

SEEKING FAIR REPRESENTATION:
POTENTIAL BARRIERS TO THE REPRESENTATION OF HISPANIC
POPULATIONS IN THE JURY POOLS OF THE EDWA

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Introduction

The underrepresentation of minorities in jury pools has become a prominent issue in our society today. Most recently, in the summer of 2013, the highly publicized George Zimmerman trial brought about questions concerning the controversial verdict made by a non-black jury in which Mr. Zimmerman was found innocent. Whether differences are racial, cultural, religious or generational, it is important that jury pools represent a fair cross-section of the community. The Hispanic population in Washington State has increased 71% from 2000 to 2010.¹ There are racial, ethnic, cultural, and linguistic differences attributed to this group that should be fairly represented on juries. The ever-growing Hispanic population is important for all Washingtonians to recognize because of the economic, political and social place they hold in society. Serving on a jury is a privilege in which citizens of the United States are given the unique power to judge and be judged by their peers. However, we must ensure that this privilege extends to all populations in Eastern Washington, Washington State, and across the United States.

This report examines the barriers to racially and ethnically representative jury pools in the seven counties for the federal courts of the Eastern District of Washington (EDWA): Adams, Benton, Franklin, Kittitas, Klickitat, Walla Walla, and Yakima. We specifically examine the barriers to a fair representation of the Hispanic population in the jury pools of the EDWA in two different ways. First, by conducting a close spatial examination of the representation of the Hispanic population on the source lists in the EDWA, we seek to answer the following questions:

¹ U.S. Census Bureau; 2010 Census Data and Resources, 2010 Census Redistricting Data [P.L. 94-171] Summary Files, generated by PewResearch; using American FactFinder; <<http://factfinder2.census.gov>>; (February 23, 2011), accessed November 1, 2013.

How is the Hispanic population represented in the jury pools of the federal courts of the EDWA?
What factors are influencing or causing the underrepresentation of Latinos in these jury pools?
The second portion of our research works to comparatively analyze how different members of the Walla Walla community perceive the issue of racial representation on juries. We conducted three individual focus group discussions with non-Latinos, non-citizen Latinos, and citizen Latinos, in order to gauge the value that individuals placed on the jury selection process and answer the following question: Why might it be important for jury pools to be racially and ethnically representative of the population? To contextualize our research we explored prior scholarship that investigated the reliability of current source lists used to produce jury pools. This prior scholarship indicates that sometimes, the use of source lists (such as voter registration lists) can lead to the underrepresentation of minority populations. As we discuss in the following section, there are many factors that have a role in this underrepresentation including: race, language, and socioeconomic status.

This report was written in collaboration with David Morales, an attorney at Northwest Justice Project (NJP). NJP is a publicly funded legal aid organization in Washington State with a mission to provide “justice for all low-income people in Washington.”² David Morales worked as a primary advisor to this research and report. NJP works with many Latino farmworkers in civil cases arguing for defendants in front of jury panels that do not represent their clients. Non-Latino juries can hold negative implications for their clients. Northwest Justice Project is also hoping to use this research in order to help inform a jury challenge to the federal courts of the EDWA.

² Northwest Justice Project, “Vision and Mission,” accessed March 7, 2014.

Our findings indicate that many Hispanic populations in certain geographic areas in the EDWA have been excluded from the current jury pool due to the use of voter registration lists as a source list. We also find that according to focus group discussions with ordinary citizens in Walla Walla, issues of race, language and socio economic status had the greatest influence on jury pool composition. As the Hispanic population continues to increase, both recognition and fair representation in jury pools is due. Through this report, we recommend that in order to improve the representation of the Hispanic population, federal courts, local organizations and communities all must recognize what is at stake, and take the necessary actions for fair jury pool representation. Furthermore, we recommend conducting additional research in order to propose what specific economic, political and social factors impact the exclusion of the identified communities and regions in the EDWA. With this additional research, we can identify supplementary source lists in order to improve the representation of Hispanic populations in the jury pools of the federal courts of the EDWA.

Literature Review

Prior studies about jury selection processes have revealed that the underrepresentation of minorities consistently occurs in courtrooms across the United States. However, a major point of contention among scholars is determining the root of this problem. Several scholars have explained the issue of underrepresentation of Latinos and other minorities on juries as a result of systematic exclusions or non-systematic exclusions. Paula Hannaford-Agor, Director of the Center for Juries Studies, has defined the terms systematic exclusion and non-systematic exclusion to identify the potential causes of minority underrepresentation in jury pools. She

defines systematic exclusions as any type of exclusion that is a result of decisions made by the court.³ Systematic exclusions can include, reliance on unrepresentative source lists, exclusions due to potential jurors' English proficiency or exclusions due to the financial burdens of jury duty. She continues to define non-systematic exclusions as exclusions that are outside of the court's ability to control or influence.⁴ Non-systematic exclusions can include lack of participation due to time, interest, and the individual's choice to not register to vote or obtain a driver's license. For the purposes of our research, we have devoted this literature review to prior scholarship that emphasizes potential systematic exclusions because the federal courts have the ability to influence or mitigate these types of exclusions. Working within this framework, other scholars have proposed specific factors that have influenced or created systematic exclusions within the jury selection process. Through a reading of this prior scholarship, we will investigate these primary systematic exclusions and their influence on the underrepresentation of Latinos in the jury pools of the federal courts of the EDWA.

I. Why Focus on Systematic Exclusions?

We have chosen to focus our literature review on systematic exclusions, because it is more effective to mitigate potential exclusions through the federal courts in order to reach out to larger populations. In the debate surrounding the underrepresentation of minorities in jury pools, scholars argue whether systematic exclusions or non-systematic exclusions are primarily responsible for the lack of representation of Latinos in the jury selection process. Hannaford-

³ Paula Hannaford-Agor, "Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded," *Drake Law Review* 59 (April 2011): 796, accessed November 15, 2014.

⁴ Hannaford-Agor, "Systematic Negligence in Jury Operations," 779.

Agor notes that using certain source lists can exclude certain populations from jury pools. For example, the EDWA uses both voter registration lists and the Department of Licensing list to create their jury pool. Here, Hannaford-Agor would note that unless voter registration lists can be evidentially proven to be unconstitutional or created in a discriminatory way, they are deemed as constitutionally valid even if in reality they prove to be unrepresentative.⁵ Hannaford-Agor stresses that because there is no constitutional violation, the courts feel no need to question the validity of these lists.⁶ The courts are then complacent with the use of unrepresentative source lists, instead of taking action to find or add other lists that are more representative of the population. Here, Hannaford-Agor adds that if source lists are not representative, the court does have the power to make necessary changes, such as adding supplementary source lists.⁷ There will always be individual circumstances that the court cannot control. However, our research will focus on the systematic exclusions that we believe the courts have a responsibility to change.

II. Systematic Exclusions: Exclusion through Source Lists

Within the courts of the Eastern District of Washington (EDWA), the jury pool is composed through the selection of Washington State citizens represented on voter registration lists and the Department of Licensing (DOL) list. The Department of Enterprise Services (DES) then merges these two source lists and eliminates any duplicate names. Jury summons are pulled from a merged list through a random-selection process that gives each individual the same probability of being summoned for jury duty. Most authors take issue with the use of voter registration lists as

⁵ Hannaford-Agor, “Systematic Negligence in Jury Operations,” 772.

⁶ Hannaford-Agor, “Systematic Negligence in Jury Operations,” 772.

⁷ Hannaford-Agor, “Systematic Negligence in Jury Operations,” 779.

one of the primary sources for creating a jury pool. Elissa Krauss and Sonia Chopra acknowledge that voter registration lists are a reliable source. By reliable they mean that in contrast to other source lists (such as the Department of Licensing list), everyone on this list is eligible to serve on a jury given their age and citizenship status. However, despite this reliability, Krauss and Chopra argue that voter registration lists are indeed “underinclusive” and would therefore not fulfill the cross-section requirement for jury pools.⁸ They express that the underinclusiveness stems from different minority groups registering and voting at different rates, meaning the list never fully represents the current population.⁹ Krauss and Chopra also note that Census data that describes voter registration rates show that an individual’s employment status, income, and age can affect voter registration rates (i.e. many registered voters are older, college educated and have higher incomes).¹⁰ According to Krauss and Chopra, this list then produces a biased and underinclusive jury pool in terms of race, age, and socioeconomic status.

William D. Schreckhise and Charles H. Sheldon conducted a study of the changes in diversity of the EDWA jury pools after the implementation of the Motor Voter Act in 1992 and the addition of the Department of Licensing list as source list in 1995. They discovered that the implementation of driver’s license lists as an additional source list significantly diversified jury pools in terms of race and ethnicity in the EDWA.¹¹ Although the Motor Voter Act created an easier way for individuals to register to vote, Schreckhise and Sheldon’s study shows that it was

⁸ Elissa Krauss and Sonia Chopra, “Law of Jury Composition Challenges,” *Jurywork Systematic Techniques* (2012): 340, accessed November 14, 2013.

