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# Stratified Juror Selection: Cross-Section by Design

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# Stratified juror selection: cross-section by design

*By manipulating the number of citizens summoned, qualified, or sent questionnaires on each of several multiple lists, a court can ensure racial and ethnic diversity on venires. However, the legality of this procedure remains unclear.*

**by Nancy J. King and G. Thomas Munsterman**

As of 1990, one of every four Americans claimed African, Asian, Latino, or Native American ancestry. Only 30 years earlier, approximately 90 percent of Americans were white, and most of the remaining 10 percent were African American.[1] In most courtrooms around the country the composition of juries has not kept pace with this rapid change in demographics, despite efforts by courts and lawmakers to eliminate discriminatory selection procedures.

Of the various selection methods that contribute to the underrepresentation of members of racial and ethnic minority groups on juries, peremptory challenges have attracted the most attention in recent years. Yet gains in diversity from regulating, or even eliminating, peremptory challenges are necessarily limited by the composition of the venire from which jurors are chosen. This article describes methods of constructing lists of veniremembers and qualified jurors used by some courts to restore the racial and ethnic diversity that is missing from the primary source lists or is eroded in the process of summoning and qualification. It also evaluates potential legal challenges to these techniques.

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Inability to secure racial and ethnic diversity on lists of qualified jurors remains the most intractable problem in

1. See Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957, 991-1 (1995). The projections for 1995 include even lower percentages of "non-Hispanic" whites. U.S. Dept. of Commerce, *Statistical Abstract of the United States* 13, Table 12 (1994).

jury administration today. Legal challenges to the composition of lists of qualified jurors and veniremembers continue to cause what one prosecutor termed a "huge strain" on the courts. A list of qualified jurors can take months to compile and usually serves a court as the sole source of grand jurors and trial jurors for a year, or even several years. A single defendant's attack on the composition of a qualified list may therefore require the reprosecution of other defendants indicted or convicted by juries drawn from the same tainted list, and delay further jury proceedings while a new list is created.

Even when selection systems pass constitutional and statutory standards, legally selected venires that fail to reflect the diversity of the community can carry serious costs. The resulting underrepresentation of minority residents on juries means that minority citizens receive less exposure to the educational experience of jury service, fuels the decline of public trust in jury fairness, and raises the risk that some jury decisions may be mis- or under-informed, lacking the breadth of experience that diverse panels can provide.[2]

Hoping to minimize these risks, state and federal judges and administrators have invested considerable resources adjusting their selection procedures so that they are more likely to produce panels that reflect the racial and ethnic composition of the surrounding community. Supplementing or replacing voter lists with more inclusive lists, updating addresses, implementing follow-up procedures for those who do not respond to jury summonses, reducing the economic hardship of jury service by increasing juror compensation, providing child care, and limiting the term of jury service are steps that can help.[3] These reforms, however, often fall short of producing qualified lists and venires that mirror local demographics. Members of some racial and ethnic minorities may be statistically less likely to receive their questionnaires and summonses because they move more frequently,[4] are more likely to find it impossible to travel to the courthouse due to distance or cost,[5] and are more likely to be disqualified for jury service because they speak a language other than English, are not United States citizens,[6] or possess disqualifying criminal histories.[7]

## Stratified selection

Stratified selection, also known as structured or clustered sampling, is

one method of restoring to venires the racial or ethnic diversity that is sometimes missing from original source lists or that is reduced during the process of qualification and summoning. By manipulating the number of citizens in each of several multiple smaller lists who are summoned, qualified, or sent questionnaires, a court can ensure that each of several populations is sampled proportionally, and can target for oversampling those populations that continue to yield disproportionately fewer veniremembers. Potential jurors can be grouped according to whatever demographic characteristics are available to jury administrators, including residence, ethnicity, or race.

