

William & Mary Journal of Race, Gender, and Social Justice

Volume 28 (2021-2022)

Issue 1 *The Largest Social Movement: Legal
Lessons from the Black Lives Matter Movement*

Article 9

10-2021

As Muddy as the Mississippi River: An Examination of Louisiana Jury Venire Creation Procedures

Kristen M. Vicknair

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Constitutional Law Commons](#), [Criminal Procedure Commons](#), and the [Law and Race Commons](#)

Repository Citation

Kristen M. Vicknair, *As Muddy as the Mississippi River: An Examination of Louisiana Jury Venire Creation Procedures*, 28 Wm. & Mary J. Race, Gender, & Soc. Just. 233 (2021),
<https://scholarship.law.wm.edu/wmjowl/vol28/iss1/9>

Copyright c 2021 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/wmjowl>

AS MUDDY AS THE MISSISSIPPI RIVER: AN EXAMINATION
OF LOUISIANA JURY VENIRE CREATION PROCEDURES

*Louisiana doesn't obey the rules of Law and Order,
and that reality has fundamentally shaped its
ability to maintain law and order.*

—Thomas Aiello, *Jim Crow's Last Stand*¹

ABSTRACT

Americans expect their constitutional rights to be respected by the federal, state, and local governments, but a lack of transparency on a government's behalf prevents Americans from being able to trust their governments fully. This Note demonstrates the astounding lack of transparency in Louisiana parishes' jury venire creation procedures, which prevent Louisianans from trusting that their communities are represented by a fair cross-section on jury venires. The same lack of transparency restricts any constitutional challenges of the representation on appeal, as the major test for the fair cross-section, the *Duren* test, requires a showing of systematic exclusion on the government's behalf. Without access to these venire creation processes, defendants' challenges fail on appeal, potentially increasing Louisiana's mass incarceration problem and allowing parish governments to continue avoiding accountability. This Note examines the venire creation procedures of three Louisiana parishes, comparing their transparency to that of the federal court system. Additionally, this Note offers solutions for the Louisiana State Legislature to reform these processes, especially in light of the clear under-representation of minorities in Jefferson Parish jury venires. Louisiana is no stranger to constitutional problems, but the current generation of Louisianans no longer blindly accepts the state's failures, such as local governments' lack of transparency and the criminal justice system's blatant denial of constitutional rights.

INTRODUCTION

I. CASE HISTORY

- A. Taylor v. Louisiana
- B. Duren v. Missouri
- C. Berghuis v. Smith

1. THOMAS AIELLO, JIM CROW'S LAST STAND: NONUNANIMOUS CRIMINAL JURY VERDICTS IN LOUISIANA, at xi (2015).

- II. DIFFICULTY OF PROVING THE THIRD PRONG OF THE *DUREN* TEST
 - A. *In General*
 - B. *Specifically in Louisiana*
- III. THE FEDERAL COURT SYSTEM'S STATUTORILY MANDATED
TRANSPARENT JURY SELECTION PROCEDURES
- IV. LOUISIANA JURY SELECTION PROCEDURE PER THE LOUISIANA
RULES OF CRIMINAL PROCEDURE AND STATUTORY PROVISIONS
- V. SPECIFIC VENIRE SELECTION PROCEDURES OF JEFFERSON,
LAFAYETTE, AND TENSAS PARISHES
 - A. *Jefferson Parish*
 - B. *Lafayette Parish*
 - C. *Tensas Parish*
- VI. IMPACTS OF THE LACK OF TRANSPARENCY IN PARISH-SPECIFIC
JURY POOL CREATION PROCEDURES ON THE PUBLIC AND
INCARCERATED POPULATIONS IN LOUISIANA
- VII. PROPOSED SOLUTIONS FOR THE LOUISIANA SYSTEMS OF JURY
POOL CREATION
- CONCLUSION

INTRODUCTION

Unlike the federal court system, state systems of jury selection, such as Louisiana's, lack transparency in their processes.² Due to a requirement in the U.S. Code, the federal courts require their jury pool selection plan be posted for the public's review, but that requirement solely affects federal courts, as principles of federalism allow states the latitude to dictate their own procedural rules.³

By lacking transparency in their parish-specific venire creation procedures, the Louisiana clerks' offices prevent the public, researchers, journalists, and criminal defendants from understanding one of the most important procedures in the criminal justice system, as well as blocking public oversight of these processes.⁴ Public oversight would allow Louisianans to hold parish governments accountable for unconstitutional, racist, sexist, and simply unfair procedures.⁵ The use of oversight is extraordinarily important in jury pool composition, as a jury determines a person's future.⁶

2. EQUAL JUSTICE INITIATIVE, ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION: A CONTINUING LEGACY 23–24 (2010), <https://eji.org/wp-content/uploads/2019/10/illegal-racial-discrimination-in-jury-selection.pdf> [<https://perma.cc/29QT-SVNP>].

3. 28 U.S.C. § 1863.

4. Sarah Geraghty & Melanie Velez, *SYMPOSIUM: PRISON POLICY: Bringing Transparency and Accountability to Criminal Justice Institutions in the South*, 22 STAN. L. & POL'Y REV. 455, 456 (2011).

5. *Id.* at 456 n.2.

6. *Id.* at 456.

Transparency also has a significant effect on the defendant. If a parish's criminal justice system does not publish its jury pool creation procedures or the lists created by the procedure, it prevents a defendant from successfully challenging the pool, in court and on appeal, through the test from *Duren v. Missouri*.⁷

In *Duren v. Missouri*, the U.S. Supreme Court created a three-step test to challenge a jury pool's composition in terms of the pool's demographic makeup.⁸ The third step of *Duren*'s test requires the defendant to demonstrate that the under-representation of a particular group results from the locality's systematic exclusion of a "distinctive" group from the process.⁹ This step is where the defendant, and therefore the community, suffers the most from the lack of transparency into the parish's jury pool selection.¹⁰ To make a successful fair cross-section claim, the defendant must be able to access the method the parish uses for jury pool creation, but that information is difficult to locate for many reasons.¹¹

If the burden from the third step of the *Duren* test was not so lofty, there would be less scrutiny upon the jury pool selection practices of parishes. However, the final step is a difficult one to prove, and the Supreme Court has affirmed it in recent cases.¹² For Louisiana, this means the clerk of court's offices must be more transparent in their activities so that the criminal justice system can regain public trust and work equitably for all Louisianans, not just those groups favored by parish officials.

For Louisiana in particular, the jury pool creation processes are nearly inaccessible to the general public and differ from parish to parish.¹³ The clerk's offices' lack of transparency and refusal to cooperate makes their processes immediately suspect to the community at large, and it discourages defendants from believing they have a chance at a fair trial in front of a jury representative of the community.

If the parish clerk of court cooperated with the general public, ascertaining whether a sample jury pool complies with the *Duren* test would not be such a complicated determination. The three parishes examined in this Note use lists generated by the Registrar of Voters, making the demographic breakdown of an ideal fair cross-section easier to determine.¹⁴ However, none of these three parishes

7. *Duren v. Missouri*, 439 U.S. 357, 364 (1979).

8. *Id.*

9. *Id.*

10. EQUAL JUSTICE INITIATIVE, *supra* note 2, at 14.

11. *See, e.g.*, *Berghuis v. Smith*, 559 U.S. 314, 319 (2010).

12. *Id.*

13. La. Dist. Ct. Appx. 9.14.

14. *Frequently Asked Questions*, JEFFERSON PAR. CLERK CT., <https://www.jpclerkofcourt.us/jury-service/frequently-asked-questions> [<https://perma.cc/S7V4-PDUP>] (last

fully cooperated with inquiries about the process they use, making it more unlikely for any defendants, parish citizens, or non-Louisianans to believe the parish processes are fair and representative.¹⁵

The lack of transparency in Louisiana does not have to be permanent. The Louisiana legislature can resolve the issue through the legislative process. Since individual parishes refuse to submit to oversight, the legislature should repeal their respective parish procedural code sections and replace them with a single mandated procedure with three sources of names to ensure a wide-reaching jury venire.