⁹ Krauss and Chopra, “Law of Jury Composition Challenges,” 339.

¹⁰ Krauss and Chopra, “Law of Jury Composition Challenges,” 339.

¹¹ William D. Schreckhise and Charles H. Sheldon, “The Search for Greater Juror Diversity: The Case of the U.S. District Court for the Eastern District of Washington,” *The Justice Journal* 20, no.1 (1998): 107-08, accessed November 15, 2013.

the addition of the driver's license list that added more non-Caucasian individuals to the jury pool.¹² In fact, in their study from 1992 to 1995, Schreckhise and Sheldon showed that there was an increase in minorities in the 1995 jury pool (12% increase of minorities compared to the 4.8% increase of Caucasians)¹³. According to a chi-squared correlation, this increase in minority representation was directly related to the addition of the driver's license list as a source list.¹⁴ Although they did find this increase in minority representation in the jury pool, Schreckhise and Sheldon also found that 45% of the people from the driver's license list were ineligible or excused from jury service while only 7.1% of individuals from the voter registration source list were excused.¹⁵ In addition, "minorities drawn from driver's license lists are more likely than are their Caucasian counterparts to be excused from service (10.6 percent)."¹⁶ While Schreckhise and Sheldon found that the people from the driver's license list were more likely to be excused from jury service, they also found that the addition of the driver's license lists did help to diversify the jury pool. In contrast, Krauss and Chopra argue that voter registration lists are biased and unrepresentative of minority populations.

Racial Representation on Juries and in the Jury Selection Process

Most scholars readily agree that the significant and visible underrepresentation of Latinos on juries has been an apparent problem in the past. Both Bagnato and Sheridan specifically

¹² Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 108.

¹³ Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 108.

¹⁴ Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 108.

¹⁵ Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 109.

¹⁶ Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 109.

referenced these problems within the context of the 1954 Supreme Court decision of *Hernandez v. Texas*. The *Hernandez v. Texas* case was appealed to the Supreme Court by Pete Hernandez's lawyer, Carlos Cadena, because evidence showed there had been no Mexican-Americans on a jury in Jackson County for the last 25 years.¹⁷ Cadena argued that this was a violation of the equal protection and due process clauses of the Fourteenth Amendment.¹⁸ Because of this, Mexican-Americans were treated as socially subordinate and were easily excluded from the justice system. During this time, Jim Crow segregation created a racial discourse that was centered on the dichotomy of black versus white. Therefore, anyone who was not legally identified as black, such as Latinos, was then legally classified as white. Bagnato argues that there was a disconnect between the growing population of Latinos in the U.S. and the representation of Latinos in the jury pools of the United States justice system.¹⁹ Sheridan would agree with Bagnato, adding that this apparent "gap" was exacerbated by the way in which Mexican-Americans were continually stuck between how they were defined legally and how they were treated socially.²⁰ Although the Supreme Court ruled in favor of Hernandez, and Latinos are protected under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, Bagnato argues Latinos are still not fairly represented in jury pools today.²¹

¹⁷ Clare Sheridan, "Another White Race: Mexican Americans and the Paradox of Whiteness in Jury Selection," *Law and History Review* 21, no.1 (2003): 123, accessed December 5, 2013.

¹⁸ Sheridan, "Another White Race," 128.

¹⁹ Christopher F. Bagnato, "Change is Needed: How Latinos are Affected by the Process of Jury Selection," *Chicano/Latino Law Review* 29 (May 2010): 61, accessed November 14, 2013.

²⁰ Sheridan, "Another White Race," 112.

²¹ Bagnato, "Change is Needed," 62.

This leads us to investigate other potential factors that influence the underrepresentation of Latinos in jury pools such as language and socio-economic barriers.

Language Barriers

Many scholars argue that native language and English proficiency should not be the determining factor of who can serve on a jury and who cannot. Diamond argues that the exclusion of a potential juror due to language barriers is “the second most common reason for excusing a juror in this courtroom.”²² Although there is an English proficiency requirement in order to participate on a jury, prior scholarship has identified language as both a barrier and an exclusion of Hispanic populations from jury pools. Although Gonzales’ study was conducted in Puerto Rico, the English language requirement caused a systematic exclusion of approximately 90% of the population from the jury pool.²³ She argues that this language requirement ignores a majority of the population. Fukurai mentions that throughout the jury selection process, the courts’ put continual emphasis on an individual’s comprehension of the English language. This can cause that same individual to develop both doubt and distrust towards the justice system.²⁴ As the courts’ apprehension about the presence of non-English speaking jury members continues to grow, Latino community members’ distrust in the system will persist as well.

²² Shari Seidman Diamond et al., “Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge,” *Journal of Empirical Legal Studies* 6, no.3 (2009): 439, accessed November 14, 2013.

²³ Jasmine B. Gonzales Rose, "The Exclusion of Non-English-Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico," *Harvard Civil Rights-Civil Liberties Law Review* 46, no. 2 (2011): 498, accessed February 1, 2014.

²⁴ Hiroshi Fukurai, “Where Did Hispanic Jurors Go? Racial and Ethnic Disenfranchisement in the Grand Jury and the Search for Justice,” *Western Criminology Review* 2, no.2 (2000): 18, accessed December 5, 2013.

Similarly Minow's study investigates the bias of jurors and judges. She critiques the assumption that Spanish proficiency is a sign of a biased juror.²⁵ Minow adds that these assumptions incorrectly imply that Latinos, who may share linguistic and cultural knowledge with a Latino victim, will automatically sympathize with a Latino defendant.²⁶ Not only does this opinion assume bias due to native language, but it also excludes a unique cultural perspective and prevents those "who view trial participation as a civic right" from sharing their knowledge.²⁷ Both Minow and Bagnato argue that these assumptions are in opposition to the promised right and duty that all citizens have to participate on a jury. Bagnato describes the significance of language when individuals are removed during the peremptory challenges, "When language and a narrow reading of procedural statutory requirement serve as the basis and rationale for jury exclusion, the spirit of democracy is twice undermined."²⁸

Barriers due to Socioeconomic Factors

Lack of compensation for jury duty deters many minorities, including Latinos, from participating on juries. Some economic barriers may include the financial burdens of taking time off work or traveling to participate on a jury. In addition, the lack of affordable childcare resources also generates participation barriers. Preller indicates that there is no employment or compensation protection for employees involved in part-time work, those who work for

²⁵ Martha Minow, "Stripped Down Like a Runner or Enriched by Experience: Bias and Impartiality of Judges and Jurors," *William & Mary Law Review* 33, no.4 (1992): 1210, accessed February 5, 2014.

²⁶ Minow, "Stripped Down Like a Runner," 1209.

²⁷ Minow, "Stripped Down Like a Runner," 1211.

²⁸ Bagnato, "Change is Needed," 67.

“independent contractors,” or those who require childcare services in order to serve on a jury.²⁹

These economic complications lead Preller to his main argument, that jury service creates an economic burden on the individual.³⁰ In agreement, Fukurai’s research examining the underrepresentation of Hispanic jurors in California states that the “economic background of prospective jurors is one of the most important determinants of jury participation.”³¹ In addition, he also states that,

Approximately three quarters of potential Hispanic jurors respond that they would be willing to serve on juries if their employers paid them for it. Similarly, 77 percent of Hispanic jurors indicate that they are willing to serve on juries if they are paid an hourly minimum wage for jury duty.³²

These results imply that the majority of Hispanics surveyed face inadequate employment compensation for jury participation. In addition, the 77% suggest that many Hispanics face similar financial burdens. Other scholars such as Aronson and Boatright observe additional obstacles arising from financial situations. Aronson’s analysis of his interviews with employers and employees in five industrial centers in New York found that this burden removes potentially useful jurors and “tends to make the jury system unrepresentative of the community.”³³ He also notes that this financial hardship increases with the length of trials. Through his study, Aronson

²⁹ Alexander E Preller, “Jury Duty is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service,” *Columbia Journal Of Law & Social Problems* 46, no. 1(2012): 14, accessed November 14, 2013.

³⁰ Preller, “Jury Duty is a Poll Tax,” 16.

³¹ Fukurai, “Where did Hispanic Jurors Go,” 18.

³² Fukurai, “Where did Hispanic Jurors Go,” 19.

³³ Robert L. Aronson, “Compensation of Industrial Workers for Jury Service,” *Labor Law Journal* 8, no.2 (February 1957): 104, accessed March 5, 2014.

finds the absence of wage-earning demographics troubling because of the social, economic, and political factors they represent in the overall community.