For example, assume that a master list for a particular jury district is composed of names of registered voters from counties X, Y, and Z, each containing equal numbers of adult citizens. If the voter registration rate is lower in county X than in counties Y and Z, and the names of persons who will receive qualifying questionnaires are selected randomly from a combined list, the proportion of questionnaires that are sent to county X will be smaller than that county's share of the entire district's adult population. A court can ensure that the proportion of questionnaires sent to each county always equals that county's share of the district's adult population by dividing the district's jury list into counties and selecting the county's proportionate share of questionnaire recipients randomly from each separate list.[8]

When racial or ethnic groups are distributed unevenly among the counties, ensuring residential proportionality at each step or in every mailing can help ensure racial or ethnic propor-

2. *See, e.g.*, King, *Racial Jurymandering: Cancer or Cure? A Contemporary Review of Affirmative Action in Jury Selection*, 68 N.Y.U L. REV. 707 (1993).

3. Munsterman and Munsterman, *The Search for Representativeness*, 11 JUST. SYS. J. 59 (1986).

4. *See, e.g., SJC's Final Report On Racial and Ethnic Bias*, Massachusetts Lawyers Weekly, Oct. 3, 1994, at 11 (reporting that state commission found that underrepresentation on state juries is primarily due to outdated address lists and the low response rate of minority residents summoned for jury duty.")

5. *See, e.g.*, Hardin v. City of Gadsden, 837 F. Supp. 1113, 1116 (N.D. Ala. 1993) ("given the extent of poverty and lack of vehicles among blacks in the Northern District generally, the use of a district-wide jury wheel disproportionately denies them the opportunity to serve on juries outside their divisions" noting that about one quarter of black households had no access to a car, compared to 6 percent of white households, and that although the qualified wheel had almost 15 percent blacks, the percentage of blacks that appeared in venires was only 5-10 percent).

6. *See, e.g.*, Lee, "Minority Issues in Jury Management" 11 (September 1991) (noting that while only 3 percent of white residents of New Jersey in 1980 were non-citizens, 50 percent of Asian-Pacific Islanders were non-citizens, as well as 23 percent of those listed by the 1980 census as "Spanish Origin") (manuscript available from the Center for Jury Studies of the National Center for State Courts).

7. *Id.* at 13 (noting study finding that almost one in four black men in their twenties is either serving time or on probation or parole on any given day compared to 15 percent for white males and 10 percent for Hispanic males).

8. *Cf.* Cerrone v. Colorado, 1995 Colo. LEXIS 300, affirming 867 P.2d 143 (Colo. App. 1994) (describing state grand jury selected by mailing 75 qualifying questionnaires to each of five counties); United States v. McKinney, 53 F.3d 664 (5th Cir. 1995) (describing plan that requires questionnaires be sent to a randomly selected number of names "weighted by county population"); *Hardin*, 837 F. Supp. at 1117 (noting that the names of persons sent questionnaires when filling the district's qualified jury wheel are selected by computer to "include persons from each county within the district proportionate to the percentage of voters from those counties in the master jury wheel").

tionality as well. In the example above, if county X contained a higher percentage of Latino residents than the other counties, stratifying the questionnaire mailing by county will ensure that the share of questionnaires sent to persons from county X never falls below X's share of the entire district's population.

Obviously, this example of stratified selection has a relatively modest goal. It assures only that the number of potential jurors in each county sent questionnaires corresponds to that county's share of the district adult population. It does not guarantee that residents will receive or return those questionnaires, meet the qualifications for jury service, or be summoned for service in proportion to the county's share of the district's population. Seeking more effective controls, some jurisdictions have adopted or considered more ambitious stratification plans.

One alternative is to amend jury selection procedures so that additional qualification questionnaires and summons are sent to persons in certain counties, districts, or zip codes based on response rates to prior mailings. Studies have shown, for instance, that questionnaires sent into some zip codes in New York that contain predominantly minority residents are completed and returned at a lower rate than questionnaires sent to zip codes containing proportionately fewer minority residents.[9] Such variations in response rates could form the basis for the determination of the number of extra names to be drawn from specific sub-jurisdiction areas.

