University of Nebraska - Lincoln
DigitalCommons@University of Nebraska - Lincoln

Publications of Affiliated Faculty: Nebraska Public Policy Center

Public Policy Center, University of Nebraska

7-1-2011

Representative Juries: Examining the Initial and Eligible Pools of Juries

Elizabeth M. Neeley
Objective Advantage, LLC, neeley@objadvantage.com

Follow this and additional works at: http://digitalcommons.unl.edu/publicpolicyfacpub

Part of the Public Policy Commons

Neeley, Elizabeth M., "Representative Juries: Examining the Initial and Eligible Pools of Juries" (2011). *Publications of Affiliated Faculty: Nebraska Public Policy Center.* Paper 22.
http://digitalcommons.unl.edu/publicpolicyfacpub/22

This Article is brought to you for free and open access by the Public Policy Center, University of Nebraska at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Publications of Affiliated Faculty: Nebraska Public Policy Center by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Representative Juries: Examining the Initial and Eligible Pools of Juries

by Elizabeth Neeley, Ph.D.

Introduction

The jury system is a fundamental element of the justice system and an important civic responsibility. Few activities in our civic life involve as many people, have as great an effect, or give citizens such direct involvement with our democracy as jury service. The opportunity to perform the civic duty of serving on a jury should be equally bestowed upon all citizens.

Until recently state law had provided that master jury lists were comprised by combining the lists of registered voters and registered drivers in the state of Nebraska. There had been anecdotal concerns that because minorities may be less likely to be registered to vote and less likely to be registered to drive, the source lists may not effectively achieve a representative master list. In December of 2008, the Minority Justice Committee (hereinafter "Committee") released a study that confirmed these perceptions. Based on an examination of nearly 70,000 juror qualification forms from eight of Nebraska's most diverse counties, data indicated that racial and ethnic minorities were significantly underrepresented in the initial and eligible pools of jurors. Addressing disparity in these initial stages is important because representative jury panels are necessarily dependent on the extent to which the initial and eligible juror pools are representative of the community.

The Committee explored several potential reforms to the compilation process to ensure that the initial pool became more representative. The Committee concluded that the most viable solution was to expand the source lists used to compile the master jury lists and explored the possibility of adding the following lists: state identification cards, tax rolls, unemploy-

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given–not merely promised." [1]

Elizabeth Neeley

Elizabeth Neeley, Ph.D, is the director of Nebraska's Minority Justice Committee, a joint initiative of the Nebraska Supreme Court and Nebraska State Bar Association, established to address issues of racial and ethnic fairness in the justice system. Dr. Neeley is a member of the American Bar Association and the National Legal Aid and Defender Association. She serves on the Board of Directors of the National Consortium on Racial and Ethnic Fairness in the Courts and on the Editorial Board of Court Review, the official journal of the American Judges Association. Dr. Neeley is a Faculty Fellow for the University of Nebraska Public Policy Center and an adjunct professor of Sociology for the University of Nebraska-Lincoln. She is an active member of the Nebraska Supreme Court's Interpreter Advisory Committee and the Nebraska Crime Commission's Committee on Disproportionate Minority Contact.

ment lists, and lists of those receiving state aid through the Department of Health and Human Services. In determining which, if any, of the aforementioned lists would be appropriate the Committee considered numerous factors including: whether the addition of the list would reduce the significant racial and ethnic differences documented in the initial jury pools; the costs involved in obtaining the list; the willingness of various agencies to provide the necessary data; the qualifications for being included on the potential list; and the level of duplication with the current source lists. Ultimately, the Committee recommended that through legislative action, the source lists used to create the master jury list be expanded to include individuals with state identification cards.

State identification cards are issued through the Nebraska Department of Motor Vehicles.[3] As of October, 2008, the total number of individuals with state identification cards (but not drivers' licenses) was 77,111. In order to obtain a state identification card, Nebraska law indicates that applicants need only provide "proof of date of birth and identity with documents containing a photograph or with non-photo identity documents which include his or her full legal name and date of birth.[4]

The Department of Motor Vehicles provided a county breakdown by race and ethnicity of individuals over the age of 18 with state identification cards. The table below indicates that non-whites (Asians, Blacks, Hispanics, and American Indians) comprise a much greater percentage of state identification card holders than of registered drivers.

Table 1:
Drivers License Holders vs. State ID Card Holders

Race	Driver License	Percentage	ID Card	Percentage
Asian	23,768	1.85%	3,284	4.26%
Black	47,626	3.71%	13,672	17.73%
Hispanic[5]	3,068	0.24%	1,149	1.49%
Am. Indian	7,569	0.59%	2,352	3.05%
Other	50,354	3.92%	13,191	17.11%
Unknown	3	0.00%	2	0.00%
White	1,152,354	89.70%	43,461	56.36%
Total	1,284,742	100%	77,111	100%

Source: Nebraska Department of Motor Vehicles.