In addition to economic barriers, there are also social implications of the underrepresentation of Hispanic populations. Boatright stresses the relationship between employment status and juror participation and how “life-cycle differences, such as the presence of young children in the home [and] part-time or full-time employment show a very strong relationship to jury service. Obstacles of this type represent economic barriers to jury service.”³⁴ When mentioning life-cycle differences, Boatright refers to generational differences that affect jury service.³⁵ His findings suggest that by providing proper employment compensation and if accessible childcare resources were readily available, participation in jury service would increase.³⁶ Boatright and Aronson suggest that in order to minimize the underrepresentation of the Hispanic population in jury pools, these financial barriers and socioeconomic factors in general must be rectified.

IV. Literature Review Conclusion

Through an analysis of prior scholarship, many scholars acknowledge the underrepresentation of the Hispanic populations in jury pools across the United States. The first type of systematic exclusion that scholars have identified is the use of unrepresentative source lists. In particular, scholars such as Krauss and Chopra have stated that voter registration are

³⁴ Robert G. Boatright, “Generational and Age-Based Differences in Attitudes Towards Jury Service,” *Behavioral Sciences and the Law* 19 (2001): 302, accessed March 5, 2014.

³⁵ Boatright, “Generational and Age-Based Differences,” 286.

³⁶ Boatright, “Generational and Age-Based Differences,” 302.

biased towards older, Caucasian, high income and college educated populations.³⁷ While the addition of the DOL list in the EDWA did help diversify the initial jury pool in 1995, we believe that further research on the EDWA source lists is necessary. Scholars also found that the lack of racial representation in jury pools is still prominent today and is an important issue to address. Some scholars have determined that language barriers are another systematic exclusion of the Hispanic population from jury pools. Finally, prior scholarship has also identified that the inadequate compensation for jury duty and lack of childcare resources directly influences jury pool participation in the Latino community. From a reading of this prior scholarship, we identify all of these barriers and how they influence our study of the jury pools federal courts of the EDWA.

Methods

Prior scholarship regarding jury selection processes has revealed that the underrepresentation of minorities, specifically Hispanic populations, consistently occurs in courtrooms across the United States. Our community partner organization, Northwest Justice Project, had heard anecdotally that members of the Latino community as well as many legal professionals have seen an absence of Latino jury members in courtrooms. Through our research, we sought to identify how and why Hispanic populations are underrepresented in jury pools in the federal courts of the Eastern District of Washington (EDWA) and why it might be important for juries to be racially and ethnically representative of the population. Prior scholarship has

³⁷ Krauss and Chopra, “Law of Jury Composition Challenges,” 339.

shown that certain types of source lists can cause the exclusion of Hispanic populations from jury pools. However, no prior scholarship that we could find has employed a geographical analysis of jury pool source lists. By adding a geographical mapping analysis of the EDWA source lists to our research, we sought to identify both how extensively Hispanic populations are represented and potentially geographically excluded. Prior research has also revealed many social factors that influence the underrepresentation of Latinos in jury pools, including race, language and socioeconomic status. By conducting focus group discussions within the Walla Walla community, we sought to identify what social factors perpetuate the exclusion of Hispanic populations in the jury pools in the EDWA. In addition, we inquired into why and whether people in different racial or ethnic groups see equal representation in jury selection processes, or on juries, as important.

Countywide Voter Registration Data

Data Collection:

Voter registration lists are one of the two types of jury pool source lists used by the federal courts of the EDWA. In October 2013, we filed data request forms to county election offices for voter registration lists from the seven counties in the EDWA: Adams, Benton, Franklin, Kittitas, Klickitat, Walla Walla, and Yakima. We gathered voter registration data in order to compare how the Hispanic population was spatially represented through each county on this specific source list.

Data Analysis:

Jo McGuire, an economist and professional data processing consultant in Wyoming, coded all the voter registration lists using the U.S. Census' Hispanic Surname list in order to

separate out the Hispanic registered voters (a process that is approximately 94% accurate). Using the GIS software, we were able to create a point on a map for each voter's address (geocoding process) in order to gain a spatial representation of this source list. Due to address locating limitations in the geocoding process, we removed the small portion of addresses that were placed at the local zip code (and not at an individual address). This excluded a very small sample of our data, but made the overall geocoding process approximately 97.7% accurate.

Our goal for this data analysis was to create a spatial representation of the Hispanic population on voter registration lists in each county. This spatial data was then merged with county and census tract demographic data (see below) in order to symbolize, compare and identify the geographic areas with the lowest proportions of Hispanic registered voters. From this, we observed there was a disproportionate representation of the Hispanic population that came from the use of this source list.

Countywide Department of Licensing (DOL) Data

Data Collection:

The Department of Licensing (DOL) list is the second jury pool source list used by the federal courts of the EDWA. We filed a data request to the Washington State Department of Licensing. We received this data in September of 2013. We gathered this data in order to compare how the Hispanic population was spatially represented through each county on this specific source list.

Data Analysis:

Jo McGuire, an economist and professional data processing consultant in Wyoming, coded the DOL list using the U.S. Census' Hispanic Surname list in order to separate out the Hispanic license holders (a process that is approximately 94% accurate). Using the GIS software, we were able to create a point on a map for each license holder's address (geocoding process) in order to gain a spatial representation of this source list. Due to address locating limitations in the geocoding process, we removed the small portion of addresses that were placed at the local zip code (and not at an individual address). This excluded a very small sample of our data, but made the overall geocoding process approximately 96.3% accurate. Our goal for this data analysis was to create a spatial representation of the Hispanic population on the DOL list in each county. This spatial data was then merged with county and census tract demographic data (see below) in order to symbolize, compare and identify the geographic areas with the lowest proportions of Hispanic license holders. One limitation with this data analysis was that the Department of Licensing list did not include information on citizenship status.³⁸ Because citizenship status is required to serve on a jury, we were unable to identify who on the DOL list is eligible or not eligible for jury summons.

Countywide Department of Enterprise Services (DES) Data

Data Collection:

The Department of Enterprise Services (DES) merges both voter registration lists and the DOL list for the federal courts in the EDWA to send Juror Qualification questionnaires. In order to obtain this data, a datashare agreement was drafted between Whitman College and the DES

³⁸ Washington State is one of six states in the U.S. to issue licenses or grant driving privileges to undocumented immigrants and non-citizen residents (Wash. Rev. Code § [46.20.031](#), [46.20.035](#); Wash. Admin. Code [308-104-040](#)).

for sharing this merged jury pool list. We received this data on December 19, 2013. We gathered this data in order to compare how the Hispanic population was spatially represented through each county on the most current merged source list used by the federal courts of the EDWA.

Data Analysis:

Jo McGuire, an economist and professional data processing consultant in Wyoming, coded the 2013 merged DES list using the U.S. Census' Hispanic Surname list in order to separate out the Hispanic license holders (a process that is approximately 94% accurate). Using the GIS software, we were able to create a point on a map for each address (geocoding process) on the DES list in order to gain a spatial representation of this source list. Due to address locating limitations in the geocoding process, we removed the small portion of addressed that were placed at the local zip code (and not at an individual address). This excluded a very small sample of our data, but made the overall geocoding process approximately 96% accurate. The DES provided a list that was divided into two source codes. Source "B" was labeled as "name show of DOL and County voter file" and source D was labeled as "names show in DOL file only." Our goal for this data analysis was to create a spatial representation of the Hispanic population on the DES list in each county. This spatial data was then merged with county and census tract demographic data (see below) in order to symbolize, compare and identify the geographic areas with the lowest proportions of Hispanics represented on this source list.

Countywide Demographic Data

Data Collection:

We downloaded Washington State Hispanic population demographic data from American Factfinder on the U.S. Census Bureau website (2010 U.S. Census) in order to merge ("join") this

information with the addresses of individuals on the source lists for jury pools in the EDWA (see voter registration, the Washington State Department of Licensing and Department of Enterprise Services above). We downloaded specific tables that showed the breakdown of race and ethnicity by age and gender at the county and census tract level. We also downloaded spatial data known as “shapefiles” (i.e. roads and Census designated urban areas) from the Washington Office of Financial Management’s (OFM) website at the county and census tract level in order to create a map to join the demographic data to the spatial data (i.e. our geocoded addresses from the source lists).

Data Analysis:

Through this data analysis, our goal was to symbolize and compare the difference in proportions of the Hispanic population represented on each source list (symbolized at the Census tract level). First, we separated specific demographic data into an Excel sheet. This information included: total population and Hispanic population and total voting age population and Hispanic voting age population for each county. Using Geographical Information Systems (GIS) software, we symbolized this demographic data (i.e. voting age population data) and then joined it to the spatial data (our geocoded addresses from the source lists). The final maps for voter registration, Department of Licensing and the Department of Enterprise Services each included three layers of data. The first layer illustrates the percent of Hispanics represented on each source list. The second showed the percent of Hispanics in the adult population and the third layer showed the urban areas, defined by the U.S. Census. Here, one limitation with our analysis is lack of data concerning citizenship status. This information would have added value to our spatial analysis, as citizenship status is required in order to serve on a jury.

