the crime was committed, the Sixth Amendment requires criminal trial "by an impartial jury of the State and district wherein the crime shall have been committed."[14] This clause, known as the vicinage provision, and its meaning, have gone through many rounds of debate regarding how to define andapply it.

Part I of this paper will discuss the historical debate surrounding the concept of vicinage as it should be applied to American jurisprudence. Part II will discuss the function that the jury is suppose to play as part of the democratic institution and the concept of community as it relates to the right to have a jury (pool) that represents a "fair cross-section" of the community. Part III will contextualize the failure of the jury to perform the functions outlined in Part II in the high profile case of the Michael Brown grand jury. Finally, Part IV will elaborate on the application of the presented solution and offer the conclusion.

PART I

The term 'vicinage' refers to the prospective jurors within the vicinity of an offense[15]. The process of producing a jury, including the geography of the vicinage, is different from state to state. The trial jury in either a civil or criminal case is chosen from a list called a **venire,** or

jury pool, that has been compiled by the court[16]. The method of selecting names for the venire varies. In many states, the list is compiled from voter registration rolls and/or drivers license lists. In some jurisdictions, the federal and state courts use the same lists for a given area. The jury pool is sometimes compiled with the help of jury commissioners appointed by the presiding judge17.Jurors are then chosen (summoned) at random from the jury pool of the district in which that court has jurisdiction. For instance, if it is a county court, the jurors will come from that county[18].

The English common law concept of drawing a jury from the area of the crime expected that the jury would have personal knowledge of the situation, perhaps even personal knowledge of the defendant, and that the jurors would also engage in their own investigation[19]. Essentially, jurors were working on behalf of the Crown to get to the bottom of an issue[20]. In the American colonies, the jury evolved torelinquish its direct connection and responsibility to the Crown and instead " became a buffer between the accused and the government."[21] Although the use of juries drawn from the vicinity of the crime was not uniform throughout the American colonies, the institution of the jury system was so meaningful to the colonists that British interference with the vicinage rights contributed to the desire for American independence.

> Despite the colonial diversity of practice concerning the use of petit jurors drawn from the vicinity of the commission of the crime, when Parliament passed the various venue acts which permitted trial in another province or in England, the colonists consistently attacked these venue statutes as depriving the accused of a trial by his peers from the vicinage of the crime. … Again, in light of the actions taken by Parliament, the colonial history with respect to trial by a jury of the vicinage, and the protests about that right being violated, it is not surprising that another grievance specifically listed in the Declaration of Independence read: "For depriving us in many cases, of the benefits of Trial by Jury."[22]

Indeed, Patrick Henry once asked and answered the rhetorical question "Why do we love this trial by jury? … Because it prevents the hand of oppression from cutting you off!"[23]

Following the American Revolution, the former colonies continued to progress through the growing pains of independence. It was during the Federal Constitutional Convention of 1789 that the current manifestation of the jury trial, particularly with regard to the vicinage provision, took shape. "Both proponents and opponents understood that a jury of the vicinage would be different from a jury from any-where else with respect to each of the three major functions performed by a jury: finding the facts, applying the law to the facts, and serving as the conscience of the community."[24]

At that time it was considered important to some proponents of the vicinage that jurors would have personal knowledge of the accused, the accuser and witnesses, and of the crime itself. Opponents of a vicinage provision were concerned that a juror with such familiarity with the case might not be impartial. Indeed, the process of voir dire[25] and the Constitutional right to an impartial jury mitigates this concern today. Today, a juror with personal knowledge of any of these things would most likely be stricken from the jury for fear of impartiality; especially if that juror had already formed an opinion. Nevertheless, at least one of the arguments made regarding the superior fact-finding ability of vicinage jurors is that they will be best able to understand subtleties such as "mannerisms, colloquialisms, and fashions of the participants"[26], as well as facts related to the setting and location.

Regarding the application of law to facts, Thomas Jefferson once wrote: "Were I called upon to decide, whether the people had best be omitted in the legislative or judiciary department, I would say it is better to leave them out of the legislative. The execution of laws is more important the making of them."[27] It was considered that the accused deserved the privilege to not be subjected to a loss of liberty (or for that matter, life and property) without the unanimous[28] consent of his/her own community.