This Note will demonstrate the overwhelming lack of transparency in the Louisiana systems of jury pool creation, specifically in Jefferson, Lafayette, and Tensas Parishes, as compared to the statutorily mandated systems for the federal district courts. This Note examines the impacts of a lack of transparency on the state's general population, as well as on incarcerated persons in Louisiana. This Note will also offer solutions for Louisiana to pursue to regain public trust in the criminal justice system, combat the overwhelming number of convictions by all-white juries, and create a fair cross-section of the community for all jury pools, as required by the Sixth Amendment.

First, Part I will provide background for three major cases that establish and reaffirm the test from *Taylor v. Louisiana*. Part II will demonstrate the difficulty of proving the third prong of the *Duren* test, the last and most difficult step to challenge a jury venire. Part III will examine the statutorily mandated transparency of the federal courts' jury venire creation processes. Part IV will discuss the specifics of the Louisiana procedure and challenges to parish procedures made recently. Part V will investigate the three parishes at issue in this Note, Tensas, Jefferson, and Lafayette, their specific procedures, and the lack of transparency from their clerks' offices. Part VI will explore the impact the procedures, and their lack of transparency, have on Louisianans and potential challenges to those procedures. Finally, Part VII will propose solutions to the problems of Louisiana's procedures and their lack of transparency. This Note's goal is to highlight a problem that influences the public's perception of the criminal justice system and prejudices a potential defendant before they set foot in the courthouse, while offering solutions for Louisiana officials to adopt.

visited Nov. 4, 2021); *Commonly Asked Questions and Answers: Jury Duty*, LAFAYETTE PAR. CLERK CT., <https://www.lpclerk.com/faq.cfm?#jury> [https://perma.cc/4R57-3385] (last visited Nov. 4, 2021); *Jury Service*, TENSAS PAR. CLERK CT., <http://www.tensasclerk.org/jury.php> [https://perma.cc/R8L9-CX2S] (last visited Nov. 4, 2021).

15. See, e.g., Geraghty & Velez, *supra* note 4, at 456 n.2.

Louisiana is a valuable case study for the issues of transparency in the criminal justice system. Louisiana is the most incarcerated state in the United States¹⁶ and it is one of the most impoverished, as well.¹⁷ Louisiana has the second-largest African-American population in the United States,¹⁸ and the African Americans in the state face greater risks of incarceration and poverty than the white population.¹⁹ Lastly, Louisiana recently repealed a remnant of the Jim Crow Era: the nonunanimous jury verdict in all criminal cases.²⁰ The discussion around the nonunanimous jury verdict encouraged more Louisianans to examine the criminal justice system in the state and its structural racism.²¹ There is truly no time like the present to continue the conversation about Louisiana and its jury-related procedures.

I. CASE HISTORY

The cases discussed in this Part of the Note describe the Supreme Court's decisions pertaining to the creation of a "fair cross-section"²² for a jury venire, which apply to both the state and federal courts. The cases describe the test at issue in this Note, a three-pronged test requiring the defendant to prove systematic exclusion of a distinct group within the community, among other things.²³ This Note will argue that the biggest barrier to a successful "fair cross-section"²⁴ challenge is the lack of transparency in the venire creation procedures of a state's local courts. The defendant is likely to fail on such a challenge if they cannot provide an overwhelming amount of information to prove systematic discrimination.²⁵ The following cases demonstrate the high level of proof required and the creation of a test that needs cooperation and transparency to properly regulate the courts.

16. KRISTEN LEWIS, SOCIAL SCIENCE RESEARCH COUNCIL, A PORTRAIT OF LOUISIANA 36 (2020).

17. *Louisiana*, SPOTLIGHT ON POVERTY, <https://spotlightonpoverty.org/states/louisiana> [<https://perma.cc/KGN2-DGEU>] (last visited Nov. 4, 2021).

18. *Louisiana Population*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/louisiana-population> [<https://perma.cc/YF9W-8HL2>] (last visited Nov. 4, 2021).

19. See LEWIS, *supra* note 16, at 105–06.

20. See, e.g., *Tilting the Scales: Everything to Know About Louisiana's Controversial 10–2 Jury Law*, THE ADVOC. (May 4, 2018, 6:44 AM), https://www.nola.com/news/courts/article_64f67fc8-9ab4-56b6-bb45-598b6795cffa.html [<https://perma.cc/569E-ZM7R>]; AIELLO, *supra* note 1, at ix.

21. AIELLO, *supra* note 1, at x.

22. *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975).

23. *Id.*

24. *Id.*

25. Nina W. Chernoff, *No Records, No Right: Discovery & the Fair Cross-Section Guarantee*, 101 IOWA L. REV. 1719, 1734 (2016).

A. *Taylor v. Louisiana*

Billy Taylor was on trial in Louisiana's St. Tammany Parish for aggravated kidnapping.²⁶ At the beginning of Taylor's trial, he asked the judge to quash the jury venire chosen for the term because it lacked female representation.²⁷ Taylor argued that, because the fifty-three percent of St. Tammany's eligible citizens for jury selection was inconsistent with the ten percent female representation on the jury wheel, the trial court denied him "his federal constitutional right to 'a fair trial by jury of a representative segment of the community.'"²⁸

The Supreme Court relied on its previous cases to agree with Taylor's assertion, saying "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."²⁹ However, at the conclusion of the opinion, the Court stated that the "fair cross-section" requirement does not require the jury itself to "mirror the community and reflect the various distinctive groups in the population."³⁰ The Court simply required that the names of the community placed in the pool juries are drawn from "must not systematically exclude distinctive groups in the community."³¹

Although the Court wrote that the jury pool must be representative of the community itself, it also held that the States themselves still had the ability to mandate their own rules of procedure for juries, as long as they were consistent with the rules set forth by the Court and the U.S. Constitution.³² The decision in *Taylor* seemed to lack an explicit rule to make a *prima facie* case, instead choosing to reaffirm precedent and make clear that women were not to be excluded from jury selection except in the case of an individual state's exemption from jury service.³³

B. *Duren v. Missouri*

Due to the lack of a *prima facie* framework for identifying a venire without a fair cross-section of the community, the Supreme Court heard another case in 1979 regarding this Sixth Amendment

26. *Taylor*, 419 U.S. at 524.

27. *Id.*

28. *Id.*

29. *Id.* at 528.

30. *Id.* at 538.

31. *Id.*

32. *Taylor*, 419 U.S. at 538.

33. *Duren v. Missouri*, 439 U.S. 357, 364–65 (1979).

guarantee, *Duren v. Missouri*.³⁴ In *Duren*, Missouri's procedure was similar to Louisiana's in *Taylor*.³⁵ The procedure allowed women who did not specifically request to serve on a jury to be automatically exempted from service, significantly decreasing the number of women in the jury pool.³⁶ In *Duren*'s case, this meant that the fifty-four percent of adult women in the county were replaced by the about fifteen percent of women who had been selected and actually attended jury selection, reducing the representation of women in his pool.³⁷ After jury selection, *Duren*'s jury was composed only of men.³⁸

The Supreme Court held that this exclusion of women on *Duren*'s jury violated his Sixth Amendment right, consistent with the holding in *Taylor*.³⁹ While overturning the Missouri Supreme Court's decision, the Court detailed the *prima facie* case needed to prove a fair cross-section violation:

The defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.⁴⁰

By showing that women were the allegedly excluded group, *Duren* met the first prong, as women were deemed a "distinctive" group in *Taylor*.⁴¹ The second prong of the test was met when *Duren* was able to provide statistics about the population of women in the county in comparison to the number of women within the venire for his trial.⁴² Lastly, *Duren* met the third prong by "[h]is undisputed demonstration that a large discrepancy occurred not just occasionally, but in every weekly venire for a period of nearly a year [that] indicate[d] that the cause of the underrepresentation was systematic."⁴³

The Supreme Court did not only rule that a defendant needs to show a *prima facie* case in order to successfully challenge a jury venire.⁴⁴ In addition to the aforementioned test, the Court once again

34. *Id.* at 359.

35. *Id.* at 360.

36. *Id.* at 362–63.

37. *Id.*

38. *Id.* at 363.

39. *Duren*, 439 U.S. at 363.

40. *Id.* at 364.

41. *Id.*

42. *Id.* at 364–65.

43. *Id.* at 366–67.