Focus Groups

Data Collection:

We conducted focus group discussions within the Walla Walla community to find any additional types of exclusions and why or if people in these communities believe proportional representation is needed within jury pools. There were three focus groups: Non-Latino citizens, citizen Latinos, and non-citizen Latinos. There were five participants in the non-Latino citizens group, six citizen Latinos, and twelve non-citizen Latinos. These discussions were voice recorded and semi-structured which lasted approximately an hour each, although the non-citizen Latinos discussion lasted an hour and a half. Using a semi-structured discussion procedure allowed us to focus on topics we found to be the most relevant to our research but also gave participants the liberty to discuss what they believed to be most important. The non-Latino discussion was conducted in English, the citizen Latino discussion was in both English and Spanish, and the non-citizen Latino discussion was conducted in Spanish. Participants were selected through snowball sampling. Initial announcements about this study were presented to Walla Walla community members through committee presentations, email, and word-of-mouth. In order to abide by the requests of participants, names were kept confidential.

Data Analysis:

We transcribed all focus group discussions verbatim through the Express Scribe program. We then examined the transcripts to identify the main themes that arose within each focus group and to see how much, or if it mattered to people, if they think juries should be racially diverse. In addition, we also inquired into attitudes towards jury service at an individual and general level,

who participants consider their “peer” to be, and if they had ever been summoned to serve on a jury. According to participants, race, language and socioeconomic status were the most prominent themes. These issues were then compared to the other focus group discussions in order to identify any meaningful parallels or divergences between the ways the different groups addressed the same themes, topics, or questions. The objective of this analysis was to compare how non-Latinos versus Latinos perceived the issue of racially unrepresentative juries. By including non-citizen Latinos in this discussion, we also were able to see how citizenship status affected their responses.

Through our geographical mapping analysis and focus group discussion, we aim to investigate the factors contributing to the underrepresentation of the Hispanic population in order to provide the federal courts in the EDWA with data to help determine recommendations about how to improve the representation of the Hispanic population in jury pools.

Primary Research Analysis

I. Geographical Exclusions of the Hispanic Population: Voter Registration as a Source List

A spatial analysis of the seven counties in this study found that using voter registration as a source list for the jury pools in the EDWA contributes to the underrepresentation of the Hispanic population. According to the 2010 U.S. Census Bureau, the potential Hispanic voting age population (VAP) for these seven counties is over 120,000 people, about 27% of the total

VAP in these counties studied. Although citizenship status is required in order to serve on a jury, it is important to note that this Hispanic VAP category includes undocumented, non-citizen Hispanic, and Hispanic citizen residents. Although not legally entitled to representation in courtrooms, from a democratic standpoint (as well as evidenced through our focus group findings) this non-citizen population does deserve representation in the federal courts of the EDWA.

Table 1: Percent of Hispanics in the Total Voting Age Population (VAP)

County	Total Population Over 18 (Total VAP)	Total Non-Hispanic Population Over 18 (Total NHVAP)	Total Hispanic Population Over 18 (Total HVAP)	% Non-Hispanic in Total VAP	% Hispanic in Total VAP
Adams	12,216	5,897	6,319	48%	52%
Franklin	51,449	28,660	22,789	56%	44%
Yakima	169,193	105,665	63,528	62%	38%
Walla Walla	45,541	38,540	7,001	85%	15%
Benton	127,513	108,863	18,650	85%	15%
Klickitat	15,835	14,575	1,260	92%	8%
Kittitas	33,431	31,390	2,041	94%	6%

Table 2: Percent of Hispanic Registered Voters in Hispanic Voting Age Population (HVAP)

County	Total Non-Hispanic Population Over 18 (Total NHVAP)	Total Hispanic Population Over 18 (Total HVAP)	Total Hispanic Registered Voters	% Of Non-Hispanic Registered Voters in the NHVAP	% Of Hispanic Registered Voters in the HVAP
Walla Walla	38,540	7,001	2,854	83%	41%
Yakima	105,665	63,528	23,468	79%	37%
Benton	108,863	18,650	6,479	83%	35%
Franklin	28,660	22,789	6,998	79%	31%
Klickitat	14,575	1,260	394	86%	31%
Kittitas	31,390	2,041	613	68%	30%
Adams	5,897	6,319	1,675	80%	27%

The percentages in the tables above indicate that the voter registration lists are excluding large numbers of Hispanics, specifically in counties where there is a higher proportion of Hispanics in the voting age population. For example, Walla Walla and Yakima have considerably higher proportions of registered voters in their respective HVAPs in comparison to Franklin and Adams County (*Table 2*). However, Adams and Franklin County have the highest proportions of Hispanics in their total VAPs, but the lowest percentage of Hispanic registered voters (*Table 1*). This means that the counties with the highest proportion of Hispanics are most overlooked by voter registration lists as a source list for jury pools in the EDWA. Walla Walla is also one of the counties with the smallest number of Hispanics in their HVAP, yet we observe the highest percentage of registered voters in their HVAP (*Table 1*). A second observation is that voter registration rates for the non-Hispanic voting age population are significantly higher than for the Hispanic voting age population. The percent of non-Hispanic registered voters ranges from 68%

to 86% while the percent of Hispanic registered voters ranges from 27% to 41%. Specifically, observing counties such as Adams and Franklin, with significantly higher proportions of Hispanics in their population, we find notable differences in the rates of non-Hispanic and Hispanic voter registration (*Table 1* and *Table 2* respectively). This shows that the overall rate of Hispanic voter registration in the EDWA lags behind the registration rate for non-Hispanics. This is yet another way in which large portions of the Hispanic population are being excluded from this source list, and subsequently the jury pool. This variation in Hispanic voter registration rates illustrates that the federal courts' choice to use voter registration lists as a source list, will not adequately show a fair cross-section of the population of the seven counties in the EDWA. This is due to the fact that areas with higher proportions of Hispanics have lower proportions Hispanic registered voters and significantly lower Hispanic voter registration rates.

At more specific geographical levels, we can also observe that a significant number of Hispanics in areas with higher numbers of Hispanics in the adult population are not included on voter registration lists. Through a spatial analysis of the voter registration lists, we observe that the lowest proportions of Hispanic registered voters are found in urban areas with the highest proportions of Hispanics in the adult population (18 and older). The most excluded areas from this source list in each county can be observed through Census tracts that are red or orange and also marked by a layer of red stripes (see maps in Appendix A). This coding indicates these Census tracts have low Hispanic voter registration rates, but high proportions of Hispanics in the adult population.

Through this spatial mapping and analysis of Hispanic representation on voter registration lists we have identified the top four regions where the highest proportions of

Hispanics are excluded from this source list. In Adams County, Census tracts 9503, 9504, and 9505 are in and around the designated urban area of Othello (Appendix A, *Figure 1*). These Census tracts are coded with red stripes, indicating that Hispanics compose more than 60% of the adult population. Although two of these three Census tracts in Othello are coded as green, we observe that only 27-29% of Hispanics in the HVAP are actually registered to vote in these green Census tracts (Appendix A, *Figure 1*). In these three Census tracts we find that an average of 67% of the adult population is Hispanic, but only an average of 27% are registered to vote. In raw numbers, this amounts to approximately 1,598 Hispanics who are registered to vote out of the potential 6,130 Hispanics in the voting age population. In Benton County, the area where we found the most Hispanics are excluded from voter registrations lists is in Census tract 112 in Kennewick (Appendix A, *Figure 3*). In this area, where 47% of the adult population is Hispanic, only 14% of the HVAP are registered to vote. This amounts to only 360 Hispanics who are registered to vote out of the potential 2,525 Hispanics in the voting age population. In Franklin County, the region where we found the most Hispanics are excluded from voter registrations lists is in Census tracts 201, 202, 203 and 204 in the city of Pasco (Appendix A, *Figure 4*). Here, where an average of 74% of the adult population is Hispanic, only 24% of the HVAP are registered to vote. This means that only 3,380 Hispanics are registered to vote out of the potential 14,140 Hispanics in the voting age population. Finally, in Yakima County, we found the most Hispanics are excluded from voter registrations lists are in Census tracts 2, 6, 15.01 and 15.02 in and around the city of Yakima (Appendix A, *Figure 10*). In this region there is an average of 68% of the adult population that is Hispanic, but only 26% of the HVAP are registered to vote. In numbers, this amounts to only 2,403 Hispanics who are registered to vote out of the potential

10,586 Hispanics in the voting age population. All four of these areas (in Adams, Benton, Franklin and Yakima) have been located in Census designated urban areas in Washington. While we have highlighted these four areas in our analysis of the exclusion of Hispanics from voter registration lists, our spatial mappings show that the exclusion of Hispanics from this source list can be found all over the EDWA.