Based on data indicating the significant underrepresentation of certain minority groups and the above statistics regarding state identification cards, a bill was drafted adding state identification card holders as a source list for compiling juries. On May 29, 2009, Governor Heineman signed LB 35 into law.

Legislative Impact

Over the past year, the Committee has been in the process of measuring the extent to which this legislative change has resulted in juries that are more representative of the communities that they serve.

Analysis

The analysis compares the demographics of the county population to the demographics of the initial and eligible pools of jurors. The *county population* is based on U.S. Census data which excludes individuals under the age of 19 and non-citizens (who are ineligible for jury service). The *initial pool* of jurors includes individuals who have received and returned a juror qualification form. The *eligible pool* of jurors includes those that remain in the pool after individuals are removed for statutory eligibility criteria or disqualification, and those that opt out for jury service.

Chi-square analyses were conducted to determine whether or not the difference between the county's demographics were significantly different from the demographics of the county's initial jury pools and eligible pools. A chi-square test takes an expected proportion (in this case, the proportion of each racial and ethnic group) and compares it to an observed proportion (in this case, the observed racial and ethnic proportions in the initial and eligible pools). The chi-square test indicates whether the difference between the groups is statistically significant. When the standardized residual is over 2.0 it indicates that the disparity contributes to the significant chi-square value; the greater the standardized residual, the greater the disparity.

Results

For purposes of assessing impact, juror qualification forms are still collected in the following counties: Dakota, Dawson, Douglas, Hall, Lancaster, Madison, Sarpy and Scottsbluff. Given the space limitations of this article, the results discussed below are limited to Douglas County. Prior to the law change, Whites and Asians were significantly over represented in the initial pools of jurors while Blacks and Hispanics were significantly underrepresented in the initial pools of jurors (see Table 2). Following the law change, Blacks are no longer significantly underrepresented in the initial pool (the standardized residual indicating significant disparity dropped from 16.1 to 1.8), and whites are no longer significantly overrepresented in the initial pool (the standardized residual dropped from 5.8 to 1.1). While significant disparities still remain for Asians and Hispanics the extent of the disparity, as measured by the standardized residual, has greatly decreased (from 11.3 to 3.8 for Asians and from 8.0 to 4.6 for Hispanics).

In regards to the eligible pool of jurors, prior to the law change, Whites and Asians were significantly overrepresented

in the eligible pools of jurors while Blacks and Hispanics were significantly underrepresented in the eligible pools of jurors. Following the law change, Blacks are no longer significantly underrepresented in the eligible pool (the standardized residual dropped from 9.7 to 0.7) and whites and Asians are no longer significantly overrepresented in the eligible pool (the standardized residual dropped from 4.4 to 2.0 for whites and from 3.4 to 0.1 for Asians). However, significant disparities still remain for the Hispanic population.

Table 2:
Douglas County Initial and Eligible Pool of Jurors

COMPARISON TO THE INITIAL POOL					
	White	Black	Asian	Native American	Hispanic
County Pop.	83.7%	10.4%	1.5%	0.6%	3.9%
Initial Pool (pre law change)	86.8%	7.4%	2.3%	0.6%	3.0%
Initial Pool (post law change)	84.8%	9.8%	2.0%	0.6%	2.9%
Level of Disparity (pre law change) (standardized residual)	5.8	16.1	11.3	0.5	8.0
Level of Disparity (post law change) (standardized residual)	1.1	1.8	3.8	0.5	4.6
COMPARISON TO THE ELIGIBLE POOL					
	White	Black	Asian	Native American	Hispanic
County Pop.	83.7%	10.4%	1.5%	0.6%	3.9%
Initial Pool (pre law change)	87.1%	7.7%	1.9%	0.6%	2.7%
Initial Pool (post law change)	86.1%	10.1%	1.5%	0.5%	1.7%
Level of Disparity (pre law change) (standardized residual)	4.4	9.7	3.4	0.6	7.2
Level of Disparity (post law change) (standardized residual)	2.0	0.7	0.1	0.7	8.2

The other counties examined exhibited similar trends; the addition of state identification card holders has significantly improved the representation of Blacks and in certain populations, Native Americans, on Nebraska's initial and eligible juror pools. The addition of state identification card holders has also improved the representation of Hispanics in the initial pool of jurors, but has not improved representation in the eligible pools. To further examine this finding, the Committee conducted an analysis of eligibility criteria by race.