44. *Id.* at 367.

addressed how the individual state's interests factor into the fair cross-section requirement.⁴⁵ Because of the presence of exemptions and other factors that may be the reason for an "unfair" fair cross-section, after the defendant is able to demonstrate the Sixth Amendment violation, "the State bears . . . the burden of justifying this infringement by showing attainment of a fair cross section to be incompatible with a significant state interest."⁴⁶ This final step of the test allows the state more discretion in its jury practices, as there is not a defined understanding of a "significant state interest," only the Court stating that any exemptions should be "appropriately tailored" and "reasonable."⁴⁷

C. *Berghuis v. Smith*

In 2010, the Court heard another major fair cross-section case: *Berghuis v. Smith*. Smith challenged his jury pool composition when the pool's composition was only six percent African American, compared to the seven percent of the county's population.⁴⁸ Within the procedural history of Smith's case, the various courts of appeal applied different tests to determine whether his Sixth Amendment right to a fair cross-section was actually violated.⁴⁹ The Supreme Court heard the case after the Sixth Circuit overturned the Michigan Supreme Court's determination that there was no systematic exclusion, even if there was a showing of under-representation.⁵⁰ *Berghuis*' major holding was an elaboration of the *Duren* test's application; since *Duren* did not lay out a method for proving the statistical under-representation of a distinct group, the Court refused to endorse any of the methods utilized by the lower courts.⁵¹ Smith tried to convince the Court to shift the burden of causation from the defendant to the State, but the Court did not comply, instead reaffirming that the State

45. *Duren*, 439 U.S. at 368–70.

46. *Id.* at 368.

47. *Id.* at 368, 370.

48. *Berghuis v. Smith*, 559 U.S. 314, 319 (2010).

49. *See id.* at 323–27. There were first two methods of examining the under-representation asserted during the original hearing for the challenge: absolute and comparative disparity. *Id.* "Absolute disparity" is determined by subtracting the percentage of African Americans in the jury pool (here, 6% in the six months leading up to Smith's trial) from the percentage of African Americans in the local, jury-eligible population (here, 7.28%). *Id.* "Comparative disparity" is determined by dividing the absolute disparity (here, 1.28%) by the group's representation in the jury-eligible population (here, 7.28%). *Id.* There was also a "standard deviation test" but there was "no expert testimony regarding application" of this test. *See id.*

50. *Berghuis*, at 326–27.

51. *Id.* at 328–30.

only has the burden to rebut the *prima facie* case, once it is made, with a valid interest for the under-representation.⁵² The holding in *Berghuis* is important to understanding the fair cross-section doctrine's modern application because it reaffirms the requirement that the defendant must be the party to prove, via concrete evidence, that there is both under-representation and systematic exclusion.

II. DIFFICULTY OF PROVING THE THIRD PRONG OF THE *DUREN* TEST

A. In General

By requiring a defendant to make these showings when challenging the venire, the Court has essentially given the States reasons to be less transparent about their procedural actions concerning juries. If Louisiana is transparent in its actions when it comes to jury selection, it makes the availability of evidence easier to come across, giving way for a simpler method to make a case against the venire for the defendant. If Louisiana is not transparent, however, it makes the defendant's *prima facie* showing that much more difficult to complete.⁵³

The prong in the *Duren* test that gives the defendant challenging his venire, by way of the Sixth Amendment, the most difficulty is the third prong of the test.⁵⁴ The defendant must prove the exclusion of the "distinct group" is not simply an accident or coincidence, but a "systematic exclusion" perpetuated by the State.⁵⁵ In this context, the "systematic exclusion" would require a defendant to show a pattern of exclusion beyond the exclusion within his own jury pool.⁵⁶

For example, in *Berghuis*, Smith offered evidence of the county procedures of filling local courts first before filling the county circuit court.⁵⁷ According to the Supreme Court, a county's procedure may exclude that distinct group from equal representation in the jury pool, but evidence of improper procedure is not enough to make that showing of "systematic exclusion."⁵⁸ The question of what qualifies as "systematic exclusion" is important to the application of the *Duren* test, as the test requires the defendant to make a showing strong enough to prove "systematic exclusion" over the state's "important interest."⁵⁹

52. *Id.* at 332–33.

53. Chernoff, *supra* note 25, at 1734.

54. *Id.* at 1734–35.

55. *Berghuis*, 559 U.S. at 317.

56. *Id.*

57. *Id.* at 314.

58. *Id.* at 317.

59. *Id.* at 316.

The State has leeway when choosing a “significant state interest” to justify its systematic exclusion, with the *Duren* test only requiring it be “primarily advanced” by the process at issue.⁶⁰ This makes the burden higher for the defendant; they must find actual, concrete evidence of systematic exclusion, rather than just possible explanations.⁶¹

This prong would have been an easier burden of proof prior to the invention of the technologically advanced venire building procedures in use in states today, such as Louisiana.⁶² The presence of technology in the jury selection process can be seen as a protection for improper jury selection procedures.⁶³ For example, in a case from Georgia in 1983, a federal court was able to overturn a conviction because of the damning evidence of improper jury pool selection procedures.⁶⁴ In this case, the jury had been selected and the defendant challenged its composition for under-representing both women and African Americans on the jury venire.⁶⁵ The third prong of the *Duren* test was met here when the Eleventh Circuit found the procedure in Georgia was “not ‘inherently unfair’” but “contain[ed] the possibility of abuse.”⁶⁶ The Court wrote that one commissioner “admitted that he, in corroboration with other commissioners, hand-picked 700 of the 4015 total persons on the 1975 pool by choosing persons that ‘we knew or thought would make a good juror,’” and another eventually conceded that she had not used any sort of random method when the evidence of her jury selection work on paper was produced.⁶⁷ As the Eleventh Circuit said, “A jury selection procedure that is as easily capable of being manipulated as the Troup County process goes far in supporting the presumption of discrimination urged by the petitioner.”⁶⁸ The fact that the evidence of jury pool selection was on paper and not on a computer undoubtedly made it easier for the defendant to prove systematic exclusion of women and African Americans.⁶⁹

When Louisiana uses a computer-run program to build its venires, that information and its minutiae are unlikely to be readily

60. *Duren v. Missouri*, 439 U.S. 357, 367–68 (1979).

61. *Berghuis*, 559 U.S. at 332.

62. Andrew Guthrie Ferguson, *The Big Data Jury*, 91 NOTRE DAME L. REV. 935, 935 (2016).

63. *Id.* at 936.

64. *Davis v. Zant*, 721 F.2d 1478, 1485–86 (11th Cir. 1983).

65. *Id.* at 1481.

66. *Id.* at 1483.

67. *Id.* at 1484.

68. *Id.* at 1485. The evidence in the case was a list where the commissioner had checked off numerous names in a row, then skipped some names, and checked off another series of names not equal to the number of the first series. See *Davis*, 721 F.2d at 1485.

69. See *id.*

available to a private citizen, making the most difficult prong even more difficult to prove for any person, but specifically, one challenging the venire on appeal from prison.⁷⁰ If the information needed to challenge the venire on appeal is unavailable to journalists and private citizens, the likelihood of an incarcerated person obtaining access to that information is minute. When a lack of transparency exists in Louisiana's criminal justice system, it disadvantages those attempting to research or report on it, but it has damning effects for those convicted persons appealing their conviction or filing a writ of *habeas corpus* on their own behalf.⁷¹

B. Specifically in Louisiana

In a recent Louisiana Supreme Court case, *State v. Holliday*, Holliday challenged the makeup of the jury venire because he believed African-American males were under-represented.⁷² According to Holliday's argument, because the population of East Baton Rouge Parish was "approximately 18% African-American men" at the time of the trial and venire creation, the presence of "only seven . . . or 6.8%" of the 102 individuals in the venire created a "comparative disparity of approximately 33%."⁷³ This disparity would seem to be large enough to convince the court that there was systematic exclusion at play in the selection of the East Baton Rouge jury venires.⁷⁴ However, the Louisiana Supreme Court rejected Holliday's claim.⁷⁵ The Court relied primarily on the third prong, "systematic exclusion," in their opinion, stating:

[A]s defendant only provides data regarding his own venire, it is impossible to determine whether the proportion of black males in defendant's venire is representative of East Baton Rouge Parish venires generally. Defendant asserts without explanation or support that the disparity results "from the operation of the jury summons and selection system," thereby allegedly demonstrating that black males are systematically excluded from East Baton Rouge Parish jury pools for purposes of the aforementioned *Duren* test Defendant does not demonstrate, or even speculate, about how this method of venire selection would systematically exclude black males.⁷⁶

70. Ferguson, *supra* note 62, at 939.

71. *See id.*

72. *State v. Holliday*, 2020 La. LEXIS 228, *75–76 (Jan. 29, 2020).