Thus, our findings are consistent with previous scholarship, revealing that using voter registration lists as source list can serve as a form of systematic exclusion of Hispanics from jury pools in the federal courts of the EDWA. Krauss and Chopra argue that voter registration lists tend to be unrepresentative of the larger population and are especially biased towards older, Caucasian, higher income and college educated individuals.³⁹ Schreckhise and Sheldon would agree, noting in their study of the U.S. District Courts of the EDWA, that when only voter registration lists were used to create jury pools, the jury pools were composed of mainly older, Caucasian individuals.⁴⁰ Our findings show that areas with higher proportions of Hispanics have lower proportions of Hispanic registered voters and significantly lower Hispanic voter registration rates (*Table 1* and *Table 2* respectively). We also identified four specific geographical regions in Adams, Benton, Franklin and Yakima County where the Hispanic population is excluded from the voter registration source list.

II. Department of Licensing as a Source List

Our analysis of the Department of Licensing (DOL) list includes the driver's license, driver's permits, and state-issued identification cards for all 512,787 individuals (18 and older) in

³⁹ Krauss and Chopra, "Law of Jury Composition Challenges," 339.

⁴⁰ Schreckhise and Sheldon, "The Search for Greater Juror Diversity," 95.

the seven counties in Washington State involved in this study. Our spatial mapping of the Hispanic license holders showed that more Hispanics have driver’s licenses than are counted by the Census (in terms of voting age and living in the Census tract).

Table 2: Total Hispanic VAP and Total Hispanic License Holders Over 18

County	Total Hispanic Population Over 18 (Total HVAP)	Total Hispanic License Holders (Over 18)
Adams	6,319	8,643
Benton	18,650	23,070
Franklin	22,789	32,442
Kittitas	2,041	2,049
Klickitat	1,260	1,995
Walla Walla	7,001	9,676
Yakima	63,528	84,560

At more specific geographical levels, our spatial analysis also shows that more Hispanics have driver’s licenses than are counted by the Census in terms of voting age and living in the Census tract. Even the Census tracts that are coded as red or orange and also marked by a layer of red stripes (the same coding used for voter registration lists), over count the number of Hispanics counted by the Census. This discrepancy is likely due to the fact that Washington State is one of six states in the U.S. to issue licenses or grant driving privileges to undocumented immigrants and non-citizen residents:

In Washington, if a driver's license applicant cannot provide any of the statutorily specified identifying documents (e.g., SSN), the Department of Motor Vehicles

may (1) consider other documentation to ascertain identity or (2) label the license “not valid for identification purposes.”⁴¹

This suggests that granting licenses to people regardless of citizenship status can help to explain how there are seemingly more Hispanic license holders than Hispanics counted in the VAP (*Table 2*).

Although our mapping analysis showed a general over count of the number of Hispanics counted by the Census on the Department of Licensing source list, there were several specific areas with higher proportions of Hispanics in the adult populations where it appears the DOL list might be leaving out a number of Hispanics from the jury pool. For example, in Census Tract 22 in Yakima County (specifically around Toppenish), Hispanics make up approximately 37% of the adult population. In this area there were around 150 Hispanics in the voting age population who were unaccounted for on the DOL source list (*Appendix B, Figure 12*). There was also a minor exclusion of Hispanics from this source list in Census Tract 116 in Benton County. Here, Hispanics also composed about 37% of the adult population, and approximately 80 people were excluded from this source list. While these exclusions of the Hispanic population were not as drastic as the number of exclusions from the voter registrations lists, these maps show that although many Census tracts are over counted, we still observe some areas that this source list may not be including.

Prior research by William D. Schreckhise and Charles H. Sheldon also helps explain the use of the DOL list as a source list. In their study of the U.S. District Courts for the EDWA, they found that the implementation of the DOL list as a source list added a significant contribution to

⁴¹ RCW 46.20.035: Proof of Identity – Findings – Intent,” *Washington State Legislature*. Accessed March 1, 2014.

the racial diversity of jury pools in the Eastern District of Washington (EDWA).⁴² However, they also found that almost half of the individuals pulled from the DOL source list were excused from jury service.⁴³ Our research shows that the DOL list over counts the Hispanic population that is counted by the Census. In order to gain a better understanding of the effectiveness of this source list, further research must be conducted concerning the citizenship status of each individual on the Department of Licensing list. This can be done through an analysis of the demographics of the returned juror qualification questionnaires (versus those not returned) in the EDWA.

III. Geographical Exclusions of the Hispanic Population: An Analysis of the 2013 DES Merged Source List

The federal courts of the EDWA use voter registration and the Department of Licensing list as their two source lists from which they create their jury pool. After the Department of Enterprise Services (DES) merges the two source lists, they remove all duplicate names from this combined list. Juror qualification questionnaires are then sent to the addresses on this merged list. The 2013 merged DES source list contains a total of 547,913 people of which 169,289 were identified as Hispanic. Two different spatial analyses were conducted according to the coding that the DES provided (i.e. “Source B” and “Source D”). The “B” source list is composed of individuals who are registered to vote and also have a driver’s licenses. The “D” source list is composed of individuals who only have driver’s licenses.

This report will focus on an analysis of the “B” source list as our findings show that the spatial analysis of the “D” source list is similar to our analysis of the Department of Licensing

⁴² Schreckhise and Sheldon, “The Search for Greater Juror Diversity,” 108.

⁴³ Schreckhise and Sheldon, “The Search for Greater Juror Diversity,” 108.

list. Both lists show that more Hispanics have driver's licenses than are counted by the Census in terms of voting age and living in the Census tract. Because of lack of citizenship data, a separate spatial analysis was conducted in order to illustrate the number of jury eligible citizens on the DES "B" source list (according to age and citizenship status).

An analysis of the 2013 DES merged "B" source list shows that even the combination of the voter registration list and the DOL list excludes many areas with high proportions of Hispanics in the adult population. We identified the top five regions where most Hispanics are excluded from the 2013 DES source list by comparing two variables in each red and orange Census tract: the difference between the number of Hispanics listed on the DES "B" source list and the number of Hispanics in the HVAP, and the proportion of Hispanics in the adult population. These top five regions are found in Adams, Benton, Franklin and Yakima County.

The region with the largest number of Hispanics excluded from the DES source list is in the Census designated urban area of Kennewick and Pasco in Franklin County. In this region, Census tracts 201, 202, 203, and 204 are the specific areas where the highest proportions of Hispanics are excluded from the 2013 DES merged "B" source list (Appendix C, *Figure 19*). In this area, the average percent of Hispanics in the adult population is 74%. However, only 24% of the HVAP are listed on this merged source list. In raw numbers, this amounts to only 3,307 Hispanics who are on the DES list out of the potential 14,140 Hispanics in the voting age population. The second biggest area of exclusion is in Census tracts 1, 2, 6, 15.01 and 15.02 in Yakima, where an average of 63% of the adult population is Hispanic, but only an average of 23% of the HVAP are listed on the DES "B" source list (Appendix C, *Figure 17*). While there are 10,586 Hispanics in the potential HVAP, only 2,465 are listed on this source list. The third

area of concern is in the Census tracts in and around the city of Othello in Adams County. Here in Census tracts 9503, 9504 and 9505 Hispanics compose an average of 68% of the adult population, but only an average of 26% of the HVAP are represented on the DES “B” source list (Appendix C, *Figure 18*). These percentages account for the 1,535 Hispanics in the HVAP who are represented on the “B” source list, out of 6,130 potential Hispanics in the HVAP. The last two problem areas are each composed of a single Census tract. In Kennewick, in Census tract 112, only 382 Hispanics out of the potential 2,525 Hispanics in the HVAP are listed on the DES “B” source list (Appendix C, *Figure 19*). Finally, in Franklin County, we observe that Census tract 208 in and around the city of Connell only has 415 Hispanics out of the total 2,338 Hispanics in the VAP represented on this sources list. Demonstrating similar representation patterns to voter registration lists, the 2013 DES “B” source list evidentially is unrepresentative of the Hispanic population, because it clearly excludes many Census designated urban area regions with higher proportions of Hispanics in the adult population.

Through this spatial analysis of the DES merged source list we found that the Census tracts with the most troublesome number of exclusions of the Hispanic population closely identified with many Census tracts in our previous analysis of exclusions through the voter registration source lists. In fact, the raw number of exclusions of Hispanics in the Census tracts in Franklin, Yakima, Benton and Adams County on voter registration lists only differed slightly. In our analysis of the voter registration lists the number of Hispanics listed on this source list were only slightly higher than the number of Hispanics that were on the 2013 DES merged source list. These small discrepancies were likely due to our data collection process. The DES was most likely using voter registration lists that were available before we began to collect data.

For our research we collected the most current voter registration lists from each county election office in this study. However, despite the small differences in numbers, the pattern of exclusion of the Hispanic population from jury pools characterizes both voter registration as a source list, as well as the current merged source list used to create jury pools in the EDWA today.