Some stratified systems, such as those previously used in Maryland and Delaware, were designed to follow requirements allocating seats on the grand jury proportionately by political subdivision. The courts in Wayne County, Michigan once composed venires using units called "jurats," each of which consisted of a specific number of names from each district within the county.[10]

Engineering jury lists to mirror residential demographics is not a particularly novel idea. Residential proportionality on the master lists from which qualified jurors are selected has been required by statute in every federal court since 1968 and is also mandated in several states. What is unique about the stratified selection systems discussed above is that they seek proportional representation by geography at later stages of the jury selection process, not just on original source lists or master wheels. Another departure is the focus on the representation of residential areas that are quite small—such as zip codes, census tracts, or local city council or alderman precincts—as compared to the larger units typically represented in master lists, such as counties or municipalities.[11]

Another stratified selection method is the direct use of race or ethnicity to target or define groups of potential jurors to sample. Instead of preserving geographic proportionality on qualified lists or venires, and in the process restoring racial proportionality, these systems seek race or ethnic proportionality directly. For example, in an attempt to improve the representativeness of venires, some courts have instituted "informal" procedures whereby areas of known minority populations receive more questionnaires.[12]

An ethnic-conscious plan was recently adopted in the U.S. District Court for the District of Connecticut, a court that has weathered recent successful challenges based upon the underrepresentation of Hispanics in its qualified lists and venires. Judges there modified the jury selection plan to provide that "additional" questionnaires, the number to be based on the rate of response, would be sent to "those municipalities...whose Hispanic population is equal to or greater than ten percent of its total population." The change was adopted "to further enhance the policy of the Jury Selection Plan...with respect to the participation of Hispanics in federal juries."[13]

In the Eastern District of Michigan a system of post-qualification balancing is used. The court there randomly strikes from the list of persons qualified the specific number of "white and other" potential jurors needed to obtain a qualified list with racial demographics identical to that of the population. Jury commissioners in Georgia, under supreme court guidance, must "balance the box" of the names of qualified jurors to correspond to the race and gender proportions of the county.[14] Names of persons to be summoned are selected from this balanced box or list. Other courts have approved supplemental summonses of

9. THE JURY PROJECT, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, March 31, 1994, at 15-17 (finding that the proportion of questionnaires designated by the post office as "non-deliverable" is often higher for areas that contain predominantly minority residents than it is for less diverse areas).

10. Allocation proved imprecise and subject to challenge. All three systems were eventually replaced by county-wide random selection.

11. Another difference is that federal law requires only that the master list mirror the geographic proportions of *actual or registered voters*, not all adult residents. The proportion of minorities that vote or register is well below the proportion of whites that vote in most jurisdictions. For a detailed description, see United States v. Bailey, 862 F. Supp. 277 (D. Colo. 1994).

12. This has been the practice in some jurisdictions in California and New York. *See The Jury Project, supra* n. 9, at 18 (noting that one New York jury commissioner has for several years sent more questionnaires into minority neighborhoods "to compensate for the relatively low numbers of minority jurors she sees.")

13. United States District Court for the District of Connecticut, "Modification to the Second Restated Plan for Random Selection of Grand and Petit Jurors Pursuant To Jury Selection And Service Act of 1968 (As Amended)."

14. Georgia Uniform Superior Court Rule 34 (1980); Administrative Office of the Courts, Judicial Council of Georgia, Jury Commissioner's Handbook 19-22 (1992) (explaining Unified App. Rule 34.3)).

qualified minority citizens to ensure proportional venires.[15]

## Implementation

Jurisdictions considering these and other stratified selection techniques should be sure to research the causes of underrepresentation with careful statistical analysis. This can help reformers identify those specific stages of the selection process that have the most disproportionate effects, and can sometimes uncover problems in a selection system that, when fixed, go a long way to achieving proportionate representation. One federal court, for example, discovered that its computer passed over for selection any resident of a city ending in the letter "d" because it was programmed to conclude that the "d" meant that the juror had died. Another county court learned that its system had been pulling most of the potential jurors from the biggest city into one particular court of limited jurisdiction, leaving very few urban minority residents for general jurisdiction courts.