73. *Id.* at *82.

74. *Id.*

75. *Id.* at *83.

76. *Id.* at *82–83.

The opinion from the Louisiana Supreme Court shows the high burden of proof that defendants face when challenging a conviction stemming from a venire that is not a fair cross-section of the community.⁷⁷ The opinion cites to an unpublished opinion that summarizes the problem with the showing of “systematic exclusion,” saying “[t]he mere fact that one particular jury venire may exhibit disproportionality does not in any sense amount to proof that the State’s system of constituting its central jury pool is unconstitutional or least to the systematic exclusion of any particular group from the jury-selection process.”⁷⁸

Louisiana has been given extraordinary leeway in the creation of its own jury venires.⁷⁹ This leeway manifests in the third prong of *Duren*. If Louisiana’s parishes have selection procedures that are unavailable to the general public, it becomes harder to override the state’s significant interest and prove the necessary systematic exclusion. A defendant cannot prove systematic exclusion of a distinct class if the defendant cannot even have access to the system responsible for the potential exclusion.⁸⁰

III. THE FEDERAL COURT SYSTEM’S STATUTORILY MANDATED TRANSPARENT JURY SELECTION PROCEDURES

Although this Note focuses primarily on the jury venire creation procedures in Louisiana, the federal court procedures should be used as a guiding example for future solutions for Louisiana and other states. The federal courts’ procedures can be contrasted with Louisiana parish courts in terms of transparency. Using the federal courts as a starting point for positive transparency allows this Note to demonstrate how problematic Louisiana parish procedures are. Seeing an example of a transparent system makes Louisiana’s failure to enact a similar system more pronounced and puts the desired standard for transparency into perspective. If the federal courts can follow guidelines within all fifty states and territories, how can Louisiana fail to do so?

Generally, in order to make an accurate judgment of a state’s jury selection processes and the representation of distinct groups in the community, one can first look at the more clear and transparent methods of the federal court system. The federal courts in the area pull from the same pool of people as the state courts, meaning that

77. *Id.*

78. *Holliday*, 2020 La. LEXIS at *83.

79. *See id.* at *82.

80. *See* Chernoff, *supra* note 25, at 1735.

the representation statistics should look the same, especially if both federal and state courts use the same information to create their venires.⁸¹ By comparing the state courts in an area to the federal ones, one can see the lack of transparency present in the state courts, and the relative difficulty to locate the information on procedures.

Because both federal and state courts exist, there are specific statutory provisions for federal court jury selection procedures.⁸² Unlike the varying state court statutes and procedures, as in Louisiana, these sections apply to all of the U.S. Federal District Courts.⁸³ One federal statute provides 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.”⁸⁴ Additionally, another provides that “[n]o 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.”⁸⁵ These provisions, along with the Sixth Amendment, work together to ensure that a defendant has a right to a fair trial by jury.⁸⁶ The federal courts, however, are required by 28 USC § 1863 to create a “plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862”⁸⁷ This allows for more oversight when examining the plans created by the district courts, as well as the procedure for when a plan does not meet the standard.⁸⁸ This oversight seems to be unique to the federal district courts in these sections, with state courts only meeting oversight when someone challenges their jury selection procedures on appeal.⁸⁹

Within the U.S. Code, the requirements for each district court’s plan are described.⁹⁰ First, the plan must “either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process.”⁹¹ Next, the plan has to determine whether the

81. See *How Courts Work: The Jury Pool*, ABA (Sept. 9, 2019), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jurypool [<https://perma.cc/F6S6-7D58>].

82. 28 U.S.C. § 1863.

83. *Id.*

84. 28 U.S.C. § 1861.

85. 28 U.S.C. § 1862.

86. *Morro v. City of Birmingham*, 117 F.3d 508, 511 (11th Cir. 1997).

87. 28 U.S.C.S. § 1863.

88. *Id.*

89. See LA. CODE CRIM. PROC. ANN. art. 408.1 (2021) (establishing each judicial district determines their own jury procedures, as opposed to having a centralized oversight process).

90. 28 U.S.C. § 1863.

91. *Id.*

jury will be chosen “from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division.”⁹² The manner of selection for the listed names also must be specified according to the section.⁹³ The statute allows discretion to the creators of the plan, but it requires that the method result in “the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes.”⁹⁴

Within the remainder of the section, it mandates that the courts (1) create a jury wheel with a minimum number of names, (2) specify which “groups or classes” will have an exemption from jury service under the plan, (3) set the time when the fair cross-section will be drawn and distributed to the case parties and the public, and (4) methods of creating and modifying the courts’ plans.⁹⁵

The level of specificity continues within the remainder of that chapter in the U.S. Code Service. Compared to the state procedures that will follow this explanation of federal jury selection code sections, the federal courts’ specificity allows for a more transparent jury selection.⁹⁶

IV. LOUISIANA JURY SELECTION PROCEDURE PER THE LOUISIANA RULES OF CRIMINAL PROCEDURE AND STATUTORY PROVISIONS

In order to fully comprehend the lack of transparency within specific parishes in Louisiana, the Louisiana Code of Criminal Procedure should be examined. By looking at the guidelines the state legislature has created, with simple rules differing by parish, it is clear that this is not simply a problem with just the three parishes discussed in detail.⁹⁷ There is an overarching lack of transparency in Louisiana, which affects the lives of all Louisianans, as procedures differ from parish to parish.⁹⁸ For example, a car accident may be on a street that is entirely within one parish, except for the block on which it occurred. That single block is within the neighboring parish, meaning the rules of procedure differ completely from an accident happening just five hundred feet away.

Compared to the Federal Courts’ methods for choosing a jury that abides by a defendant’s Sixth Amendment rights, Louisiana’s

92. *Id.*

93. 28 U.S.C. § 1863.

94. *Id.*

95. *Id.*

96. See *Jury Selection Process*, E.D. LA., <https://www.laed.uscourts.gov/jury-information/jury-selection-process> [<https://perma.cc/KS5Q-HTCD>] (last visited Nov. 4, 2021).

97. See LA. CODE CRIM. PROC. ANN. art. 416 (2021).

98. See *id.*

procedure is not as clear. Louisiana is also unique to other states in the country, as it has parishes instead of counties, with these parishes serving as somewhat of a basis for the formation of the court system.⁹⁹ The Louisiana courts are not solely created based on parishes, as there are sixty-four parishes within the state and forty-two judicial districts.¹⁰⁰ For example, the Sixth Judicial District contains three parishes: East Carroll, Madison, and Tensas.¹⁰¹ In contrast, the twenty-fourth judicial district is comprised only of Jefferson Parish.¹⁰²

The Louisiana Code of Criminal Procedure has a variety of nuances, with many differing from the aforementioned federal court procedures. Article 1734 of the Louisiana Code of Criminal Procedure says that the jury venire will not be pulled until the bond has been filed, markedly different from a set day and time required.¹⁰³ Article 408.1 does agree with the federal court procedure mentioned, as it requires the Louisiana judicial districts to determine “whether the names of prospective jurors shall be drawn exclusively from voter registration lists or also drawn from other sources or lists.”¹⁰⁴

The Louisiana Code of Criminal Procedure specifies a jury can be successfully challenged and set aside when: “fraud has been practiced, some great wrong committed that would work irreparable injury to the defendant, or [if] persons were systematically excluded from the venire solely upon the basis of race.”¹⁰⁵ This provision of the Louisiana Code of Criminal Procedure functions much like the Supreme Court’s holdings in the *Taylor*, *Duren*, and *Berghuis* because it requires the defendant to prove that there was, in fact, systematic exclusion on behalf of the state with regards to this a distinct group, such as a racial minority.¹⁰⁶

Articles 416 and 418 of the Louisiana Code of Criminal Procedure provide for the selection of the petit jury venire.¹⁰⁷ The procedure requires that the jury commission draw a venire when told to do so by the Court of its jurisdiction, with the starting number being thirty

99. See *Maps of Judicial Districts*, LA.SUP. CT., <https://www.lasc.org/about/mapsofjudicialdistricts> [https://perma.cc/5MXJ-E8CM] (last visited Nov. 4, 2021).

