

Nos. 99-02491; 99-02493

THE STATE OF TEXAS,)	IN THE 292nd DISTRICT
)	COURT
Plaintiff,)	
)	DALLAS COUNTY, TEXAS
v.)	
)	
XXXX XXXX XXXX,)	
)	
Defendant .)	
_____)	

DEFENDANT S REQUEST FOR A TRIAL BY JURY REPRESENTING A FAIR CROSS SECTION OF THE COMMUNITY AS REQUIRED BY THE AMENDMENT VI OF THE UNITED STATES CONSTITUTION

Defendant, XXXX XXXX XXXX, hereby requests a trial by jury representing a fair cross-section of the community as required by the amendment VI of the United States Constitution.

As this Court is undoubtedly aware, on October 22, 2000, the Dallas Morning News published its statistical analysis of the composition of juries in Dallas County. This analysis established: 25% of the population in Dallas is Hispanic whereas only 7% of those who report to jury duty in Dallas County are hispanic; 19% of the population is African-American whereas only 14% of those who report are African-American; 51% percent of the population is white whereas 77% of those who report are white. In addition, the household income of 39% of the population is under \$35,000 whereas the household income of those who report is 13%; the household income of 20% of the population is over \$75,000 whereas 41% of those who report have a household income over \$75,000. In short, Dallas County does not provide a criminal defendant a jury that represents a fair cross section of the community as required by Amendment VI of the United States Constitution.

In *Duncan v. Louisiana*, 391 U.S. 145 (1968), the Supreme Court held that the Sixth Amendment right to an impartial jury was applicable to the states through the Fourteenth

Amendment due process clause. In *Taylor v. Louisiana*, 419 U.S. 522 (1975), the Supreme Court held that the fair cross-section of the community requirement also applied to the states.

This right applies to a defendant irrespective of the fact that he may not be a member of the distinct group that is being excluded from jury service. See *Taylor v Louisiana*, (male defendant successfully challenges law that permits the exclusion of women); and *Peters v. Kiff*, 407 U.S. 493 (1972) (case in which a white man was permitted to raise a challenge concerning the exclusion of blacks).¹

In *Duren v. Missouri*, 439 U.S. 357 (1979), the Supreme Court made clear that a defendant need not show total exclusion of certain group. Moreover, in *Duren*, the Court set forth a clear three part test to establish a prima facie case of the violation of the fair cross-section requirement: (1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this under representation is due to systematic exclusion of the group in the jury-selection process.

In this case there is no doubt that Hispanics are a distinctive group within the community. There is no doubt that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to such persons in the community. Finally, this under representation is due to systematic exclusion of this group in the jury selection process as a result of this County's failure to identify and locate many residents in the first place and because this County then makes jury service so personally and financially onerous that many people can not or will not serve.²

¹ In this case the defendant is a black male with a household income under \$35,000. He is a member of the economic class most markedly excluded, but not of the racial or cultural class most excluded, namely, Hispanics.

² A defendant need not show purposeful discrimination; he need only show that the jury selection procedure systematically exclude[s] distinctive groups in the community and thereby fail[s] to be reasonable representative thereof. *Castanada v. Partida*, 430 U.S. 482

Counsel for the defendant will supplement this motion with a memorandum of law and an affidavit from a representative from the Dallas Morning News concerning the methodology and results of the statistical analysis.

Respectfully submitted,

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XXXX XXXX XXXX

CERTIFICATE OF SERVICE

I, XXXXlyn Mickelsen, do hereby certify that I caused a copy of the foregoing document to be served on the Dallas County District Attorney's Office 133 N. Industrial Blvd., Dallas, Texas _____ by hand-delivery _____ by first-class mail, postage pre-paid.

XXXXlyn Mickelsen