Similarly, it was considered that the community had a right to participate in the resolution of alleged law-breaking within their midst. This goes to the notion of jury duty being a civic duty and a direct way for popular participation in law-making. "If jurors were chosen from the place of the commission of the crime, jurors from the community affected by the crime would apply the law to the facts of the particular case. Local communities, through their juries, would thereby be able to "make" the criminal law for their community. Local responsibility for setting community standards, for defining what conduct was considered criminal within that community, would be encouraged."[29] This "applying of the law" naturally compliments the idea that the jury should be the conscience of the community.

Ultimately, a compromise was reached that balanced the agreement that a vicinage provision should exist, with the disagreement about how it should be applied. The Sixth Amendment use of the word "district" rather than state, county, town, or some other iteration of a locality is deliberately amorphous. It allows the state or local government the flexibility to create judicial districts that fit the need of the community. Combined with the venue provision of USC Article 3, Section 2, Clause 3,[30] the judicial system attempts to assure that jury trials and the jury pool are kept within relative proximity to the commission of the crime. However, when thiswas established, the states were less populous and diverse. Furthermore, the need to assure minority representation and participation was not an issue to be considered.

In order for the conscience of the minority communities to actually be given influence, their representation and participation in juries must be assured. In order for this to happen, their conscience must not be diluted with the conscience of the larger society. To the extent that such dilution occurs, it has the potential to be a neutralizing influence such that only a façade of equality remains.

> It's just like when you've got some coffee that's too black, which means it's too strong. What do you do? You integrate it with cream; you make it weak. But if you pour too much cream in it, you won't even know you ever had coffee. It used to be hot, it becomes cool; it used to be strong, it becomes weak. It used to wake you up, now it puts you to sleep.[31]

As Thomas Jefferson recognized[32], the import of juror participation is more precious than voter participation.[33] The jury and its role as a buffer between the accused and the government is expected to be a shield against oppression, tyranny, and injustice. In order for this buffer to be effective, juries must adequately represent minority communities.

PART II

"Since it was first recognized in [the] Magna Carta, trial by jury has been a prized shield against oppression, but, while proclaiming trial by jury as "the glory of the English law," Blackstone was careful to note that it was but a "privilege." Our Constitution transforms that

privilege into a right."[34] The clause was clearly intended to protect the accused from oppression by the Government[35]. It is understood that the purpose of a jury is to guard against the exercise of arbitrary power; to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor; and in preference to the professional,over-conditioned, or biased response of a judge.[36]

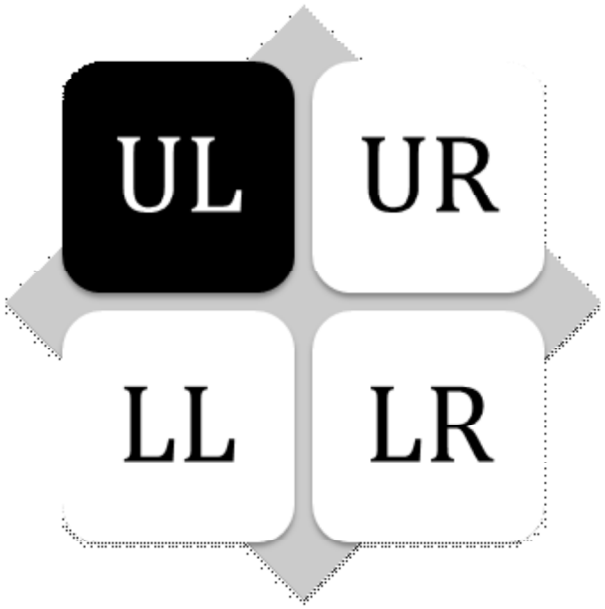
As it is written, the Sixth Amendment does not guarantee the jury to represent the conscience of the community, it simply grants the right of an impartial jury. The Court has "interpreted the Sixth Amendment's right to an impartial jury as requiring that the venire from which the jury is selected represent a "fair cross-section' of the community."[37] The Supreme Court, in *Taylor v. Louisiana,* held that "the selection of a petit jury from a representative cross-section of the community is an essential component of the Sixth Amendment right to a jury trial."[38] The Court found that a process that failed to comport with the cross-section requirement lost the purposes of the jury.These purposes are: (1) to "guard against the exercise of arbitrary power;" (2) to preserve "public confidence in the fairness of the criminal justice system;" and (3) to uphold that the ideal that "sharing in the administration of justice is a phase of civic responsibility."[39] The Court also relied on the language in *Ballard*,[40] where Justice Douglas had stated that "a flavor, a distinct quality is lost if either sex is excluded."[41] Similarly, a distinct flavor or quality is lost if cognizable groups, such as racial minorities, are missing.