IV. Focus Groups Analysis

In addition to exploring the geographical distribution of opportunities to serve on juries in the EDWA, we also conducted focus group discussions in one local area within the EDWA. The goal of these discussions was to determine why proportional representation in jury pools and on juries might matter to ordinary people. We also wanted to see if these focus groups would reveal any additional systematic factors that play into inequalities in the jury selection process. Major topics of discussion included race, how people define a “peer”, language, and socioeconomic status. Among the three discussion groups, some of these concepts figured more prominently than others.

Race and the Jury Selection Process

One of the primary questions presented to discussion groups sought to identify how many people have been summoned to serve on a jury, and if any had had the opportunity to serve. Within the non-Latino group, three participants had been summoned to court, and only one was granted the opportunity to serve on a jury. Out of the citizen Latinos, two participants had been summoned, but neither was selected to serve. We asked the only non-Latino participant who had served on a jury about her about her experience. This participant had been selected as an alternate juror on a drug bust case when she was just eighteen-years-old. She described her

devastation during the trial and how she had been exposed to experiences for which she was unprepared. Another non-Latino shared his experience as a lawyer, noting that to the court he would not be an ideal candidate for jury service due to his previous employment within the judicial system. Despite this exclusion, he accepted that because of his employment history, he would not be selected to serve on a jury. However, individuals from the citizen Latino group became frustrated, wondering why they had not been summoned or why they were not qualified to serve on a jury. Finally, although non-citizen Latinos do not have the option to serve on a jury, many were vocal about the importance of serving one's community regardless of citizenship status.

Differences in the attitudes towards jury service were most prominent between Latino and non-Latino participants. For participants who had not received a jury summons, we asked what their general feelings were about participating on a jury. While an important distinction to make for eligibility purposes, discussions about citizenship figured prominently in our investigation. Many non-Latino participants quickly identified jury service as an important civic duty. Although four out of five participants recognized a citizen's responsibility to serve their community through jury duty, only one viewed this duty in a positive light. The non-Latino group also expressed that not only did they feel a personal lack of enthusiasm for serving on a jury, but that they also believed that the general public felt the same. One non-Latino participant went as far as to suggest that the population has become entirely disinterested in the system. According to the participant, "It is one of the problems, that there's not enough emphasis put [towards the public] on the fact that serving on a jury is a privilege when there aren't many

countries in the world where people are judged by their peers.”⁴⁴ These statements were difficult to ignore when comparing them to the enthusiasm of both citizen and non-citizen Latinos. One non-citizen Latino declared, “We influence the lives of citizen Americans, but we need to participate.”⁴⁵ While the non-Latino group was not as interested in this opportunity to participate, non-citizen Latinos, who lack legal documentation, showed a desire to commit to responsibilities currently unavailable to them. When asked if she would be willing to serve, one citizen Latino stated, “I would love to, but I haven’t had the opportunity.” She continued, “I believe in this system and I want to use my vote in this and express myself and explain what is happening and find out what is happening in my community.” Even the three youngest citizen Latino participants, eighteen to nineteen years old, felt the need to participate and believed in the importance of representing their community.

Participants were then asked if they believed that jury panels were generally representative of their community. Discussions of representation included topics such as race, cultural background and age. One non-Latino participant responded, “I’m hoping that it is representative, I don’t know.” According to her statement, there is an assumption that jury panels are representative of the community. On the other hand, another non-Latino participant stated, “I’d like to think it is but I feel like, just by what I’ve heard about the screening process, I don’t

⁴⁴ Focus Group with Non-Latino Participants, led by Loretta Velaochaga Klugger, Walla Walla, Washington, December 6, 2013. All further comments about and quotations from this focus group derive from this event.

⁴⁵ Focus Group with Non-Citizen Latino Participants, led by Loretta Velaochaga Klugger, Walla Walla, Washington, December 8, 2013. All further comments about and quotations from this focus group derive from this event.

see how it could be.” For others, the lack of knowledge about the system creates distrust in and confusion about the jury selection process.

Although both Latino and non-Latino participants acknowledged that race is an issue when creating jury pools, the way in which non-Latino participants approached racial discourse differed from Latino participants. When we asked participants if having a racially representative jury would influence a verdict or their trust in a jury, citizen and non-citizen Latinos stated that, as a defendant, they would feel more comfortable to see their respective race on a jury panel. In contrast, a participant from the non-Latino group approached the question through color-blind rhetoric. He stated, “It's unfortunate in a way, that we don't approach the jury from the concept that everybody should have the same open mind regardless of their race, color, or creed, and that you should be judged by fellow human beings.” In contrast, non-Latino participant shared her perspective stating, “I don't think it's fair to that person to have a group of people that don't have perspective on their life.” A third non-Latino participant discussed why having a racially representative jury is necessary,

It's just a gut reaction I have. If I'm a defendant and I look up there [at the jury] and there's nobody that really would understand my cultural background, my gender, my sexual orientation you know, or my age, I wouldn't feel comfortable, and that's where your attorney is supposed to protect you.

When citizen Latino participants were asked if they believed that a lawyer could do a satisfactory job presenting a Latino defendant's background to a non-Latino jury, one participant responded, “They wouldn't understand.”⁴⁶ The general consensus for non-Latino participants was that for minority populations, racially representative juries are necessary. However, whether or not they

⁴⁶ Focus Group with Citizen Latino Participants, led by Loretta Velaochaga Klugger, Walla Walla, Washington, December 08, 2013. All further comments about and quotations from this focus group derive from this event.

believed it was necessary for their own representation was not mentioned. In contrast, many Latino participants felt that racially diverse juries are needed and would directly affect them if they were defendants. By diversifying jury pools, many populations, such as Latinos, will have the chance to be fairly represented.

Another theme of discussion among citizen Latino participants included how generational differences would affect a jury verdict. Both older and younger citizen Latinos discussed how the upbringing of an individual would change the perspectives and the ways in which someone would judge another individual. Older citizen Latino participants discussed how younger individuals lack life experience and that many are unsuitable candidates for deciding the fate of someone older than they are. One citizen Latino talked about his life experiences growing up and how the expectations of society influenced his interactions with non-Latino individuals,

Elderly people that come from another generation of time, when they still oppressed people my color at that time, people with color in general, if you were not all American white looking they thought of you as a lesser being even though that wasn't supposed to happen.

Through this discussion, both age and upbringing were important factors in determining how one defines their “peer”. Citizen Latino participants believe that age differences influence how one interacts with people of different races because of generational culture norms. For this reason, both older and younger community members felt that their “peer” was someone with a similar generational background. The combination of factors such as cultural background, age, and civic responsibility all influence the definition of “peer”. However, both citizen and non-citizen Latino participants, race played a role in each of these factors.

Language Barriers as a Systematic Exclusion

At the beginning of the jury selection process, eligible citizens are sent a primary juror qualification questionnaire. According to question number four, in order to be considered to participate on a jury the individual must identify whether he or she can “read, write, speak and understand the English language” (see Appendix D). This question requires people to respond with a “yes” or “no,” regardless of the different levels of linguistic comprehension. We asked participants if they believed that in order to be an effective juror one must be able to meet every part of the English proficiency requirements. Although the citizen Latino group believed some parts of this requirement were necessary, such as understanding English, all participants were in agreement to divide the question into separate parts. One citizen Latino stated, “I think that question, if you speak English, should be divided into three questions, one can you speak, can you write, can you read.” The same participant reasoned that there are different levels of comprehension of the English language and that some skills are more relevant than others. For example, the respondent felt that in order to be a successful juror, she would need to speak but not write or read English. Furthermore, if written evidence was presented to a jury panel, the individual juror would still have no need to write in English. As a potential juror, one citizen Latino noted that if she needed to take notes during a trial, taking notes for herself in Spanish would not affect her discussion with other jury members. She did not believe that in order to be a successful juror, one would have to “master” all of these components of the language requirement. We then asked participants how question number four could affect participation and what their initial reactions were when presented with the question. One citizen Latino participant responded stating that question number four assumes that he lacks the capability to understand the English language:

It's like saying that well, you don't have the capacity to think. [One] can't speak about things but can listen well and understand well. You can think and you can judge someone, but since you can't do these three things immediately it's like you don't have a brain, like you don't exist. They don't speak to you like a person per se, it's like you're not important.

His interpretation of this question is that if a potential juror cannot read, write, speak, or understand English at a certain level of fluency, then they cannot do it at all. This question presents two extremes that participants became aware of: either you are capable of serving on a jury or you're not. Non-native English speaking populations are being systematically excluded because of the disregard for different levels of proficiency in English and the combination of reading, writing, speaking, and understanding English into one "yes" or "no" question. There is a large population of Latinos whose native language is not English, but who would still consider themselves to be fully capable of serving on a jury, especially if given the opportunity to expand on their language skills. In addition, by breaking down this question, many Latinos who are eager to participate will have a better chance of being included in jury pools.