Statistical analysis can also minimize the risk that proposed modifications will produce unexpected results. For instance, efforts to send extra questionnaires into a particular community that contains more minority citizens than other communities in the jury district may backfire, skewing the racial composition of a qualified list even further, if the number of additional minority responders is dwarfed by the increased numbers of white responders from the oversampled district. Court computer systems may also require some updating to accommodate the manipulation of combined lists or a list with multiple variables, although the most popular software systems now in place for jury selection can handle stratified selection.

The most frequent concern voiced about stratified selection, however, is not how to get it to work well, but whether it is legal. Without the assurance that proposed modifications comply with the law, a court that adopts stratified selection to combat underrepresentation in its existing system may risk trading one set of costly legal challenges for another. So far very few published judicial opinions have considered whether any of these various forms of stratified selection comply with federal or state law.

## Equal protection challenges

One potential challenge to stratified selection is based on the equal protection rights of potential jurors under the Fifth and Fourteenth Amendments of the Constitution. When a jurisdiction uses stratified selection to create its qualified lists and venires, citizens may be summoned at different rates, depending on their residence, race, ethnicity, or other criteria employed by the selection system. Summoning a person slightly more often based only upon where he or she lives would probably pass equal protection review because of the legitimate governmental interest in securing a cross-section of the community on jury venires. However, the constitutionality of balancing lists by race or ethnicity, sometimes termed affirmative action in jury selection, has recently become the subject of considerable academic debate.

It is not at all clear who would be allowed to challenge the constitutionality of a selection system that considers race or ethnicity in constructing lists of qualified jurors lists or veniremembers. Potential jurors who may be summoned less frequently because of the system's use of race or ethnicity may claim that they have been denied equal opportunity to serve as jurors.[16] However, few who escape jury service have an incentive to sue. The more likely challenger of a jury selection system is the criminal defendant who seeks relief from a jury's indictment or guilty verdict.

Recent decisions of the Supreme Court provide two plausible, but so far untested, theories by which a defendant could seek relief from the decisions of juries chosen from venires constructed with racially stratified jury lists. A defendant may allege a violation of his or her own right to equal protection, if he or she shares the race of those whose opportunities for jury service are reduced under the stratified system. Alternatively, a defendant could assert third-party standing to raise the rights of potential jurors, even if he or she does not share their race or ethnicity. The Court has allowed defendants to challenge discrimination against potential jurors during voir dire under this theory,[17] but has not addressed the propriety of allowing defendants to challenge violations of the rights of potential jurors that may occur earlier in the selection process.[18]

15. *See, e.g.* St. Cloud v. Leapley, 521 N.W.2d 118 (S.D. 1994) (reminding trial judges to add supplemental names of minorities to venire to correct grossly underrepresentative venires).

16. A decision of the Supreme Court this past term limiting the standing of those seeking to challenge race-conscious electoral districting practices may curtail the pool of plaintiffs who could raise this claim. In United States v. Hayes, 115 S. Ct. 2431 (1995), the Court concluded that only those persons who reside *within* a racially-gerrymandered district have suffered an injury sufficient to maintain an equal protection challenge to the use of race in selecting the district's boundaries. *Hays* suggests that only those citizens eligible for jury service whose chances for inclusion on the qualified list could have been affected by the stratified system would have standing to bring a constitutional challenge.

17. *See* Powers v. Ohio, 111 S. Ct. 1364 (1991).