The 'fair cross-section' consideration was developed with the idea of integrating a typically white-male jury and addressing the issue of systematic exclusion. The Court in *Duren v. Missouri*[42] enunciated the test for establishing a "fair cross-section' violation. The defendant must make a prima facie case, demonstrating three facts: (1) the alleged exclusion affects a "distinctive group;" (2) the number of members from the group is unreasonable in proportion to the number in the community; and (3) the underrepresentation is the result of "systematic exclusion."[43] If the prima facie case is made, the state must then show that the exclusion serves a significant state interest.

The issue being addressed here has less to do with a systematic exclusion, and more to do with a developing a solution for the underrepresentation of Black people on juries regardless of the reasons for it. Underrepresentation may occur in different places and/or for different reasons. With respect to the fair-cross section requirement as a response to underrepresentation on juries, past cases have typically (but not exclusively) concerned either women or Black people. Therefore, having a fair cross-section could be interpreted as having a jury of people other than white males. Also, the idea of underrepresentation should be considered with the reciprocal value of overrepresentation. In other words, if African-Americans are underrepresented, this means that whites are overrepresented. The present solution under discussion aims to address this issue. If the jury venire is localized, there is less chance that white people will be overrepresented in matters that primarily concern the black community.

The word community, like the word district discussed *supra*, is an amorphous and undefined area. Either word can be applied to an entire state, county, ward, town or even a particular side of town. These various areas may have interests that are widely shared, interests that are competing, or interests that have nothing to do with the other. As it relates to juries, the fair cross-section requirement is to be applied to the vicinage. However, there is no requirement as to how large or small the vicinage is supposed to be. It can be expanded or limited as necessary.

Figure 1



Using Figure 1 as an example, consider this an entire district. The Upper Left (UL) quadrant of the district is a majority (not exclusively) black area. The other three quadrants are majority (not exclusively) white. If a crime occurs in UL and the vicinage is drawn from the entire district, the most that a defendant from UL can hope for is 3 jurors from UL on average,sometimes more. However, it is mathematically more likely that it would be less. To the extent that the quadrants are separated on racial lines, the majority black quadrant is unlikely to have a majority black jury. On the other hand, no matter where a crime occurs, the jury is most likely to be majority white;sometimes it may even be entirely white. However, if the vicinage is adjusted such that the district is divided into four components and the vicinage for crimes that occur in UL are exclusively drawn from UL, the jury composition will change immediately and dramatically. More importantly, this could be done without violating the Equal Protection clause of the Fourteenth Amendment, or the Sixth Amendment right to an impartial jury[44].

PART III

The Mike Brown homicide in Ferguson, Missouri, provides an exemplary case study. The city of Ferguson sits within St. Louis County. The demographic population of St. Louis County is 24 percent black and about 68 percent white. The population of Ferguson, on the other hand, is approximately the inverse: 67 percent black and 29 percent white[45]. In Missouri, the jury pool comes from the county, not the city, and as it turned out, the petit grand jury of 9 whites and 3 blacks roughly reflected the county demographics. However, if the jury pool was localized to the City of Ferguson, it is more likely that the jury would have reflected the demographics of Ferguson, rather than St. Louis County. Had that been the case, there is no way to know if

the outcome would have been different, but the jury's decision may have been better informed and received, thus contributing to public confidence. Even if one believes that the link between diverse juries and impartiality is tenuous, this second aspect of institutional legitimacy is incontrovertible: "confidence in the criminal justice system rests as much on the appearance of fairness as on the delivery of "accurate" results. T]he public is more likely to question the accuracy of verdicts when a non-representative tribunal delivers them, especially when the issues are controversial or the crime is race-related."[46]