100. See *id.*; see also LOUISIANA PARISHES, <https://www.Louisiana.gov/local-louisiana> [https://perma.cc/MSK8-XRLQ].

101. See *Maps of Judicial Districts*, *supra* note 99.

102. *Id.*

103. LA. CODE CIV. PROC. ANN. art. 1734 (2021).

104. LA. CODE CRIM. PROC. ANN. art. 408.1 (2021).

105. LA. CODE CRIM. PROC. ANN. art. 419 (2021).

106. See *Taylor v. Louisiana*, 419 U.S. 522, 531, 533 (1975); *Duren v. Missouri*, 439 U.S. 357, 364, 370 (1979); *Berghuis v. Smith*, 559 U.S. at 327, 332–33 (2010).

107. LA. CODE CRIM. PROC. ANN. art 416 (2021); LA. CODE CRIM. PROC. ANN. art. 418 (2021).

names out of the “general venire box.”¹⁰⁸ The article also provides for the commission to perform this task by computer.¹⁰⁹ After drawing the names of the venire for each week of the court’s session, the commission has to place those names in sealed envelopes for each week.¹¹⁰

Because of the slim amount of information available within the Louisiana Code of Criminal Procedure about jury composition, there is a good reason for any Louisianan to be unsure about what exactly the jury venires look like in specific cases. Unlike in the federal court system, the Louisiana courts do not all release their specific method of jury selection online for the public or release the names themselves.¹¹¹ Furthermore, Louisiana’s parishes widely differ in racial and socioeconomic composition, meaning that a representative fair cross-section would differ in different parishes, which may be lumped together in one judicial district.¹¹²

In one of the cases brought to the Louisiana Third Circuit Court of Appeals, *State v. Sterling*, an African-American man attempted to challenge his robbery conviction because there were only three African-American men on a panel of ninety people.¹¹³ The Third Circuit Court held that because the burden of establishing systematic exclusion is on the defendant, he had to demonstrate proof beyond just the statistical makeup of the venire.¹¹⁴ In *State v. Melancon*, the defendant argued that his venire “contained so few [B]lack that the jury could not be selected from a representative and fair cross-section of the community.”¹¹⁵ In this case, the Court applied both the Louisiana Constitution’s guarantee to an impartial jury, as well as Sixth Amendment Supreme Court jurisprudence to demonstrate the flaws in the argument made.¹¹⁶ Because the jury venire was only five to ten percent comprised of African-American jurors, the defendant ended up with an all-white jury, which he

108. LA. CODE CRIM. PROC. ANN. art. 416 (2021).

109. *Id.*

110. *Id.*

111. See *Jury Duty*, 23D JUD. DIST., <https://www.23rdjdc.org/jury-service> [<https://perma.cc/N2YZ-MYBM>] (showing an example of a judicial district with their jury selection procedures provided online) (last visited Nov. 4, 2021); see also *Information for Jurors*, 15TH JUD. DIST., <https://www.15thjdc.org/juror-information> [<https://perma.cc/5ZEU-J6W3>] (showing an example of a judicial district that does not have their procedures provided online) (last visited Nov. 4, 2021).

112. See *Race and Ethnicity in Louisiana*, STAT. ATLAS, <https://statisticalatlas.com/state/Louisiana/Race-and-Ethnicity> [<https://perma.cc/RPK8-278J>] (last visited Nov. 4, 2021); see also *Maps of Judicial Districts*, *supra* note 99.

113. *State v. Sterling*, 496 So.2d 659, 661 (La. Ct. App. 1986).

114. *Id.*

115. *State v. Melancon*, 563 So.2d 913, 913 (La. Ct. App. 1990).

116. *Id.* at 914.

subsequently challenged.¹¹⁷ The Court ruled against him, however, holding that unless he was able to demonstrate fraud or systematic exclusion, the jury could not be quashed.¹¹⁸

These cases demonstrate the need for transparency when the court chooses a venire: who is choosing the venire? What is the venire's demographic composition compared to the demographics of the community?

V. SPECIFIC VENIRE SELECTION PROCEDURES OF JEFFERSON, LAFAYETTE, AND TENSAS PARISHES

For the purposes of this Note, the parishes examined will be a rural parish, a suburban parish, and an urban parish. By comparing these three jury selection practices and their possible representative juries, the goal is to see how important transparency is when examining the fair cross-section, as well as how difficult it is to prove systematic exclusion within a specific place because of the unavailability of certain data.

The rural parish examined in this Note is Tensas, within the Sixth Judicial District with Madison and East Carroll parishes.¹¹⁹ The suburban parish is Jefferson, with cases from Jefferson Parish's incorporated cities and independent towns alone creating the twenty-fourth judicial district in the suburbs of New Orleans.¹²⁰ The urban parish examined is Lafayette, in the Fifteenth Judicial District with Vermillion and Acadia Parishes.¹²¹

The lack of information on the specifics of these venire processes is unsurprising, but, nonetheless, it is unacceptable. These three parish clerk's websites have a slim amount of detailed information about how the court actually chooses the jury, beyond just the acknowledgment of computer software to choose the lists.¹²² There is no information about how many people are selected for the

117. *Id.*

118. *Id.*

119. See COURTS, <http://www.madisonparish.org/services/courts> [<https://perma.cc/W8YX-U9X4>] (last visited Nov. 4, 2021).

120. See *About the Twenty-Fourth Judicial District Court*, 24TH JUD. DIST., <http://www.24jdc.us/about> [<https://perma.cc/2HDY-6H9H>] (last visited Nov. 4, 2021).

121. See FIFTEENTH JUDICIAL COURT ONLINE, <https://www.15thjdc.org> [<https://perma.cc/K9HM-E6G2>] (last visited Nov. 4, 2021).

122. See *Jury Assembly*, 24TH JUD. DIST., <http://www.24jdc.us/jury-assembly> [<https://perma.cc/UP7D-8DL8>] (last visited Nov. 4, 2021); *Jury Management Department*, LAFAYETTE PAR. CLERK CT., <http://www.lpclerk.com/departments/juryDuty.cfm> [<https://perma.cc/AQ8R-4JWX>] (last visited Nov. 4, 2021); *Jury Service*, TENSAS PAR. CLERK CT., <http://www.tensasclerk.org/jury.php> [<https://perma.cc/D9U9-PB48>] (last visited Nov. 4, 2021).

venire, nor is there much information about what the breakdown of the percentages on the venire would really look like beyond just the parish's population.¹²³ How is the general public supposed to have faith in the criminal justice system, at a time when issues of race are at the forefront of the American psyche, if the courts refuse to make the relevant information public? The lack of transparency from these parishes has created a greater desire in their citizenry for criminal justice reform.¹²⁴ More individuals are asking questions about the criminal justice system's procedure, and those questions are the ones these parishes refuse to answer.¹²⁵

A. Jefferson Parish

Jefferson Parish's clerk of court's website has a page dedicated to commonly asked questions about jury duty.¹²⁶ The webpage gives potential jurors in Jefferson Parish information about exemptions, the one-day jury system, excusals, and other qualifications.¹²⁷ Most importantly, the website lists the manner in which the clerk of the court's office selects the venire.¹²⁸ The website explains that Jefferson Parish uses lists of registered voters, as well as licensed drivers when selecting the pool of potential jurors.¹²⁹ The computer also "eliminate[s] duplicate names and then selects names at random of those who will be summoned for jury duty."¹³⁰ Although the lack of access to this information may not seem outrageous, parish residents form opinions of the criminal justice system and its fairness from the information provided or available to them. Being unable to understand why a friend had an all-white, all-male jury for their trial may shape an individual's distrust of the system, something that could be avoided by greater transparency.

123. See *Jury Assembly*, *supra* note 122; *Jury Management Department*, *supra* note 122; *Jury Service*, *supra* note 122.