18. Some lower courts have. *Compare* State v. Moore, 404 S.E. 2d 845, 846 (N.C. 1991) (granting relief to African American defendant who objected to replacement of white grand jury foreman with African American grand jury foreman); and Ramseur v. Beyer, 983 F.2d 1215, 1228 & n.8 (3d Cir. 1992) (upholding judges attempt to secure racial balance on grand jury, but noting defendant had standing to argue that the judge's practice violated the rights of potential jurors), *cert. denied*, 113

Even assuming that someone passed over for service, or a defendant, has standing to object to the consideration of race or ethnicity in "balancing" juror lists, there is little agreement about what standard of review a court should use to evaluate the constitutionality of such a scheme. Professor Albert Alschuler has argued that because the use of race to secure proportional representation of minority racial groups on juries does not stigmatize or disadvantage people on the basis of their race, it should withstand a challenge under the Equal Protection Clause.[19] Others have predicted that such techniques would be upheld only if a reviewing court was persuaded that the use of race or ethnicity was necessary to advance a compelling governmental interest.[20]

Two 1995 decisions of the U.S. Supreme Court also suggest strict scrutiny would be applied to race-based selection procedures. In *Adarand Constructors, Inc., v. Pena,* addressing the constitutionality of a minority preference for federal contracts, the Court emphasized that all race-based classifications are presumptively invalid unless narrowly tailored to achieve a compelling interest.[21] In *Miller v. Johnson,* the Court revealed little interest in relaxing this standard in the context of electoral districts, where, as in the jury selection context, federal law closely regulating racial imbalance gives lawmakers an incentive to act affirmatively to secure racial balance.[22]

The Court also has yet to clarify which interests could qualify as compelling enough to justify the consideration of race. In *Adarand,* the Court

cited as the only example of a compelling interest the goal of correcting "pervasive, systematic, and obstinate discriminatory conduct,"[23] suggesting that ongoing, intentional discrimination may now be the only situation in which the justices would uphold a race-conscious remedy. Such a strict interpretation of the Equal Protection Clause may prove fatal to stratified juror selection techniques that take race or ethnicity into account. These techniques are adopted not to remedy ongoing intentional discrimination in the selection of jurors, but to restore discrepancies between the demographics of jury lists and the demographics of local adult populations, imbalances produced by race-neutral selection methods and criteria.

Absent a more conclusive pronouncement, however, it is also reasonable to predict that the Court may in the future accept as "compelling" other, forward-looking interests. For example, the Court has not overruled a 1977 decision upholding the use of race as a factor in medical school admissions in order enhance the academic and educational environment.[24] Methods of selecting potential jurors for qualified lists and venires that use race or ethnicity may survive constitutional attack if the interest in promoting the legitimacy of jury verdicts provides an equally strong basis for upholding race-based selection systems, and other race-neutral options are not available for achieving the same goals.[25]

## Statutory challenges

Federal courts considering stratified systems should also anticipate challenges under the Jury Selection and Service Act, 28 U.S.C. §§1861-1868. This statute requires federal jurors to be "selected at random from a fair cross section of the community in the district or division wherein the court convenes" and prohibits "exclu[sion] from service...on account of race, color, religion, sex, national origin, or economic status." Courts have agreed that the federal jury selection statute does not mandate stratified selection methods that could prevent imbalances in qualified wheels and venires,[26] but they have yet to address whether it bars such remedies.

The text of the act offers little guid-

S. Ct. 2433 (1993) and *Ramseur,* 983 F.2d at 1251 (Cowen, J., dissenting) (finding defendant had standing to raise and succeed on claim that grand jurors' equal protection rights had been violated by judge's effort to seat racially balanced grand jury) *with Ramseur,* 983 F.2d at 1245 (Alito, J. concurring) (concluding that defendant had no standing to raise rights of grand jurors or potential grand jurors). *See also* Meders v. State, 389 S.E.2d 320, 323 (Ga. 1990) (finding defendant failed to preserve his challenge to Georgia's stratified system, but expressing disapproval of "manipulating" the selection system); *Meders,* 389 S.E.2d at 326 (Bentham, J., concurring) (finding Georgia's selection system constitutional); Acadiana Bureau, *Appeal court orders hearing on race issue,* The Advocate (Baton Rouge), March 9, 1995, at 3B (reporting case in which appellate court held white defendant had standing to raise the rights of minority residents excluded because of their race from service as grand jury foremen).

19. *See* Alschuler, *Racial Quotas and the Jury,* 44 DUKE L. J. 704 (1995).