Recalling the holding in *Taylor*, the Court found that the purposes of the jury were lost by a process that failed to comport with the cross-section requirement: (1) to "guard against the exercise of arbitrary power;" (2) to preserve "public confidence in the fairness of the criminal justice system;" and (3) to uphold that the ideal that "sharing in the administration of justice is a phase of civic responsibility."[47] Regarding point one, the Mike Brown case involved a grand jury, which unlike a jury trial is a prosecutorial driven secret proceeding where the jury hears the testimony of the prosecution's witnesses in the defendant's absence,allowing them no opportunity to confront the witnesses against them. Under these circumstances, prosecutors typically have no difficulty getting the indictments they seek. If the federal grand jury is any indication of what transpires at the state-level, prosecutors get their indictments at a rate of 16,000 to 1. According to the FBI'sBureau of Justice Statistics[48], U.S. attorneys prosecuted 162,000 federal cases in 2010, with grand juries returning an indictment on all but 11 of them. With such power and influence over the process, the importance of the jury as a "hedge against the overzealous or mistaken prosecutor" cannot be underestimated.[49]

It has been well documented that blacks are statistically less likely to trust police than are whites;a recent Gallup Poll[50] provided evidence of this fact. It found that overall 57 percent of Americans trust the police in their neighborhoods. This includes more than 60 percent of whites and exactly 57 percent of Hispanics. That number falls dramatically, however, within the Black community, where just 34 percent feel confident in the police. In urban communities, blacks feel even less comfortable with their law-enforcement agents. Just 26 percent of African-Americans living in big cities say they trust the police. This past year, "this lack of faith has become kinetic following the grand jury decisions in Ferguson and in Staten Island, N.Y., not to indict police officers in the death of Brown or in the July choke-hold death of Eric Garner."[51]

Because many of the high-profile racial incidents involving police have occurred in urban settings, blacks living in and around big cities may be more sensitive to these tensions with police than blacks living in non-urban areas. It is possible that these high-profile events were not isolated incidents but more extreme examples of ongoing and widespread tensions between police and blacks, which many urban blacks may experience firsthand[52]. In the particular case of Brown, the lack of African-Americans on the grand jury may have been a critical to the outcome. Although the crime occurred in the City of Ferguson, the jury venire was drawn for the larger, whiter county of St. Louis, thus diluting the sensibilities of the affected Black community. To the extent that this dilution is significant enough to neutralize the concerns of minority groups, the aforementioned function of the jury as a means to share in the administration of justice as a civic duty becomes meaningless.

PART IV

Presently, the population of the United States is as high as it has ever been and just over 80 percent of the population lives in an urban environment.[53] Such high concentrations of people mean that the area from which a vicinage is drawn can be smaller, yet not over-burdensome for the population, and still be sufficient. A smaller vicinage potentially creates a community-centered jury. Areas that identify a problem with underrepresentation or overrepresentation of a particular group(s) can redraw their jural districts based on zip code, ward, or townships as the case may be. Such action is at the discretion of the legislature and is not an exclusionary effort, but rather, a balancing effort. As shown in Figure 1, white people who live in the UL area would not be excluded from jury service if the jural districts were divided into the four quadrants.

The consideration here is not simply an issue of black and white. It's an issue of recognizing that black and white communities often have divergent interest or different matters of principal concern. One of those issues was raised above and has to do with public confidence in the police department. Another issue is the disparity between police violence[54] and the lack of accountability that goes along with it. Police kill with relative impunity and the lives taken are disproportionately black lives; a ratio of almost 30:1 compared to their white counterparts. "[T]he 1,217 deadly police shootings from 2010 to 2012 captured in the federal data show that blacks, age 15 to 19, were killed at a rate of 31.17 per million, while just 1.47 per million white males in that age range died at the hands of police."[55] Jury verdicts and indictments favoring the officer(s) do not inspire confidence in the judicial system (in fact, the opposite can be said) when few, if any, members of the affected community are present on the jury.

FINAL NOTE

In the beginning of July 2015, a jury selection process began for the trial of Randall 'Wes' Kerrick, a white police officer who is on trial in Charlotte, North Carolina, for the 2013 killing of Jonathan Ferrell, an unarmed Black man[56]. I was present for parts of it, and I watched as the few Black people that were summoned provided responses during voir dire that had the intended or unintended consequence of having them easily excluded from jury duty. I wondered how many times, in courthouses all around the country, an all-white jury has been seated because of potential black jurors making themselves easy targets for being stricken.