Eligibility

Jurors from the initial pool can become ineligible for three reasons. 1) They do not meet the juror requirements (not a U.S. Citizen; not a county resident; do not read, speak or understand English; not over 18 years of age); 2) they are disqualified (they

Examining the Jury Compilation Process: Nebraska as a National Model

Historically states have been inhibited from fully examining the extent to which juries are representative of their community because of a lack of data on the racial and ethnic composition of potential jurors. This was also the case in Nebraska, where each county utilized their own distinctive juror qualification form, and only a handful of Nebraska's 93 counties collected data on race/ethnicity. Because existing data were not available, Nebraska established its own process to allow it to examine and monitor the jury compilation process. Nebraska's process (described below) has become a national model, replicated by New York and currently being considered by Pennsylvania.

In 2005, LB 105 was passed, authorizing the Nebraska Supreme Court to adopt a uniform juror qualification form and providing the Nebraska Supreme Court or its designee access to juror qualification forms for the purpose of research. Accordingly, the Nebraska Minority Justice Committee worked on developing a uniform document that would continue to meet the needs of each county, but also allow for a confidential method of collecting demographic data. The Committee reviewed dozens of counties' juror qualification forms, consulted Nebraska statutes regarding juror qualifications, and worked with a group of district court clerks and jury commissioners in developing the uniform juror qualification form. The form was subsequently approved by the Nebraska Supreme Court and is currently being implemented in each county.[2]

In addition to the information required by statute and information added at the request of the district court clerks for practical administrative purposes, the qualification form collects data on the race and ethnicity of the potential juror. This information is collected on a page separate from the body of the juror qualification form. The page containing the "confidential juror information" is removed from the qualification form, stored by the clerks until the end of the jury term, and then mailed to the Committee via the Nebraska Administrative Office of the Courts.

The information gleaned from the uniform juror qualification form was designed to allow researchers to examine each stage of the jury compilation process, from the compilation of the initial pool to the final impaneled jury. Results of these examinations will be used to explain why the composition of our jury pools may or may not be reflective of the diversity of our counties. It has been the Committee's position that while there may be many legitimate reasons for disparity within a county (e.g., certain groups in the population are less likely to be qualified for jury service due to eligibility criteria), if data indicate that certain groups are structurally excluded, prompt action should be taken to correct the compilation process.

are a sheriff jailer, deputy, clerk or judge; they are a party to a pending case; or have a criminal offense which disqualifies them); or 3) they opt out (over 65 years of age, nursing mother, active military, or recent prior jury service).

Ineligibility rates differ by race and ethnicity (see Table 3). Blacks (31.6%) and Native Americans (32.8%) have comparable rates of ineligibility to whites (31.1%), meaning that they are as likely as whites to be eligible for jury service. By improving their representation in the initial pool of jurors, their representation on the eligible pools of jurors has also improved.

Asians (58.3%) and Hispanics (52.3%), on the other hand, have substantially higher rates of ineligibility. Put another way, more than half of all Asians and Hispanics who are called for jury service are not eligible to serve. One notable difference is that across the counties examined, Asians tend to be overrepresented in the initial pool of jurors, and Hispanics are not (when Hispanics are underrepresented in the initial pool, the extent to which they are underrepresented in the eligible pool is compounded).

Table 3:
Ineligibility rates by Race

Whites	Blacks	Asians	Native Americans	Hispanics
31.1%	31.6%	58.3%	32.8%	52.3%

Table 4 provides, by race, the reasons why individuals become "ineligible" for jury service. When we look at the reasons why Asians and Hispanics are ineligible for jury service it is because they do not meet two of the primary requirements--not a U.S. Citizen and do not read/speak/understand English. Whites on the other hand, primarily become ineligible for jury service because they opt out (particularly in the category of being over the age of 65). Ineligibility reasons for Blacks fall into two categories: not a U.S. Citizen (Nebraska has a large population of refugees from African Nations) and opted out as being over the age of 65. For Native Americans, the majority of those ineligible for jury service opted out (specifically, being over the age of 65 or having an impairment).

Table 4:
Racial Breakdown of Reasons for Ineligibility

	Whites	Blacks	Asians	Native Americans	Hispanics
Requirements	21.5%	**44.9%**	**88.4%**	26.6%	**84.5%**
Disqualified	6.9%	13.9%	1.3%	22.4%	2.7%
Opted Out	**71.6%**	**41.3%**	10.3%	**51.0%**	12.8%

In examining why Hispanics remain underrepresented in the eligible pools of jurors, several explanations are possible. First, as described above, Hispanics are significantly underrepresented in the initial pools of jurors, and the addition of state identification cards has not adequately raised their representation in the initial pool. Second, it is possible that the population of Hispanics who do not return a juror qualification form is growing. Third, it is possible that the population of

Jury Refreshment

Prior to 2003, counties within Nebraska were not required to update their jury pool lists within a given time frame. Some counties, therefore, did not update their jury pool lists for several years. Caselaw has determined that inaction on the part of the state, just as much as a specific action to bar minorities from the jury pool, could violate a defendant's constitutional guarantee to a fair and impartial jury. Although, Nebraska used racially neutral criteria to comprise a jury pool, failure to update the jury pool given the quickly changing demographics throughout the state could produce an unfairly disparate jury *(by potentially excluding several groups of people including young adults, recent residents of Nebraska and newly naturalized citizens)*.