20. *See, e.g.,* King, *supra* n. 2.

21. 115 S. Ct. 2097 (1995).

22. Miller v. Johnson, 115 S. Ct. 2475 (1995). Previously, in 1993, the Court agreed that voters may bring a claim under the Equal Protection Clause when the boundaries of their electoral district were designed to enhance the proportion of minority voters in the district. In *Miller,* the Court explained that such a claim should succeed with proof that "the legislature subordinated traditional race-neutral districting principles" to racial considerations, unless the state can show that its use of race is necessary to achieve a compelling state interest. *Id.* at 2481.

23. 115 S. Ct. at 2117 (describing the problem addressed by the race-based remedy that was upheld in United States v. Paradise, 480 U.S. 149 (1987)).

24. Indeed, Justice O'Connor's majority opinion in *Adarand* cited Justice Powell's pivotal opinion in that case favorably. *But see* Hopwood v. Texas, 1996 U.S. App. LEXIS 4719 (March 18, 1996) rejecting diversity as a compelling interest in law school admissions, stating "Justice Powell's arguments in *Bakke* garnered only his own vote and has never represented the view of a majority of the Court").

25. *See Adarand,* 115 S.Ct. at 2118 (a racial classification cannot survive strict scrutiny unless there was first "'consideration of the use of race-neutral means'" to achieve the government's goal, quoting Richmond v. J.A. Croson Co., 109 S. Ct. 706, 729 (1989)).

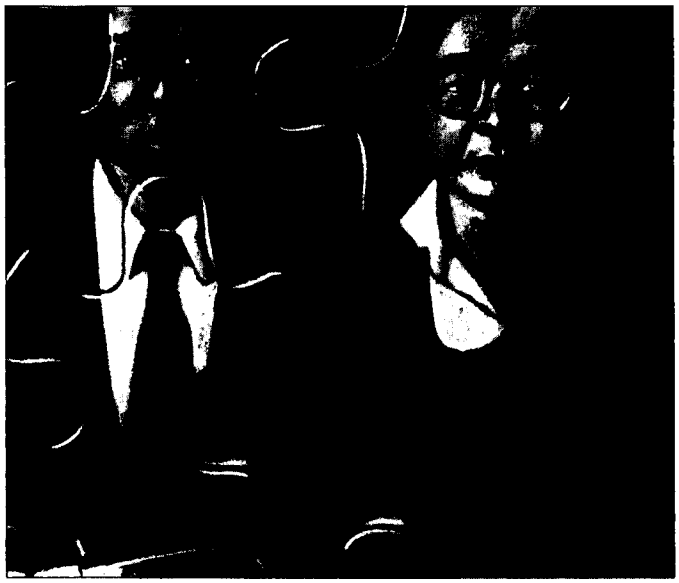
26. *See, e.g.,* United States v. Gometz, 730 F. 2d 475 (7th Cir.) (en banc) (refusing "to infer from the provision empowering court clerks to follow up on non-responders a legislative intent that the power must be used to eliminate possible non-response bias" and quoting Senate Report No. 891, 90th Cong., 1st Sess. 10, U.S. Code Cong. & Admin. News 1968 p. 1792 (1967) ("The act...does not require that at any stage beyond the initial source list the selection process shall produce groups that accurately mirror community make-up.")), *cert. denied* 469 U.S. 845 (1984).

ance. On the one hand, the act nowhere defines what is meant by its command that selection be "random." Indeed, it gives discretion to jury clerks to compel people to respond to jury questionnaires when at first they do not return them, allowing for some manipulation of the qualified list beyond whatever composition the initial mailing produces.[27] On the other hand, it does not mention residential balancing when describing the creation of lists of qualified jurors or veniremembers, nor does it mention racial balancing for any list, even though it expressly provides that the master wheel reflect the residential demographics that appear in the list of registered voters.