After speaking with criminal defense attorneys in Washington, District of Columbia, Baltimore, Maryland, and Charlotte, North Carolina, as well as sitting in on jury selections, a common problem is present: many of those who respond to jury duty do not want to be there and search for reasons to be excluded. This is not a problem that is drawn on racial lines[57]. Indeed, people across the demographic spectrum seek to avoid jury duty[58]. However, because of the underrepresentation of some groups, such as Black people, it is especially damaging to the interests of the Black community when Black people compound the problem of underrepresentation by avoiding jury service. A jury pool that is under-representative of Black people is one problem, but the problem of Black people avoiding jury duty when summoned is another.

In addition to the issue of deliberate avoidance is the issue of jurors making admissions to voir dire questions that expose "bias". For example, some questions might be related to trust

of law enforcement. As noted above, Black communities are typically least trusting of law enforcement; therefore, voir dire questions related to that lack of trust might serve as proxy questions to remove blacks from juries in a constitutionally acceptable way[59]. Black people must learn to answer voir dire questions in a way that does not make them so easily excused. One of the purposes of voir dire is to uncover bias within the potential jurors. Those seeking to get seated on the jury should answer questions in a way that does not expose any bias that they may have or, if this is unavoidable, reiterate the point that "I can be fair"[60].

The criminal justice system is a racist institution; it is biased by its own nature. It protects privilege, property, patriarchy, and white supremacy. Jurors are supposed to bring their life experiences into the courthouse. This is one of the reasons for having a "fair cross-section". However, in seeking to exclude jurors who have had negative experiences with police and whose judgment is affected by those experiences is not eliminating bias, it is supporting the biased notion that police always conduct themselves responsibly within Black communities. Furthermore, it assumes that the police should have in the community in the first place when, in fact, the over-policing of Black communities and Black people is a known problem[61]. Black people, and indeed marginalized people and people of color in general, must combat the inherent racism within the criminal justice system by taking jury duty seriously and engaging the opportunity to serve enthusiastically. This means not trying to get off the jury, but trying to get on the jury.

As a civic duty, jury service is the purest form of direct democracy. It should be treated with the same dogged protectionism and public expectation of participation as the right to vote, if not more. Statistics show that Americans have lost faith in the government[62] and this fact is attributed to low voter turnout. Indeed, people may have good reason to conclude that it doesn't matter who they vote for or that those in government will not manage their duties in the best interest of the people whom they serve. Jury duty does not create this same conundrum.

Once on the jury, the jurors control the destiny of the case before them. It is within their power to acquit, convict, or even nullify. In fact, former prosecutor and current law professor Paul Butler encourages what he refers to as race-based jury nullification.[63] Jury Nullification is a jury's knowing and deliberate rejection of the evidence or refusal to apply the law, either because the jury wants to send a message about some social issue that is larger than the case itself, or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness[64]. Such is the jury's ultimate duty to "guard against the exercise of arbitrary power;" to preserve "public confidence in the fairness of the criminal justice system;" and to uphold that the ideal that "sharing in the administration of justice is a phase of civic responsibility."

Notes

1. John Paul Ryan, The American Trial Jury: Current Issues and Controversies. *http://www.socialstudies.org/system/files/publications/se/6307/630711.html* (last visited Nov. 12, 2015).
2. G. Edward Wright, The Path of American Jurisprudence,U. PA. L. REV. (1976). *http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5004&context=penn_law_review* (last visited August 11, 2015).
3. New Jersey Sen. Bill Bradley speaking against the Nomination of William H. Rehnquist to be Chief Justice of the United States Supreme Court said, "even as the stirring words of the declaration

of independence were being written, they were being dishonored. America was practicing slavery in a form as demeaning as any in recorded history. American slaves had no legal standing. They belonged to their white owners. They could take no action to control their sale. They could not swear a legally binding oath, nor make a binding contract, nor own any property to speak of. They had no freedom of speech or movement. They were subject to their owner's curfew. They had no privacy. Neither church nor State recognized their marriages. In sum, they were openly classified as the white man's property and required to do the white man's bidding." 132 CONG REC S 12467 (1986).