124. See MARK STEPHENSON, RED OAK STRATEGIC, SURVEY RESULTS—JUSTICE ACTION NETWORK—NOV. 2015 LOUISIANA SURVEY (2015), https://www.prisonpolicy.org/scans/justice_action_network/louisiana_survey.pdf [<https://perma.cc/UM3L-UVSW>].

125. See *id.*

126. See *Jury Assembly*, *supra* note 122.

127. *Id.* The one-day/one-trial system allows a person who appears at jury duty to fulfill their obligation after appearing for the scheduled day, if there are not selected for a jury on that day. *Id.* It also allows a person who serves on one jury to satisfy their obligation with just that one trial. Additionally, there is a two-year exemption an individual can claim after serving on a jury. *Id.*

128. See *id.*

129. *Jury Assembly*, *supra* note 122.

130. *Id.*

B. Lafayette Parish

In Lafayette Parish, there is also a website listing the structure and nuances of their jury pool selection.¹³¹ According to the website, Lafayette does not have a one-day/one-trial system like Jefferson Parish.¹³² Rather, the computer program used by the Jury Commission chooses a larger pool of individuals to serve by week.¹³³ All trials for any week will draw their juries from that one weekly venire created by the Commission.¹³⁴ Additionally, Lafayette Parish provides exemptions for seniors over seventy and people who would experience “an undue hardship or extreme inconvenience” from participating.¹³⁵ Lafayette also allows for an exemption for those who have served on a jury in the previous two years.¹³⁶

Lafayette Parish uses a computer algorithm that chooses jurors based on the qualifications desired by the Clerk’s Office.¹³⁷ Their Clerk’s Office also allows for public requests of jury lists’ demographic information, though some of that information is protected.¹³⁸

C. Tensas Parish

For Tensas Parish, the smallest parish examined in this Note, the webpage for jury service is more vague than those for Jefferson or Lafayette.¹³⁹ The Tensas Parish website only explains the use of registered voter lists to select names for the venire by a computer.¹⁴⁰ There is a senior citizen exemption and a previously served exemption, but there is not an undue hardship exemption.¹⁴¹

In *Duren*, the defendant was able to prove the systematic exclusion of women in the local state court by comparing the state court process’ numbers to those of the local Federal District Court.¹⁴² By demonstrating a significant difference between the federal and state courts for the same area with similar exemptions, the defendant was able to prove systematic exclusion of women was happening.¹⁴³ In

131. See *Jury Management Department*, *supra* note 122.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. See Email from Sherrie Vanover, Jury Management Supervisor Lafayette Parish, to author (Jan. 15, 2021, 3:33 PM EST) (on file with author).

138. See *id.*

139. See *Jury Service*, *supra* note 122.

140. *Id.*

141. *Id.*

142. *Duren v. Missouri*, 439 U.S. 357, 367 (1979).

143. *Id.*

the federal district court encompassing Jefferson Parish, the Eastern District of Louisiana, the procedures for selecting a jury pool are published on their website.¹⁴⁴ As mentioned above, this detailed explanation allows for the typical citizen to find out how exactly the jury pool is summoned.

A lack of transparency from the Tensas Parish Clerk's Office surprises anyone who knows of a recent *habeas corpus* case heard by the federal court for the Western District of Louisiana, concerning the venire selection in Tensas Parish.¹⁴⁵ In the direct appeal to the Louisiana Second Circuit Court, Higginbotham argued the jury venire under-represented African Americans.¹⁴⁶ The population of Tensas Parish, according to the defendant, was almost evenly divided between whites and African Americans, making the forty percent of African Americans on his venire an under-representation.¹⁴⁷ In this case, unlike those previously mentioned that failed on prong three, the defendant failed to demonstrate the venire was "not fair and reasonable in relation to the number of such persons in the community."¹⁴⁸ Higginbotham's challenge of the Tensas Parish venire was denied by the Western District of Louisiana for failing to meet two of the three prongs of the *Duren* test.¹⁴⁹

In Higginbotham's case, the clerk testified that the jury pool had been nearly equal with the actual representation of the parish since 2005.¹⁵⁰ The evidence in this case, seemingly demonstrating a legitimate jury selection process, is not representative of the parish's transparency with the general public, seen by the lack of detailed information on the Parish website and the uncooperative nature of the Clerk's Office with members of the public and local journalists.¹⁵¹ The Parish's successful defense of their venire selection protocol does not redeem it for its lack of transparency with the general public. The public should have access to the information in question, in order to understand the criminal justice system and call for the reforms it desires. As a parish with a majority African-American population, the information becomes even more significant, as African Americans

144. See *Jury Selection Process*, *supra* note 96.

145. Higginbotham v. Louisiana, 2014 U.S. Dist. LEXIS 60920, *1, *1 (W.D. La. 2014).

146. *Id.* at *19–20.

147. *Id.* at *20.

148. *Id.*

149. See *id.* at *3.

150. *Id.*

151. In a series of articles for *The Advocate*, journalists and researchers contacted parishes to ask about their jury selection processes. Tensas Parish did not cooperate with those individuals, and their clerk refused to answer any questions from the author of this Note regarding their processes. See Email from Gordon Russell, Journalist at *The Advocate* to author (Jan. 15, 2021, 3:33 PM EST) (on file with author).

“comprise two-thirds of state prisoners and three-fourths of inmates serving life without parole” in Louisiana.¹⁵² A parish’s citizens should have access to information that has such a strong effect on an individual’s trial by jury.

VI. IMPACTS OF THE LACK OF TRANSPARENCY IN PARISH-SPECIFIC JURY POOL CREATION PROCEDURES ON THE PUBLIC AND INCARCERATED POPULATIONS IN LOUISIANA

Louisiana has been well known for multiple things in recent years: the New Orleans Saints fans obsessing about a no-call in the playoffs, people being run over by floats during the annual Mardi Gras celebrations, and, most importantly, being the most incarcerated state in the United States with “683 inmates per 100,000 residents, compared to the national rate of 440 per 100,000 residents.”¹⁵³ Being the most incarcerated state means that Louisiana is also the most incarcerated state in the world, as the United States holds the title of the most incarcerated country.¹⁵⁴

In 2018, Jefferson Parish alone made up nearly twelve percent of the convictions in a state with sixty-four parishes.¹⁵⁵ Lafayette Parish contributed about three percent of the state’s convictions.¹⁵⁶ These numbers, combined with the lack of access to knowledge about courthouse procedures, are contributing factors to the overwhelming desire for criminal justice reform in Louisiana.¹⁵⁷ Recent polls have shown that over eighty percent of Louisiana voters support reform efforts for the criminal justice systems in the state.¹⁵⁸ This bipartisan

152. See TENSAS PARISH, <https://www.census.gov/quickfacts/tensasparishlouisiana> [<https://perma.cc/L7EK-VBQW>]; Jeff Adelson, Gordon Russell & John Simerman, *How an Abnormal Louisiana Law Deprives, Discriminates and Drives Incarceration: Tilting the Scales*, THE ADVOC. (Apr. 1, 2018, 8:05 AM), https://www.nola.com/news/courts/article_8e284de1-9c5c-5d77-bcc5-6e22a3053aa0.html [<https://perma.cc/V3KZ-BPNE>].

153. *Despite Reforms, Louisiana’s Incarceration Rate Leads the Nation*, WDSU (Oct. 26, 2020, 10:07 AM), <https://www.wdsu.com/article/despite-reforms-louisianas-incarceration-rate-leads-the-nation/34467334> [<https://perma.cc/Y6LZ-8FX9>]; LEWIS, *supra* note 16.

154. LEWIS, *supra* note 16.

155. LOUISIANA DEP’T OF CORR., CRIMINAL JUSTICE IN LOUISIANA: JEFFERSON 7 (2018), <https://doc.louisiana.gov/wp-content/uploads/2019/08/jefferson.meeting-.6.26.18.pdf> [<https://perma.cc/MJ67-JFJ4>].

156. *Id.*

157. *Id.*; see also Terry Schuster, *Louisiana’s 2017 Criminal Justice Reforms*, PEW CHARITABLE TR. (Mar. 1, 2018), <https://www.pewtrusts.org/en/research-and-analysis/sue-briefs/2018/03/louisianas-2017-criminal-justice-reforms> [<https://perma.cc/TS8V-4CRG>].