Stratifying jury lists, at least by residence, does not appear to violate the main purpose of the Act, which was not to require randomness in a statistical sense, but only to prevent intentional discrimination against individuals or groups. As one court explained, when a selection technique "create[s] only a slim chance that particular jurors could be designated by the jury clerk," it is sufficiently "random" under the Act.[28]

In dicta 20 years ago, the Tenth Circuit declined to condemn a system that "oversampled" certain areas containing residents who tend to be disqualified and excused at higher rates than others, noting that "the practical effect of the alleged initial 'overrepresentation'...when considered in conjunction with the disproportionate number of 'travel hardship' excuse requests from that division, was a 'qualified' jury wheel more accurately reflecting a 'fair cross section of the community' than would have been obtained had every seventy-fifth name from each division been selected."[29]

The act may erect even greater hurdles for race- or ethnicity-based selection systems. If the reduced rate at which non-minority citizens are summoned for jury service under racially stratified systems can be considered "exclusion" from jury service, or if a court concludes that any consideration of race or ethnicity conflicts with the anti-discrimination norm of the act, a statutory challenge to a racially-stratified system could succeed. Needless to say, both of the federal courts that have specifically attended to racial balance in their qualification procedures—the Eastern District of Michigan and the District of Connecticut—consider their methods well within those authorized by the act.



Because many state courts are bound by state statutes that resemble the federal act, stratified selection in state systems may face similar arguments. State courts interested in adopting stratified selection techniques may choose to bypass or eliminate such statutory challenges by amending state law to accommodate stratified selection. This legislative route has its own share of hazards, of course. A statute that overtly recognizes race or ethnicity as a factor in jury selection may offend those legislators or constituents who would prefer to adhere to a color-blind selection system.

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As vicinage-wide reforms continue to fail to yield demographically representative venires, judges, lawmakers, and administrators are searching for other solutions that will. Striking particularly unrepresentative venires ("venire shopping") or calling in huge numbers of jurors for isolated racially-sensitive cases,[30] are responses that may appease particular litigants, but may in the long run prove to be arbitrary and expensive to administer, or harmful to other litigants. A statistically-sound stratified selection system can provide proportionate residential, racial, or ethnic representation in most or all venires, not just in isolated cases. However, jurisdictions considering stratified selection methods should tread carefully, as the rulings of courts on this delicate and complex topic are difficult to predict.

27. 28 U.S.C. §1964(a). Follow up procedures can have a significant effect on minority representation in venires. In Madison, Wisconsin, state court follow-up letters to jurors who do not return their questionnaires have raised the return rate from African Americans from 31 to 42 percent, although the rate for whites is nearly double that at 83 percent. Schneider, *New Rules to Expand Jury Picks*, Capital Times (Madison), Nov. 15, 1994, at 1A.

28. United States v. Bearden, 659 F.2d 590, 603 (5th Cir. 1981), *cert. denied* 456 U.S. 936 (1982). *See also* United States v. Eyster, 948 F.2d 1196, 1213 (11th Cir. 1991), *cert. denied* 502 U.S. 1099 (1992).

29. United States v. Test, 550 F.2d 577, 584 n.4 (10th Cir. 1976).

30. *See* JURORS: THE POWER OF TWELVE, REPORT OF THE ARIZONA SUPREME COURT COMMITTEE ON MORE EFFECTIVE USE OF JURIES 44-45 (Sept. 1994) (recommending that judges make more use of their power to strike grossly underrepresentative jury panels); Ackerman, *Second jury picked for homicide trial; First jury dismissed because pool failed to include blacks*, Pittsburgh Post-Gazette, Jan. 11, 1995, at B1; *Youth Guilty in the Killing of 2 Gay Men*, N.Y. Times, Feb 10, 1995, at A25 (reporting that defendant's first trial was canceled because the 70-member jury pool lacked enough black members); Torrance, *Jury makeup among issues raised by Chapel defense; Small percentage of adults listed in county's pool*, Atlanta J. and Const., Aug. 4, 1995, at 3J (noting judge denied motion for changed jury selection method "but did allow them to call 400 prospective jurors—double the number usually summoned").