4. "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world . . . He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages.. . ." THE DECLARATION OF INDEPENDENCE para.2 (US 1776).
5. The petit jury are the people that actually make-up the sitting jury at trial or the grand jury.
6. Taylor v. Louisiana, 419 U.S. 522, 527 (1975) In Taylor, the Court found the fair cross-section requirement of the Sixth Amendment , which provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" was incorporated in the Due Process clause of the Fourteenth Amendment; and as such, the states had to adhere to it. Id. at 526 - 28. The right to a jury trial in federal cases is also set forth in Article III of the Constitution, which states that "the Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." U.S. CONST. art.III, § 2, cl. 3. Prior to Taylor, federal criminal defendants already had a statutory right to a jury drawn from a fair cross section. See 28 U.S.C. § 1861(1994).
7. This is akin to sending someone to the grocery store with a full grocery list, but being unable to complain if the only thing that they return with is tomato soup.
8. The overwhelming portion of the population is white. So, obviously, all you have to do in most jurisdictions is challenge a half a dozen blacks to end up with an all-white jury. … Now, how many jurisdictions are there where you could exercise a few preemptory challenges against whites and end up with an all-black jury? … How many people within the sound of my voice have ever heard of a circumstance where a prosecutor was able to produce, and could have reasonable prospects of producing [an all-black jury] by opposing all whites who were in the pool of jurors? … Justice Rehnquist trades off that nonexistent possibility against a persistent practice, the practice being that there are a lot of jurisdictions, there are a lot of circumstances, there is a long history of 150 years of prosecutors saying, "We don't want a black man on this jury. We don't want a black woman on this jury. We want an all-white jury."Deleware Sen. Joe Biden speaking against the Nomination of William H. Rehnquist to be Chief Justice of the United States Supreme Court.132 Cong. Rec S 12467.
9. Professor Kim Forde-Mazrui proposes a jury selection procedure he terms "jural districting." An implementing jurisdiction would divide a jury district into twelve sub-districts, designed around "communities of interest," and would require juries to contain jurors from every sub-district. Such a procedure should satisfy constitutional objections and would create a broadly diverse juries representing a variety of communities, including communities identifiable by race, ethnicity, religion, political affiliation, and socioeconomic status. Kim Forde-Mazrui, Jural Districting: Selecting Impartial Juries Through Community Representation, 52 VAND. L. Rev. 353, 354 (1999).
10. In the 1980s and 1990s, the United States District Court for the Eastern District of Michigan (Eastern District) sought to correct significant, though likely not constitutionally sanctioned, differences between the racial composition of the general population and jury venires empanelled in the Eastern

District. In an attempt to do more than was constitutionally required to achieve a fair cross section of the community on its juries, the Eastern District implemented a "balancing" system that removed individuals from certain groups, particularly overrepresented Whites, permitting increased representation for previously underrepresented groups. Ultimately, the Sixth Circuit Court of Appeals struck down this system in United States v. Ovalle, 136 F.3d 1092 (6th Cir. 1998).

12. "In 1940, William A. Vinson, Sam W. Davis, and Harry W. Freeman presented a novel legal argument to the Supreme Court of the United States on behalf of their indigent eighteen-year-old African-American client convicted of rape. They argued that juries and grand juries should accurately reflect the demographic makeup of the communities from which they are chosen." The Supreme Court, unanimously agreed, holding that "juries as instruments of public justice … should] be a body truly representative of the community." Robert C. Walters, , Michael D. Marrin, & Mark Curriden. Jury of Our Peers: An Unfulfilled Constitutional Promise 58 SMU L. Rev. 319 (2005).
11. "The trial of all crimes, except in Cases of Impeachment, shall be by Jury; and such trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." U.S. Const. art.III, § 2, cl. 3.
12. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.
13. Lisa E. Alexander, Vicinage, Venue, and Community Cross-Section: Obstacles to a State Defendant's Right to Trial by a Representative Jury, 19 Hastings Const. L.Q. 261 (1991).
14. Am. Bar. Ass'n, How Courts Work, (last visited Aug. 12, 2015)http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jurypool.html.
15. Id.
16. Id.
17. Id.
18. Lee Alexander, Obstacles to a State Defendant's Right to Trial by a Representative Jury (1991).
19. Id.
20. Id.
21. Drew L. Kershen, Vicinage, 29.4 OKLA. L. REV., 814-815 (1976).
22. Id. Henry was delivering a speech attacking the Federal Constitution for not sufficiently guaranteeing a right to trial by jury of the vicinage.
23. Kershen, Vicinage, 1976, at 833.
24. French for "to speak the truth." Voir dire is the process through which potential jurors from the venire are questioned by either the judge or a lawyer to determine their suitability for jury service.
25. Kershen, Vicinage, 1976, at 834.
26. Howe, Juries as Judges in Criminal Law, 52 Harv. L. Rev. 582 (1939).
27. Unanimous jury verdicts in criminal trials are required in all but two states. Currently both Oregon and Louisiana allow convictions on 10-2 or 11-1 margins, only requiring unanimous verdicts in capital cases.