After the discussion of initial reactions to question number four on the juror qualification questionnaire, one non-Latino participant responded, "I'm thinking about how so many people might want to duck under that [question] like if I'm busy I might check no. Yeah, if I wanted to duck I guess I could see how people would." Later, in the citizen Latino discussion, one participant admitted to checking "no" on question four of the juror qualification questionnaire. The citizen Latino participant stated that although she is able to speak and understand English, she is not completely confident that she would consider herself to be fluent and therefore does not think she is fit to serve on a jury. Her decision to eliminate herself from jury service was because of the insecurity instilled by the manner in which question number four is

presented. This insecurity arises with the vague presentation of the question when determining how proficient one would have to be in order to serve on a jury.

During a criminal case trial in Walla Walla, Washington, a non-Spanish speaking jury was shown a video as evidence against a Spanish-speaking defendant. The non-English speaking defendant depicted in the video, was incapable of defending himself in an interview conducted by a detective who only spoke English. Although there was an interpreter in the video, this interpreter did not translate the defendant's statements verbatim and at times did not translate at all. Although the defendant's translator in the courtroom could not translate the statements from the three people in this video out loud to the jury, the judge allowed the video to be presented. This left the non-Spanish speaking jury unable to comprehend anything but the defendant's body language, the statements from the detective and what the translator presented. Upon sharing this experience with participants, we asked if they felt it was important to have a juror who spoke the same language as a defendant and/or prosecutor in addition to an interpreter. One non-citizen Latino participant recalled her familiarity with defendants in similar situations. She expressed her anger on behalf of some fellow Latino community members that had to plead guilty for crimes they did not commit because of language barriers. These community members had no access to the resources required to hire a proper interpreter. Instead, to avoid lengthy and expensive trials, these defendants chose to plead guilty. If at least one juror on the panel had the ability to speak Spanish, non-English speaking defendants would have a better chance of being fairly represented. When statements are translated, much like the trial that we witnessed, vital pieces of information are misinterpreted or missed altogether such as body language and tone of voice. Had there been a Spanish-speaking juror in the Walla Walla case, the jury would not have

missed the information that was ignored by the translator in the video. If there was at least one individual who could read these signals, their input on a jury could give insight on aspects of the defendant or prosecutor's statements that could be essential to the decision making process.

Socioeconomic Status as a Systematic Exclusion

Another form of exclusion that was prominent in our focus group discussions was an individual's socioeconomic status. Some socioeconomic factors discussed included: level of education, occupational status and income. Robert G. Boatright examines how socioeconomic circumstances can provide an explanation for the underrepresentation of certain groups. He found that, relating to employment, both income and education present the biggest barriers for jury participation.⁴⁷ His research found that one way to improve participation is the addition of accessible childcare resources. When asked if willingness to participate in jury duty would be influenced by the addition of accessible childcare resources, one non-Latino participant described her mother's chaotic experience trying to balance her three children and serving on a jury. As a single mother and part time employee, not only did she struggle to ask for time off work, but she also experienced difficulties finding affordable or available childcare resources. In fact, she described how jury duty meant neglecting work and the care of her children. The financial burden of finding accessible childcare resources was also a problem faced by Latino participants. Both citizen Latinos and non-citizen Latinos found that the source of this hardship stems from employment impediments.

⁴⁷ Robert G. Boatright, "Generational and Age-Based Differences in Attitudes Towards Jury Service," *Behavioral Sciences and the Law* 19 (2001): 296, accessed March 5, 2014.

Many citizen Latino participants expressed the difficulties of asking their employers for time off work in order to participate in jury duty. Even non-citizen Latinos have experienced issues with asking employers for any time off, because of the fear of being terminated. Many non-citizen Latino participants stated that if they had the legal documentation to be selected to serve on a jury, they would feel similarly about losing their job. In fact, Fukurai notes that citizens with holding higher paid positions are more likely to serve on a jury.⁴⁸ This is especially important considering that jury trials are typically unpredictable in length.

Lack of jury participation due to work obligations was prominent in all three focus group discussions. Participants were asked how their employment situation influenced their chances of participating on a jury and how much time was available if they were to do so. However, while both citizen and non-citizens Latinos felt directly affected by this issue, the non-Latino participants did not reference this issue in respect to their own experiences. Non-Latino participants simply acknowledged the potential financial burdens that many Latinos could face from missing work. A non-Latino participant stated, “Having a Hispanic who's dependent on being out there working seven days a week, you know, it would impact them so much financially that they wouldn't want to serve.” These discussions highlight the financial burdens that many Latinos face due to work and family obligations.

In addition to the recognition of work related barriers that prevent certain populations from participating on a jury, many citizen and non-citizen Latinos described that they cannot afford to leave paid work for jury duty. Finding time off work for these individuals is difficult

⁴⁸ Hiroshi Fukurai, “Race, Social Class, and Jury Participation: New Dimensions for Evaluating Discrimination in Jury Service and Jury Selection,” *Journal of Criminal Justice* 24, no.1 (1996): 71, accessed November 14, 2013.

enough with family obligations, financial situations, and vague estimates on how much work they will be missing. As Fukurai states, “Racial minority jurors with low incomes and less prestigious occupations are the most underrepresented groups.”⁴⁹ After a reading of prior scholarship, we inquired into what ways employment influences juror participation. We asked non-citizen Latino participants if they would serve on a jury if they were given the opportunity to do so. The majority, if not all of the non-citizen Latinos responded with concerns about asking employers for time off. One participant stated, “If I was a citizen and had the opportunity [to serve on a jury] I would, but I wouldn't risk it because in reality it would cost my job and finding a new one would be too hard.” Many non-citizen Latino participants were in agreement with this statement and described why they would be reluctant to serve: fear of being replaced, employers withholding wages, and losing out on paid work that could help their families. Another non-citizen Latino participant also mentioned that employers are more lenient towards non-Latino individuals when allowing workers to take time off work. Similarly, Fukurai argues that both race and socioeconomic factors influence the chances for minorities to be represented in the jury pool. However, without the money or time available, these citizens will never get the chance to serve.⁵⁰ If employers perpetuate racial preferences, individuals, like the Latino focus group participants, face barriers to getting time off work and will not have access to jury service. One non-Latino participant stated that although these barriers exist “if it's not important to you then don't take your time.” He described how if serving on a jury were truly as important as many had

⁴⁹ Fukurai, “Race, Social Class, and Jury Participation,” (83)

⁵⁰ Fukurai, Hiroshi. “Race, Social Class, and Jury Participation,” 83.

discussed then they would make time for it. In response to this participant's comment, another non-Latino participant argued, "but that doesn't mean that that person's ideals shouldn't be represented." Our focus group discussion finding illustrated that when combining issues of time away from work, racial discrimination, family obligations, and language barriers, it becomes infinitely more difficult for Latino individuals to participate or even be considered for jury duty.

V. Primary Research Conclusion

Our research found that the Hispanic population has been excluded from jury pools in the federal courts of the Eastern District of Washington. Through an analysis of the source lists used by the EDWA, we found that the use of the 2013 DES merged source list excludes many areas with high proportions of Hispanics in the adult population from the jury pool. We specifically identified Census tracts in Census designated urban areas of Adams, Benton, Franklin and Yakima County. Voter registration lists in particular, largely contribute to this problem. Our spatial mapping showed that areas with higher proportions of Hispanics tended to have lower proportions of Hispanic registered voters and significantly lower Hispanic voter registration rates compared to non-Hispanic registration rates. Our spatial analysis of the Department of Licensing source list shows that this list over counts the Hispanic population that is counted by the U.S. Census in terms of voting age and living in the Census tract. We believe this over count has a relation to the fact that Washington State issues licenses or grant driving privileges to undocumented immigrants and non-citizen residents. In addition to our geographical analysis of the EDWA jury pool source lists, through our focus group research, we determined several significant obstacles that prevented members of the Latino community from participating on

juries. As expressed by the citizen Latino and non-citizen Latino group discussions, these obstacles have diminished their trust of the system. The exclusion of the Latino community is primarily a result of language barriers. This obstacle gives rise to other factors because both citizen and non-citizen Latinos have internalized the insecurity in their ability to comprehend all the proceedings in a courtroom which deters otherwise eager participants from becoming involved in jury duty. If we are supposed to be represented by a jury of our “peers”, we must find a way to increase the representation of Latinos in order to fulfill that promise to the ever-growing Hispanic populations within the EDWA.

Conclusion

The quantitative and qualitative research from our spatial GIS analysis as well as our focus group discussions have revealed that there is a significant underrepresentation of the Hispanic population in the jury pools of the federal courts of the Eastern District of Washington. In order to obtain a fair representation of the community in jury pools, the following action recommendations seek to provide additional opportunities for Hispanic populations to be represented in the courts of the EDWA. We address these recommendations to the federal courts, our partner organization (Northwest Justice Project), and to individuals and communities in the EDWA region.

