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feature article

Recent Efforts to Make Nebraska Juries More Representative of Their Communities

by Carly Duvall and Elizabeth Neeley, PhD



At the Year of the Juror proclamation signing: From left to right, Justice John Gerrard of the Nebraska Supreme Court; Cecilia Huerta, Executive Director of Nebraska Mexican American Commission; Chief Justice John Hendry; Governor Dave Heineman; Liz Neeley, Executive Director of the Minority and Justice Implementation Committee; and NSBA President, William Dittrick.

Introduction

According to the Minority and Justice Task Force Report (2003), “the majority of Nebraskans believe that it is important that juries reflect the racial and ethnic makeup of the community.”¹ Preliminary data obtained as part of the Task

“This year, let us recognize those who are called upon to take time from their daily lives to fulfill the highest responsibility of citizenship and make our system of justice a reality through their jury service.”

—Governor Heineman

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Elizabeth Neeley, PhD



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Force’s inquiry into representation of minorities on petit juries call into question whether Nebraska juries are representative of their communities.² This concern has prompted several statewide policy reforms that are designed to increase representation of minorities on juries regardless of whether there has been a problem in the State. The first reform involved regular refreshing of jury pool lists (LB 19 and LB 402). A second reform will provide insight into whether there actually is a problem: It provides the authority to conduct an analysis of the jury compilation process to determine to what extent (if any) minorities are structurally excluded from serving on juries (LB 105). These efforts are intended to address both the possibility of an actual problem and the fact that Nebraska’s minorities have less faith in the justice system and are more likely to perceive that minorities are underrepresented on juries. It was the concern about the trust and confidence in the system that prompted the Minority and Justice Implementation Committee to conduct a statewide campaign to promote jury service by everyone in Nebraska, with a special focus on, the state’s most diverse communities.

Jury Pool Refreshment: Legislative Bills 19 and 402

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.³ 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. In this manner, though, 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 on May 19, 2003. The bill requires 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 402 (*passed March 29, 2005*) amended Neb. Rev Stat. § 25-1628, to require only counties with populations over 3,000 to refresh annually, counties under 3,000 are to be refreshed every two years.

In 2005, the Nebraska Appleseed Center on Law in the Public Interest, together with the Minority and Justice Implementation Committee (MJIC), conducted a small-scale study to examine the impact that LB 19 and LB 402 had on the diversity of Nebraska's jury pools as well as the financial and personnel impact on counties. Because baseline data were not available, perceptual data measuring the impact of the legislation were gathered through phone interviews with District Court Clerks.

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. Of the 10 counties with the highest minority populations in the state, half (50%) reported noticing either great or some change in the composition of the jury pool following the annual updates. These statistics suggest that LB 19 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 removing individuals who have moved from the county (*and are therefore ineligible*) and county residents who are deceased.

District court clerks were divided on assessing the burden that complying with the legislation has had on their counties, more specifically the workload of their office or the financial burden of complying with the legislation. Although nearly one-third (32.9%) of the clerks reported no impact, 40% report that complying with the legislation created somewhat of a burden for their county and 27.1% indicated that complying with the legislation created a great burden for their county. Interestingly, clerks' perceptions of the burden created by the

legislation were not significantly correlated with the size of the county or with the method (*in-house or out-sourcing*) of compiling the list.

Uniform Juror Qualification Form for the Purposes of Research: Legislative Bill 105

While subjective accounts suggest that the annual/biannual refreshing of jury pool lists mandated by LB 19 and LB 405 have had their intended impact of making jury pools more representative of their communities, Nebraska has, until recently, been inhibited from fully examining the extent to which juries are representative of their community because each county utilized their own distinctive juror qualification form, and only a handful of Nebraska's 93 counties collected data on race/ethnicity.

In 2005, LB 105 was passed, authorizing the Nebraska Supreme Court authority to adopt a uniform juror qualification form and authorizing the Nebraska Supreme Court or its designee access to juror qualification forms for the purposes of research. Accordingly, the MJIC 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 the necessary 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 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.⁴

In addition to the information required by statute and information added at the request of the district court clerks for practical administrative purposes, the proposed 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 a research entity approved by Nebraska Supreme Court.