158. *Overwhelming, Broad and Extensive Support Across Party, Ideology and Demographics for Criminal Justice Reform in New Louisiana Survey Findings*, SURVEY RESULTS—JUSTICE ACTION NETWORK—NOV. 2015 LOUISIANA SURVEY, <https://www>

sentiment for a resolution of the crippling problems in the state's justice system likely comes from recent revelations about the unfair and unethical procedures happening behind closed doors in clerks' offices and courtrooms.¹⁵⁹

Due to the recent push (and success) in Louisiana to rid the state constitution of nonunanimous juries, a large number of journalists and researchers tried to understand the state's courtroom procedures and the thought processes behind them.¹⁶⁰ In particular, *The Advocate*, the leading South Louisiana newspaper, ran a series of articles detailing the nonunanimous verdict.¹⁶¹ Some of the main sources of information for the project were jury pool lists from the ten busiest courthouses in the state.¹⁶² However, one of the major parishes refused to cooperate with *The Advocate's* team: Lafayette Parish.¹⁶³ The lists in question were not very comprehensive, but they gave insight into the local procedures that the public knows so little about.¹⁶⁴

A greater question about the accessibility of jury lists and knowledge about the procedures in specific parishes is whether these parishes are complying with a provision in the Louisiana Criminal Code that requires the parishes to publish, in a number of places, the general venire called to jury service.¹⁶⁵ If the jury lists are to be published in the local newspaper, why would the clerk's office not provide those lists to the newspaper at a later date? Lafayette Parish was not the only uncooperative parish in research on parish-specific processes and jury lists, though.¹⁶⁶ Tensas Parish refused to work with the reporters for *The Advocate*, as well as members of the general public.¹⁶⁷

.prisonpolicy.org/scans/justice_action_network/louisiana_survey.pdf [https://perma.cc/UM3L-UVSW].

159. *See id.* In this poll, over a quarter of the responses favored a complete overhaul of the system and nearly thirty percent wanted major reform. *Id.* The desire for reform was overwhelmingly bipartisan, with about eighty percent or more of Republicans, Democrats, and Independents agreeing, and the same numbers for conservatives, liberals, and moderates. *Id.*

160. *See, e.g.,* Adam Liptak, *A Relentless Jailhouse Lawyer Propels a Case to the Supreme Court*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/us/politics/supreme-court-nonunanimous-juries.html> [https://perma.cc/JN36-U8JX]; Editorial, *When Jurors Are Silenced*, N.Y. TIMES (May 10, 2018), <https://www.nytimes.com/2018/05/10/opinion/when-jurors-are-silenced.html> [https://perma.cc/288Q-PJLF].

161. Adelson et al., *supra* note 152.

162. Jeff Adelson, *Download Data Used in The Advocate's Exhaustive Research in Tilting the Scales Series*, THE ADVOCATE (Apr. 1, 2018, 8:00 AM), https://www.nola.com/article_25663280-c298-53ef-8182-9a8de046619c.html [https://perma.cc/85WJ-MLLW].

163. Adelson et al., *supra* note 152.

164. *Id.*

165. LA. CODE CRIM. PROC. ANN. § art. 417.

166. Email from Kristen Marie Vicknair, author, to Gordon Russell, Journalist at *The Advocate* (Jan. 18, 2021, 9:10 PM EST) (on file with author).

167. *Id.*

Jefferson Parish's lack of transparency makes their venire creation procedures even more questionable when the lists of an actual criminal trial venire are examined and compared to the demographic data of the parish.¹⁶⁸ The lists examined as an example for this Note were drawn for six trials in the parish, from 2012 to 2017, without one for 2013.¹⁶⁹ All of the lists examined had major consistencies, likely from an algorithm in the computer software the parish uses.¹⁷⁰ For the purposes of this Note, the demographic distribution of the venire is compared to the most recent Census data.

	2012–2017 Range¹⁷¹	Census Data Distribution¹⁷²
White, Non-Hispanic	60.2–69.9%	52%
Black	18.92–27.4%	28.3%
Hispanic	1.28–4.11%	14.9%
Asian	0.69–3.85%	4.3%
All Others	2.74–9.91%	2.5%

The numbers gathered from the lists convincingly demonstrate that Jefferson Parish's lack of transparency is problematic for those having a jury trial and for the parish as a whole.¹⁷³ This data shows a large percentage of minority communities in the parish are not being pulled for jury duty proportional to their representation in the community.¹⁷⁴ The numbers for the five years and six jury venires are consistent, demonstrating the consistent nature of disproportionate jury venires in the parish.¹⁷⁵ Five years is a lengthy period of time for a locality—countless elections, trials, and town halls

168. The lists discussed here are drawn from an Excel sheet created by *The Advocate's* team for their project. The lists are part of a public database the team created to allow the public access to data, potentially unavailable to them otherwise, on the criminal justice system. Adelson, *supra* note 162.

169. *Id.* Notable about the list for 2017 is that it was the year Louisiana passed widespread criminal justice reform to make the system less crowded.

170. *Id.*

171. *Supra* note 168.

172. *Quick Facts: Jefferson Parish, Louisiana*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/jeffersonparishlouisiana> [https://perma.cc/DYU4-JED4].

173. *Id.*

174. *See id.*; Adelson, *supra* note 162.

175. *See* Adelson, *supra* note 162.

occur in such a time span. Additionally, during these five years, the State Legislature passed criminal justice reform at the urging of numerous communities, further calling into question why Jefferson Parish's disproportionately white jury venires have continued for so long.¹⁷⁶

These six disproportionately white venires in Jefferson Parish were drawn from lists released voluntarily by the Parish to *The Advocate*.¹⁷⁷ This further begs the questions: What do the lists the Parish refuses to produce look like? Are those lists just as disproportionately white as these, explaining why the Parish refuses to explain its procedures? If the Parish was transparent in its venire creation methods, these lists may not seem so incriminating, but the methods are unknown to the public, with only examples of disproportionately white representation to analyze.

Although the Supreme Court in *Taylor*, *Duren*, and *Berghuis* never specified a bright-line rule for minority exclusion to qualify under the third prong of the fair cross-section requirement, the numbers present in the venires analyzed do seem to rise to that level.¹⁷⁸ This data, and the data the Parish will not release, may make a *prima facie* case for an unconstitutional fair cross-section for countless individuals, but the lack of transparency has impaired the fairness of the criminal justice system and citizens' trust in it.¹⁷⁹

Additionally, the lack of transparency in the actions of Louisiana Parishes' Clerks' Offices demonstrates a continuing pattern of state and local administrations' refusal to release important statistics or clarifications about their actions.¹⁸⁰ Louisiana's citizens have good reason to be concerned; the only information these administrative

176. *Id.*; see also EQUAL JUSTICE INITIATIVE, *supra* note 2.

177. Adelson, *supra* note 162.

178. *Taylor v. Louisiana*, 419 U.S. 522, 522 (1975); *Duren v. Missouri*, 439 U.S. 357, 357 (1979); *Berghuis v. Smith*, 559 U.S. 314, 314 (2010).

179. Adelson et al., *supra* note 152.

180. See, e.g., Tiffany Wong, *Jefferson Parish Parents Call for Transparency After Learning About New Upcoming School Times*, FOX 8 LIVE (May 26, 2020), <https://www.fox8live.com/2020/05/26/jefferson-parish-parents-call-transparency-after-learning-about-new-upcoming-school-times>; Gambit Commentary, *Commentary: Lawmakers' Lack of Transparency Threatens Public Records, Citizen Access*, GAMBIT (May 15, 2020), https://www.nola.com/gambit/article_5f445688-96aa-11ea-9949-9b1cacbe4fec.html [<https://perma.cc/7RSL-RJN6>]; Mike McDaniel, *Attorneys: Shootings of Black People Show JP SO Lacks Accountability*, WWL-TV (June 23, 2020), <https://www.wwltv.com/article/news/crime/attorneys-shootings-of-black-people-show-jpso-lacks-accountability/289-ce786cc5-9697-4048-97de-495aeced8da1> [<https://perma.cc/G8C5-N5LF>]; Lee Zurik & Cody Lillich, *Zurik: JP Councilmember Charges Taxpayers Thousands in Out-of-State Travel*, FOX 8 LIVE (Nov. 13, 2019), <https://www.fox8live.com/2019/11/14/zurik-jp-councilmember-charges-taxpayers-thousands-out-of-state-travel>.

offices release about these procedures, ones with far-reaching effects on defendants' access to fair trials, is a single sentence on a website.¹⁸¹

VII. PROPOSED SOLUTIONS FOR THE LOUISIANA SYSTEMS OF JURY POOL CREATION

In order to increase transparency and public confidence in the jury system, the Louisiana legislature should pass bills requiring the sixty-four parishes in the state to publicly post their individual methods for drawing their venires, similar to the aforementioned federal court requirement.¹⁸² The availability of these jury selection processes would allow for the public to have a greater sense of understanding of what goes on behind closed doors when the jury pool is selected, rather than simply guessing.