To remedy this, LB 19 was passed in 2003, requiring all counties within Nebraska to refresh their jury pool lists annually. The goal of LB 19 was to make jury pools across the state more representative of their communities. Because many of Nebraska's smaller counties may not even hold a jury trial over the course of a year, LB 712 was passed in 2010 to require counties with populations under 3,000 to refresh every five years, counties with populations between 3,000 and 7,000 to refresh every two years, and counties with populations over 7,000 to refresh annually.

In 2005, the Nebraska Appleseed Center for Law in the Public Interest, together with the Minority Justice Committee, conducted a small-scale study to examine the impact that these bills had on the diversity of Nebraska's jury pools. Because baseline data were not available, perceptional data measuring the impact of the legislation were gathered through phone interviews with District Court Clerks. Prior to the law change, only 44 of Nebraska's 93 counties updated their master list on an annual or biannual basis. Researchers concluded that, more than 25% of counties interviewed reported noticing either great or some change in the composition of the jury pool following annual updates, suggesting that the bill has had its intended effect in a number of counties. Although not an intended impact of the legislation, annual or biannual updates also improve the efficiency of the jury compilation process by updating resident addresses and removing individuals who have moved from the county *(and are therefore ineligible)* and county residents who are deceased.

ineligible Hispanics in the state is growing. Finally, anecdotally, concerns have been expressed by jury commissioners about the number of Hispanics claiming an inability to read/speak/understand English (particularly in situations where those individuals are known in the community to possess English skills). These reports beg the question of whether the requirement for English is being utilized as a convenient way for Hispanics to "opt" out of jury service.[6] At a minimum, these reports have signaled the need for a process to determine English proficiency (in some counties anyone who indicates on the juror qualification form that they do not read, speak or understand English is presumptively removed from consideration, in other counties; judges or jury commissioners make these determinations on a case-by-case basis, albeit with no formal criteria).

Next Steps

The Committee intends to continue monitoring the extent to which Nebraska's juries are representative of the communities they serve. Eventually data will also be examined to address other stages of the jury compilation process, such as peremptory challenges and final impaneled juries.

Over the coming months the Committee will partner with the Latino American Commission on ways to improve response to juror qualification forms through educational initiatives.

Endnotes

1. *Smith v. State of Texas* 311 U.S. 128, 61 S. Ct. 164 U.S. 1940
2. *Nebraska Supreme Court Rules Regarding the Use of Nebraska Juror Qualification Form*. Adopted December 14, 2005, effective January 1, 2006. Available on-line: http://court.nol.org/rules/JurorQualRule36.htm
3. Neb. Rev. Stat §60-4181.
4. Neb. Rev. Stat. §60-484 (f)(i).
5. Please note that in 2008 the Department of Motor Vehicles began collecting information on Hispanics. For this reason, the number of Hispanics is drastically lower than expected. It is likely that a large percentage of Hispanic drivers were captured in the "other" category prior to the policy change.
6. While the numbers of Asians who are ineligible for jury service for not being a citizen and for language ability are nearly identical, the number of Hispanics who are ineligible for jury service for language reasons is about 10% higher than the number who are ineligible for citizenship reasons.

THESE PLANS, SPECIFICALLY DESIGNED FOR NSBA MEMBERS, OFFER:

- Life Insurance protection with coverage amounts available up to $1 million for members and $500,000 for spouses.
- Member support from dedicated customer service professionals.
- Simplified solutions and hassle-free application process.
- Portable benefits that enable you to take your coverage with you, regardless of your employment situation.

HELP SECURE YOUR FINANCIAL FUTURE AND PROTECT THE ONES YOU LOVE WITH THE NSBA-SPONSORED 10- AND 20-YEAR GROUP LEVEL TERM LIFE INSURANCE PROGRAMS.

IT MAY BE TIME TO REEVALUATE YOUR LIFE INSURANCE NEEDS IF . . .

You've recently experienced major life changes.

Your employer offers inadequate life insurance.

Your financial situation has recently changed.

You think you may be paying too much.

You're not sure how much coverage you may need.

Your spouse needs coverage.

For more information (including costs, exclusions, limitations and terms of coverage), call 1-866-236-6582 or visit www.nebarinsurance.com

NEBRASKA State Bar Association

MARSH

Underwritten by The United States Life Insurance Company in the City of New York
Plans may vary or may not be available in all states.

AR Ins. Lic. #245544
CA Ins. Lic. #0633005

AG-8596

d/b/a in CA Seabury & Smith Insurance Program Management
50912 (7/11) ©Seabury & Smith, Inc. 2011