The information gleaned from the uniform juror qualification form will 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 this examination will be used to explain why the composition of our jury pools may or may not be reflective of the diversity of our counties. 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



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data indicate that either by specific action or inaction, that certain groups are structurally excluded, prompt action should be taken to correct the compilation process.

The Year of the Juror

As previously noted, preliminary data gathered by Nebraska's Minority and Justice Task Force (2003) suggested that Nebraska's juries are not always representative of their communities. Testimony collected through statewide public hearings and discussions with district court clerks, jury commissioners and minority community leaders suggests that minority under-representation on juries is in part due to a general distrust and unfamiliarity with the justice system, resulting in a failure to respond to jury summonses by many. For many new Americans, receiving a letter from the court often creates feelings of suspicion or fear, especially if the summons is served by local law enforcement.

In response, the MJIC partnered with district court clerks, jury commissioners, and representatives from the Nebraska Commission on Indian Affairs, the Nebraska Mexican American Commission, the Urban League of Nebraska and the Nebraska Racial Justice Initiative in developing a three-pronged campaign to promote jury service, consisting of meetings with minority community organizations, dissemination of written materials regarding the jury process, and a targeted radio campaign. The campaign is funded through a grant from Woods Charitable Fund and several individual contributions from NSBA members.

The campaign began on Friday January 6, 2006 when Governor Heineman, signed a joint proclamation with Nebraska Supreme Court Chief Justice John Hendry and Nebraska State Bar Association President William Dittrick, declaring 2006 The Year of the Juror. To date, community campaigns have been implemented in Hall and Madison counties. The campaign will visit Dawson and Scotts Bluff counties in May, 2006 and Lancaster and Douglas counties in the fall.

Summary

Prior to LB 19 and 402 some counties in Nebraska were not regularly updating their jury pools and without regular refreshment, these juries failed to be truly representative of the changing communities they were drawn from. Data gathered indicates that counties are now complying with the legislation and that the legislation has had the desired impact in a number of counties. Complying with the legislation has not been without a cost. Some clerks of the district court report the

increased burden on the personnel of their office and for those who outsource the compilation process the legislation has had an additional annual or biannual financial cost.

While pleased that legislative bills 19 and 402 appear to be having their intended impact, LB 105 allows for a full examination of the jury compilation process. As Nebraska's 93 counties submit the research portion of the newly adopted uniform juror qualification form, researchers will be able to document the extent to which Nebraska's juries are actually representative of their counties. 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 either by specific action or inaction, that certain groups are structurally excluded, prompt action should be taken to correct the compilation process.

Until these data are available for analysis, the extent to which Nebraska's juries are representative of their communities is unknown. In the mean time, the Year of the Juror activities are focused on improving public trust and confidence in the justice system. If juries are perceived as biased or unrepresentative, public trust and confidence in the legal system will decline. As Chief Justice Hendry explains, "The jury system is a fundamental cornerstone of the justice system. The premise that a defendant will receive a trial by a representative group of his or her peers is essential to maintain confidence in the court system." Public perception is important because attitudes towards the courts can affect the way individuals perceive their role in the justice system. When people believe that the justice system is fair it increases their willingness to comply with laws, report crimes, file legal suits, and so on.

Legislative bills 19, 402 and 105 not only aim to ensure that juries are representative of their communities, but also to improve public trust and confidence in the court system. As Nebraska communities continue to grow and change demographically, so too must the juries chosen from those communities. 

Endnotes

- ¹ Minority and Justice Task Force, Final Report, 2003, 22.
- ² Minority and Justice Task Force, Final Report, 2003 xvii.
- ³ In fact, only 44 of Nebraska's 93 counties indicated updating either annually or biannually prior to LB 19.
- ⁴ 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.no.lg/rules/JurorQualRule36.htm>.