



THIESSEN

LAW FIRM

DEATH TO THE “E” JURY; Getting a Fair Trial

Mark Ryan Thiessen

Trichter & Murphy, P.C.

2000 Smith

Houston, Texas 77002

(713) 524-1010

mark@texasdwilaw.com

THIESSSEN
LAW FIRM

Electronic Jury Selection

- ◎ TEX CODE CRIM PROC 34.05

Mechanical or Electronic Selection Method

A mechanical or electronic method of jury selection as provided by Chapter 62, Government Code, may be used under this chapter.

THIESSEN
LAW FIRM

Montgomery County “E” Jury

- ◎ Allows the juror to respond and register electronically via email
 - > Who?
 - Owns a computer
 - Email Account
 - Sufficient computer skills
 - Gung Ho! Attitude

Montgomery County Non “E” Juror

- ◎ Allows a juror to report directly to the Crighton Theater
 - > Who?
 - May or may not own a computer/internet access
 - May or may not have an email account
 - May just like the “old school” jury service
 - Not Gung Ho! but still respects the duty

MoCo District Clerk Statistics

- From January 2009 to September 8, 2009, 7,484 jurors registered by email and were told to report to a specific court unless a court canceled. If the court cancels before the jury date then those “E” jurors would receive an e-mail with that information. Or, a court could cancel on the court date in which case they would be turned away at the door of the court.
- During the same time period, 7,155 non “E” jurors reported to the Crighton and out of those we first excuse the ones that have exemptions or disqualifications then from the ones left we sent 2,913 of them to courts.

Pondexter v. State

942 S.W.2d 577, 580 (Tex.Crim.App. 1996)

To establish a prima facie violation of the “fair cross section of the community represented” requirement, a defendant must show:

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

1. Distinctive Group

- ◎ African- American and/or Hispanic people
 - › According to the US Census Bureau, African- American and/or Hispanic people account for 5% and 18% of Montgomery County's population respectively. See Exhibit I: Montgomery County QuickFacts from the US Census Bureau.
 - › See also *Feagins v. State*; 142 S.W.3d 532 (Tex.App.— Austin 2004) (Appellate court recognizes 9.2% of the population of Travis County is African-American and thus a distinctive group).

2. Unreasonable and Unfair

This jury panel only contains ___ African-American and/or Hispanic people in a ___ person venire and **all** are “E” jurors.

- > 50% of potential jurors respond via email.
- > Should be ___ x 23 = ___ / 100 = # of African-American and/or Hispanic jurors

THIESSEN
LAW FIRM

3. Systematic Exclusion

- 5% of African-American and 18% Hispanic percentages in Montgomery County

COUPLED WITH

- ___% of white and ___% of Hispanics and ___% of African-Americans use the internet.
 - > Not just own a computer.

RESULT

- ◎ Gross under-representation or total exclusion of African-American and Hispanics.
 - > All white, educated, conservative, parents.....

THIESSEN
LAW FIRM

Feagins v. State

142 S.W.3d 532 (Tex. App.—Austin 2004).

“keeping the ratio of internet to in-person responses the same in venires as it is in the overall response population...works to ensure that a systematic exclusion does not take place”

THIESSEN
LAW FIRM

Best Opportunity

- Judge
- District Attorney
- Defense Attorney



THIESSEN
LAW FIRM