28. Kershen, Vicinage, 1976, at 839.
29. Supra note 11.
30. On December 10, 1963, while still the leading spokesman for the Nation of Islam, Malcolm X gave a speech at a rally in Detroit, Michigan. That speech outlined his basic black nationalist philosophy and established him as a major critic of the civil rights movement. Malcolm X. Message to the Grassroots (1963). *http://www.blackpast.org/1963-malcolm-x-message-grassroots#sthash.P3pqsOSr.dpuf* (last visited Nov. 11, 2015).
31. Supra note 27.
32. When it comes to citizenship, the ability to sit on a jury ranks with freedom of speech, freedom of religion, and the right to vote. Indeed, one may argue that jury service is more important than the right to vote. Mark Curriden. Jury of Our Peers: An Unfulfilled Constitutional Promise 58 SMU L. Rev. 319, 321 (2005).
33. Glasser v. United States, 315 U.S. 60, 84 (1942).
34. Singer v. United States, 380 U.S. 24, 31(1965).
35. Taylor v. Louisiana, 419 U.S. 522, 530 (1975).
36. Sanjay K. Chhablani, Re-Framing the 'Fair Cross-Section' Requirement, 13 U. Pa. J. Const. L. 931, 934 (2011).
37. Women were not included in the panel of grand and petit jurors in the Southern District of California where the indictment was returned and the trial had; that they were intentionally and systematically excluded from the panel." (Justice Douglass in Ballard v. United States, 329 U.S. 187).
38. Taylor v. Louisiana, 419 U.S. 522, 530 (1975).
39. Ballard v. United States, 329 U.S. 187 (1946).
40. Chhablani, Re-Framing the 'Fair Cross-Section' Requirement, at 944 (quoting Taylor v. Louisiana, 419 U.S. 522 (1975).
41. Duren v. Missouri, 439 U.S. 357 (1979).
42. Chhablani, Re-Framing the 'Fair Cross-Section' Requirement, at 944.
43. The Bill of Rights (Sixth Amendment included) contains obligations that are placed upon the federal government, not the State governments. Unless the Supreme Court determines that a right is a fundamental right and applicableto the states via the Fourteenth Amendment, the specific liberty interest involved is not germaneto state prosecutions. It was not until 1968 in *Duncan v. Louisiana* that the Sixth Amendment right to trial by jury was made applicable to the states. In order to satisfy the Sixth Amendment, courts and states must take steps to ensure that their jury selection system provides the defendant with a trial before an impartial jury. Any modifications to the jury selection process must not be discriminatory as this would violate the equal protection clause. Proposals of jury reform that intend to increase the number of black jurors and reduce the number of white jurors must be constructed so as not to be unconstitutionally discriminatory. The system being proposed here would not violate the Constitution because it simply shrinks the vicinage by applying a narrower definition of community.
44. US CENSUS BUREAU, CITY OF FERGUSON, MISSOURI 2010 CENSUS INFORMATION, (2010), http://www.fergusoncity.com/123/Demographic-Information, (last visited May 21, 2014).
45. Tanya E. Coke, Lady Justice May Be Blind, But Is She A Soul Sister? Race-Neutrality And The Ideal of Representative Juries, 69 N.Y.U. L. Rev. 327, 362-363 (1994).
46. Taylor v. Louisiana, 419 U.S. 522, 530 (1975).