By passing a bill requiring public notice, the state government can take steps to make sure all parishes are abiding by the Sixth Amendment's fair cross-section requirement for jury venires.¹⁸³ This would also allow criminal defendants to have the necessary procedural knowledge to make an educated objection to their venire during their trial's jury selection process.¹⁸⁴ Requiring the parishes to post their venire creation procedures may not be enough to ensure transparency in the system, though, since these parishes have existed with a lack of oversight for so long and would likely object to any reforms affecting them.¹⁸⁵ The best way to ensure transparency in the system, and allow citizens to hold their local governments accountable for unconstitutional or unfair procedures, would require the Louisiana legislature to repeal the various code sections relating to each individual parish's procedures for jury venires.¹⁸⁶ After the legislature repeals those procedures, they should pass a new code section mandating a specific venire creation procedure for every parish. The legislature could enlist experts in this field to assist with the creation of such a procedure and the algorithms the computer uses, for

181. See *Jury Assembly*, *supra* note 122; *Jury Management Department*, *supra* note 122; *Jury Service*, *supra* note 122.

182. 28 U.S.C. § 1863.

183. *Taylor*, 419 U.S. at 538.

184. Chernoff, *supra* note 25, at 1735.

185. Jennifer Emily, *Racial Bias in Louisiana Jury Selection Spurs Broader Scrutiny*, DALL. MORNING NEWS (Aug. 16, 2015, 11:25 PM), <https://www.dallasnews.com/news/2015/08/17/racial-bias-in-louisiana-jury-selections-spurs-broader-scrutiny> [https://perma.cc/B4Q5-TRBK].

186. La. Dist. Ct. Appx. 9.14.

the purpose of consistency.¹⁸⁷ If all the parishes had the same procedure for drawing the jury pool, it would allow defendants to receive the same procedural experiences in neighboring parishes, as if they were in their home parish, unlike the current processes.¹⁸⁸

Lastly, the use of driver's license lists and voter rolls contributes to the lack of transparency in these procedures and the lack of trust in the criminal justice system.¹⁸⁹ If the parishes and the state are truly committed to criminal justice reform and allowing the public to fairly contribute to jury service, the state could utilize a three-pronged approach to create a more fair and representative venire. These three sources would be (1) existing voter lists, (2) taxpayer rolls, and (3) benefit recipient records.

Using these three sources would include a wider and more inclusive group of people for jury service.¹⁹⁰ The three sources combine to reach all three socioeconomic classes and a greater number of minority individuals.¹⁹¹ There has been evidence of voter rolls not including representative percentages of minorities,¹⁹² and this can be balanced by using the records of Louisiana benefit recipients, such as TANF, SNAP, EITC, and WIC.¹⁹³ Since Louisiana is one of the most impoverished states in the country,¹⁹⁴ it is unsurprising that over thirty-seven percent of African-American households live below the poverty line, with over two hundred thousand African-American and Hispanic households not having a parent with a full-time, year-round job.¹⁹⁵ These families are likely to be represented on benefit recipient records, rather than voter lists, as over nineteen percent of Louisianans live below the poverty line.¹⁹⁶

Voter lists are typically more representative of older, whiter, wealthier, and more educated individuals, as younger adults are less likely to vote.¹⁹⁷ Using taxpayer lists would resolve this, as it would likely reach working-class Americans who do not receive benefits, are less educated, and identify as a minority group. A representative

187. Ferguson, *supra* note 62, at 975.

188. La. Dist. Ct. Appx. 9.14.

189. CRAIG HEMMENS, DAVID C. BRODY & CASSIA SPOHN, *CRIMINAL COURTS: A CONTEMPORARY PERSPECTIVE* (2019) (e-book).

190. *Id.*

191. Adelson et al., *supra* note 152.

192. *Id.*

193. *Id.*

194. LEWIS, *supra* note 16, at 105–06.

195. *Louisiana*, *supra* note 17.

196. *Id.*

197. *What Affects Voter Turnout Rates?*, FAIRVOTE, https://www.fairvote.org/what_affects_voter_turnout_rates [<https://perma.cc/H388-C43A>] (last visited Nov. 4, 2021).

venire needs a wide range of identities to successfully work, which supports the idea of using taxpayer lists, in addition to the other sources of names.

A number of individuals do not trust the criminal justice system because of their inability to participate in the system.¹⁹⁸ The juries people see on television and online media may not look like them or represent their views, and they may feel as if the criminal justice system just does not offer them a chance to participate.¹⁹⁹ If the drawn venires summon a wider and more diverse representation of the criminal justice system, there may be greater involvement from non-white, working-class people, and, subsequently, a greater trust in the criminal justice system.²⁰⁰

CONCLUSION

The relationship between the criminal justice system and the public is complicated and convoluted; the understanding people have of juries stems from various legal television shows, media coverage of high-profile cases, and community word of mouth. As Americans begin to embrace a greater understanding, activism, and involvement in the criminal justice system, transparency of the processes will allow the public to determine the fairness of the system for themselves.

Following the Louisiana State Legislature's decision to repeal the nonunanimous jury verdict, Louisianans have become more involved in the public discourse on the fairness of the state's criminal justice system.²⁰¹ But, just as it took a concerted effort to uncover the problematic history and consequences of the nonunanimous jury verdict, it is time Louisianans examine the problematic jury venire creation systems in the state's parishes.

As discussed in this Note, the lack of procedural transparency and under-representation of minority groups in Louisiana's jury venires has negative consequences for the state's criminal justice system and Louisianans' trust in it. In order to address and rectify the problematic lack of transparency, the Louisiana State Legislature should pass legislation to overhaul these venire creation processes and create parish uniformity for the state. Excuses from local

198. See, e.g., Clarence M. Dunnaville, Jr., *Unequal Justice Under the Law—Racial Inequities in the Justice System*, VA. LAW. MAG. (Dec. 2000).

199. *Id.*

200. See *id.*

201. Lea Skene, *Most Louisiana Voters Support Criminal Justice Reform to Cut Costs, Allow Redemption, Poll Says*, THE ADVOC. (Mar. 2, 2021, 3:00 PM), https://www.theadvocate.com/baton_rouge/news/article_5528ce68-7863-11eb-b9c2-4fe7a5f8e078.html.

and state officials should be disregarded because clear evidence exists that transparency and constitutionality are achievable in jury venire creation, as seen in federal courts' processes.

Not a melting pot, but a gumbo of cultures, can be found in Louisiana. The Sixth Amendment guarantees there be a fair cross-section of the community in a criminal defendant's trial, and in a state that prides itself on its cultures, there should be a representation of that diversity in venires, with ways for the public to hold local officials accountable if they do otherwise.

KRISTEN M. VICKNAIR*

* Kristen Marie Vicknair is a 2022 JD Candidate at William & Mary Law School and holds two Bachelors of Arts in History and Political Science from Louisiana State University. She dedicates this Note to her fellow Louisiana Service and Leadership (LASAL) Scholars & her LASAL mentors, Dr. Granger Babcock and Ms. Cindy Seghers—may Louisiana one day be a more equitable and beautiful place as a result of their hard work. The author would like to thank Scarlett Hammond, Sami Warren, and Will Dufour for their unwavering love and support. She would also like to thank her parents and brother for all they have done to encourage and support her desire to affect real change in the criminal justice system. Lastly, in true Louisiana fashion, *Geaux Tigers!*