Our primary research has shown that many portions of the Hispanic population in certain geographic areas of the EDWA have been excluded from jury pools. Some of the largest exclusions of the Hispanic population were observed with the use of voter registration as a

source list. Through both a spatial analysis of the DES list, as well as an analysis of the voter registration list, our findings show that areas with higher proportions of Hispanics have lower proportions of Hispanic registered voters and significantly lower Hispanic voter registration rates. The geographic areas that were most excluded include: Othello, Yakima, Kennewick and Pasco. In order to create a fair representation of the Hispanic population in the jury pool, the federal courts should first conduct further research as to why these specific geographic areas are underrepresented. This research should seek to answer what social, economic and political situations are at work in these specific areas that are causing Latinos to be underrepresented on these source lists. We recommend that the federal courts should incorporate supplementary source lists (in addition to voter registration and driver license lists) in order to reach the Hispanic populations that have been excluded in specific geographic area in the EDWA.

The federal courts in the EDWA should also provide a higher daily compensation for jury members. Our focus group research presented the financial burden that many potential jurors experience and how those factors helped determine their participation. The undetermined spans of time required of jury members on court cases adds additional strain to the financial situations of many participants, especially for minority populations.⁵¹ Although Washington State law states, under RCW [43.03.060](#), jurors should receive between \$10-\$25 of compensation per day, this amount accounts for only a couple hours of employment earnings. In addition, lack of protection and job security was a prominent issue that several focus group participants faced. Although we acknowledge that Washington State has enacted a law to protect employees, further research on effective enforcement of this law is necessary. Many focus group participants talked

⁵¹ Preller, ““Jury Duty is a Poll Tax,” (2012).

about how they themselves, or families they knew, were unable to attend jury duty or jury summons due to the lack of resources or money for child care. Therefore, the federal courts of the EDWA should also provide free or affordable child care services. These resources, which directly impact the participation of potential jury members, will make jury service more accessible to individuals with financial impediments.

Finally, our focus group research shows that participants found that question number four on the juror qualification questionnaire could lead to the exclusion of Latinos because the question overlooks the different levels of English proficiency. Several participants felt that in order to be an effective juror being able to write in English in order to participate was not necessary. According to participants in all three focus groups, an individual's ability to comprehend English cannot be determined by one simple yes or no question. For example, an individual does not need to know how to write in English as long as they can understand English in order to evaluate a case. Many also commented on the fact that if someone would be capable of fulfilling these requirements but would not consider themselves to be completely confident because of the wording of the question, they will assume that they would not be an ideal juror and remove themselves from the process. The federal courts should consider revising question number four ("Can you read, write, speak and understand English?") on the juror qualification questionnaire. Revising this question into a format in which potential jurors can "rank" their own English proficiency on a scale would be a way to mitigate these issues. The federal courts would get a more well-informed answer to question number four on the juror qualification questionnaire as well as provide potential jurors with an opportunity to explain their answers to this question if it were to be broken into four separate categories (i.e. ranking readings, writing,

speaking and comprehension abilities separately). We recommend that federal courts conduct additional focus group discussions within the other counties of the EDWA to see if these specific barriers and attitudes are common among other areas and communities. The federal courts would get a more well-informed answer to question number four on the juror qualification questionnaire as well as provide potential jurors with an opportunity to explain their answers to this question if it were to be broken into four separate categories (i.e. ranking readings, writing, speaking and comprehension abilities separately).

Community organizations, such as Northwest Justice Project (NJP), should continue this research, both by analyzing the potential factors behind why Hispanic populations in certain geographic areas are being excluded, as well as conducting and analyzing more focus group discussions in communities throughout the EDWA. Mapping analysis will help organizations, such as NJP, to provide concrete suggestions for supplementary source lists for jury pools to give to the federal courts of the EDWA. In addition, community organizations like NJP should actively engage ordinary people in discussions about the importance of jury duty and the jury selection process. These discussions will help organizations to publicize the issue of unrepresentative juries, determine which populations are being excluded, and emphasize the importance of having representative juries.

Citizens who are not represented in the jury pool (and have the ability to do so) should make the effort to participate through the means available (i.e. registering to vote, or obtaining a driver's license). Specifically, these citizen voter registration and driving registration effort would be most helpful in increasing Latino representation in Othello, Yakima, Kennewick and Pasco. It is important that both as a community and as residents of Washington State, those who

can participate should do so for those who do not have access to the jury but are in need of representation. However, this issue of representation could potentially be answered in a different way. Our research shows that one possible solution to increase participation as well as Hispanic representation is to provide non-citizens with the opportunity to be included in jury pools through legal amendments to U.S. law. According to non-citizen Latino participants they are part of the community through employment, tax payments, and volunteering programs and therefore should have the right to be represented on juries in the EDWA.

Works Cited

- Aronson, Robert L. "Compensation of Industrial Workers for Jury Service." *Labor Law Journal* 8, no.2 (February 1957): 95-104. Accessed March 5, 2014.
- Bagnato, Christopher F. "Change is Needed: How Latinos are Affected by the Process of Jury Selection." *Chicano/Latino Law Review* 29 (May 2010): 59-67. Accessed November 14, 2013.
- Boatright, Robert G. "Generational and Age-Based Differences in Attitudes Towards Jury Service." *Behavioral Sciences and the Law* 19 (2001): 285-304. Accessed March 5, 2014.
- Diamond, Shari Seidman, Destiny Peery, Francis J. Dolan and Emily Dolan. "Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge." *Journal of Empirical Legal Studies* 6, no.3 (2009): 425-449. Accessed November 14, 2013.
- Fukurai, Hiroshi. "Race, Social Class, and Jury Participation: New Dimensions for Evaluating Discrimination in Jury Service and Jury Selection." *Journal of Criminal Justice* 24, no.1 (1996): 71. Accessed November 14, 2013.
- Fukurai, Hiroshi. "Where Did Hispanic Jurors Go? Racial and Ethnic Disenfranchisement in the Grand Jury and the Search for Justice." *Western Criminology Review* 2, no.2 (2000): 1-29. Accessed December 5, 2013.
- Gonzales Rose, Jasmine B. "The Exclusion of Non-English-Speaking Jurors: Remediating a

- Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico." *Harvard Civil Rights-Civil Liberties Law Review* 46, no. 2 (2011): 497-549. Accessed February 1, 2014.
- Hannaford-Agor, Paula. "Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded." *Drake Law Review* 59 (April 2011): 761. Accessed November 15, 2013.
- Krauss, Elissa, and Sonia Chopra. "Law of Jury Composition Challenges." *Jurywork Systematic Techniques* (2012): 319-473. Accessed November 14, 2013.
- McGuffee, Karen, Tammy S. Garland and Helen Eigenberg. "Is Jury Selection Fair? Perceptions of Race and the Jury Selection Process." *Criminal Justice Studies* 20, no.4 (2007): 445-468. Accessed November 20, 2013.
- Minow, Martha. "Stripped Down Like a Runner or Enriched by Experience: Bias and Impartiality of Judges and Jurors." *William & Mary Law Review* 33, no.4 (1992): 1201-1218. Accessed February 5, 2014.
- Northwest Justice Project. "Vision and Mission." Accessed March 7, 2014.
<http://nwjustice.org/vision-and-mission>.
- Preller, Alexander E. "Jury Duty is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service." *Columbia Journal Of Law & Social Problems* 46, no. 1 (2012): 1-48. Accessed November 14, 2013.
- Reil, Stephen E. "Who Gets Counted? Jury List Representativeness for Hispanics in Areas with Growing Hispanic Populations Under Duren v. Missouri." *Brigham Young University Law Review* (2007): 201-258. Accessed November 15, 2013.
- Rose, Mary R., Christopher Ellison, and Shari Seidman Diamond. "Juries and Judges in the Public's mindRace, Ethnicity, and JURY EXPERIENCE." *Judicature* 93, no.5 (2010): 194-200. Accessed November 14, 2013.
- Schreckhise, William D. and Charles H. Sheldon. "The Search for Greater Juror Diversity: The Case of the U.S. District Court for the Eastern District of Washington." *The Justice Journal* 20, no.1 (1998): 95-112. Accessed November 15, 2013.
- Sheridan, Clare. "Another White Race: Mexican Americans and the Paradox of Whiteness in Jury Selection." *Law and History Review* 21, no.1 (2003): 109-144. Accessed December 5, 2013.
- U.S. Census Bureau; 2010 Census Data and Resources, 2010 Census Redistricting Data [P.L. 94-

171] Summary Files, generated by PewResearch; using American FactFinder; <<http://factfinder2.census.gov>>; (February 23, 2011). Accessed November 1, 2013.

Wedel, Collin P. “Twelve Angry (and Stereotyped) Jurors: How Courts Can Use Scientific Jury Selection to End Discriminatory Peremptory Challenges.” *Stanford Journal of Civil Rights & Civil Liberties* 7, no.2 (2011): 293–328. Accessed November 14, 2013.