47. U.S. DEPARTMENT OF JUSTICE, FEDERAL JUSTICE STATISTICS, (2010), *http://www.bjs.gov/content/pub/pdf/fjs10st.pdf.*, (last visitedMay 21, 2015).
48. Supranote 29.
49. Jeffrey M. Jones, Urban Blacks in U.S. Have Little Confidence in Police, GALLUP, (Dec. 8, 2014), *http://www.gallup.com/poll/179909/urban-blacks-little-confidence-police.aspx?utm_source=genericbutton&utm_medium=organic&utm_campaign=sharing (last visited Nov. 11, 2015).*
50. Lauren Fox, There's a Huge Racial Gap in Trust of Police. Can Congress Fix It?, NAT'L J., (Dec. 8, 2014), *http://www.nationaljournal.com/congress/there-s-a-huge-racial-gap-in-trust-of-police-can-congress-fix-it-20141208* (last visited May 21, 2015).
51. Jeffrey M. Jones, Urban Blacks in U.S. Have Little Confidence in Police, GALLUP, (Dec. 8, 2014), *http://www.gallup.com/poll/179909/urban-blacks-little-confidence-police.aspx?utm_source=alert&utm_medium=email&utm_content=heading&utm_campaign=syndication* (last visited May 21, 2015).
52. US CENSUS BUREAU. *https://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html* (last visited May 21, 2015).
53. 'Police violence' is here being used as a catch-all phrase for police torture, brutality, violence, coercion, killings, and the like.
54. Ryan Gabrielson, RyannGrochowski Jones, & Eric Sagara, Deadly Force, in Black and White, PROPUBLICA, (Oct. 10, 2014), *http://www.propublica.org/article/deadly-force-in-black-and-white,* (last visited May 21, 2015).
55. Trial begins for Charlotte police officer accused of shooting an unarmed man, THE GUARDIAN, (Jul. 20, 2015), *http://www.theguardian.com/us-news/2015/jul/20/jury-trial-charlotte-officer-shooting-unarmed* (last visitedAug. 11, 2015).
56. Although, low-income communities of color have both a heightened interest in being on juries, and evading jury duty. The former, because the majority of people prosecuted are people who look like them and they need to represent the interests of their community, and the latter, because many, if not most of them are not in comfortable enough financial positions to take time off or get child care for the amount of time required to serve on a jury.
57. Recent studies have found that in urban jurisdictions, 20 percent or more of the citizenry who receive jury summons fail to report to the courthouse for potential service. Robert G. Boatright, Why Citizens Don't Respond to Jury Summonses and What Courts Can Do About It, Judicature 82, No. 4 (Jan,-Feb. 1999): 156-164.
58. In Batson v. Kentucky, 476 U.S. 79 (1986), the Supreme Court determined that it is constitutionallyviolative to exclude people from juries for reasons based only on their race or gender. However, race canbe one of many reasons and during voir dire, questions are asked to expose bias in jurors.
59. In other words, distrust of the police or the criminal justice system in general does not necessarily mean that one cannot be an impartial juror – despite the luck of trust. Potential jurors that have negative experiences with law enforcement and the criminal justice system are also aware that crime exists in their community; can objectively judge the credibility of the evidence; and have a vested interest in an just outcome.
60. The Black Youth Project.Report: The Policing of Black Communities and Young People of Color. *http://blackyouthproject.com/byp-memo-the-policing-of-black-communities-and-young-people-of-color/.* (Last visitedNov. 11, 2015).

David Kennedy. Black communities: overpoliced for petty crimes, ignored for major ones, LA TIMES, (Apr. 10, 2015), *http://www.latimes.com/opinion/bookclub/la-reading-los-angeles-kennedy-ghettoside-20150404-story.html,* (last visited Aug. 11, 2015).

"Overpoliced&Underprotected": In Michael Brown Killing, Neglect of Black Communities Laid Bare, DEMOCRACY NOW, (Aug, 19, 2014), *http://www.democracynow.org/2014/8/19/over_policed_underprotected_in_michael_brown,* (last visited Aug. 11, 2015).

61. Doug Mataconis, Americans Have Almost Totally Lost Faith in Government, OUTSIDE THE BELTWAY, (Jul. 2, 2014). *http://www.outsidethebeltway.com/americans-have-almost-totally-lost-faith-in-government/,* (last visitedAug. 11, 2015).
62. Paul D. Butler, Race-Based Jury Nullification: Case-In-Chief, 30 J. Marshall L. Rev. 911, 912-22 (1997). Shannon Heffernan, The Secret Power of Jury Nullification, LIFE OF THE LAW, (Jun. 24, 2014), *http://www.lifeofthelaw.org/2014/06/jury-nullification/,* (last visited Aug. 11, 2015).
63. See U.S. v. Thomas, 116 F.3d 606 (2d Cir. 1997).