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## Representative Juries: Examining the Initial and Eligible Pools of Jurors

Elizabeth M. Neeley

*Nebraska Minority Justice Committee*, [neeley@objadventure.com](mailto:neeley@objadventure.com)

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# **Representative Juries: Examining the Initial and Eligible Pools of Jurors**



**December, 2008  
Nebraska Minority Justice Committee**

## Acknowledgements

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## **Executive Summary**

State law provides that master jury lists are comprised by combining the lists of registered voters and registered drivers in the state of Nebraska. There have been anecdotal concerns that because minorities may be less likely to be registered to vote and less likely to be registered to drive, the current source lists may not effectively achieve a representative master list. The findings of this examination support this assertion. Based on an examination of juror qualification forms from 8 of Nebraska's most diverse counties, data indicate that there are significant racial disparities in the initial and eligible pools of jurors.

This report provides a review of several policy options intended to ensure a more representative initial jury pool. It is recommended that through legislative action, the source lists used to create the master jury list be expanded to include individuals with state identification cards and that the judicial branch be granted discretion to add additional source lists in the interest of creating a representative cross section of the community.

## I. Introduction

*“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.”<sup>1</sup>*

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”.<sup>2</sup> Preliminary data obtained as part of the Task Force’s inquiry into representation of minorities on petit juries, however, called into question whether Nebraska juries are representative of their communities.<sup>3</sup> Nebraska was, until recently, 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 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 the necessary data. The Committee reviewed dozens of counties’ juror qualification forms, consulted Nebraska statutes regarding juror qualifications, and

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<sup>1</sup> *Smith v. State of Texas* 311 U.S. 128, 61 S. Ct. 164 U.S. 1940

<sup>2</sup> *Minority and Justice Task Force, Final Report*, 2003, 22.

<sup>3</sup> *Minority and Justice Task Force, Final Report*, 2003, 26.

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.<sup>4</sup>

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 the Minority Justice 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. 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. This report discusses the first two stages of the jury compilation process, creating the initial pool of jurors and determining the eligible pool of jurors. These stages are considered important because representative jury panels are necessarily dependent on the extent to which the initial and eligible pools are representative of the community (i.e., if

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<sup>4</sup> *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>

blacks are significantly underrepresented in the initial and eligible pools, they are less likely to be represented in subsequent stages of the compilation process).

## II. Methods

As of December 15, 2008, the Nebraska Minority Justice Committee has received, entered and analyzed data from over 115,000 juror qualification forms. For the purpose of analysis, the Committee chose to focus on counties with significant minority populations (over 10%), and counties which submitted enough juror qualification forms for statistical reliability. The counties chosen for analyses are presented in Table 1.

**Table 1: Counties Selected for Analysis**

County	Percentage Non-White <sup>5</sup>	# of Forms Analyzed
Dakota	30.5%	1,536
Dawson	26.8%	1,041
Douglas	21.9%	27,299
Hall	17.3%	3,151
Lancaster	11.1%	25,054
Madison	12.2%	2,958
Sarpy	11.4%	5,309
Scotts Bluff	17.6%	1,954

There are two primary research questions to be answered. The first is: **to what extent are the *initial pools* of jurors representative of the counties which they serve?** The second question is: **to what extent are the *eligible pools* of jurors representative of the counties they serve?** This requires a comparison of the demographics of the county to the demographics of the initial pool and eligible pool for each county.

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<sup>5</sup> Percentage non-white is taken from 2006 U.S. Census Bureau Estimates for the entire county population.

## County Demographics

In order to obtain an accurate assessment of each county's demographics, 2006 data from the U.S. Census Bureau were obtained for each county. Because not every individual in the county is eligible for jury service, the Committee took some additional steps to create a more accurate depiction of the pool of potential jurors. First, individuals under the age of 19 are not eligible for jury service.<sup>6</sup> Because demographics differ by age (i.e., younger populations are typically more diverse than older populations),<sup>7</sup> the Committee removed individuals under the age of 19 from the dataset, so that they would not over-represent the racial/ethnic diversity of the counties' potential jurors.

Second, to be eligible for jury service an individual must be a citizen of the United States and must be able to read, speak, and understand the English language.<sup>8</sup> Unfortunately, it is not possible to use U.S. Census Bureau information to simultaneously account for the intersection of: age, race, citizenship status, and language ability at the county level. When faced with the decision to further refine the query by citizenship status or by language ability, the Committee chose citizenship status for two reasons. First, the number of non-citizens is greater than the number of individuals reportedly speaking English less than "well".<sup>9</sup> Additionally, it is reasonable to assume that there is a fairly high correlation between citizenship status and ability to speak English well which means that by capturing non-citizens we will also capture many of those who reportedly

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<sup>6</sup> Neb. Rev. Stat. §25-1601.

<sup>7</sup> Weeks, John. (1999). *Population: An Introduction to Concept and Issues*. Belmont, CA: Wadsworth Publishing Company.

<sup>8</sup> Neb. Rev. Stat. §25-1601.

<sup>9</sup> The number of individuals residing in Nebraska, over the age of 18 that are identified as non-U.S citizens is 41,740 or 2.4% of the population. The number of individuals residing in Nebraska, over the age of 18, that report to speak English less than very well is 27,877 of 1.7% of the population.



speak English less than *well*.<sup>10</sup> Second, citizenship status as captured by the U.S. Census Bureau is an objective variable (i.e., someone is either a U.S. citizen or they are not). Language ability, on the other hand, is a more subjective variable where individuals fall along a spectrum of speaking ability and language comprehension. For example, individuals have the option of indicating that they speak English *very well*, *well*, *not well*, or *not at all*. Even if someone self-reports that they speak English well they may not pass the statutory provision of being able to read, speak and understand English. Thus, citizenship status was selected because it likely captured many of the individuals who would not pass the statutory language ability criteria and because it was seen as a more objective/valid indicator.

A limitation of including citizenship as an additional variable to refine the query is data suppression. In certain counties, the number of people in a certain age group, of a certain race, and of a certain citizenship status is so few, that individuals could conceivably be identified through the reporting of such data. In these instances, the U.S. Census Bureau suppresses information and does not report statistics for those counties to protect anonymity. The table below shows the extent to which data on citizenship status is available for certain racial groups, by age, in certain counties.<sup>11</sup> In short, data suppression in these counties inhibits our ability to remove non-citizens from the county demographics. Given the fact that the number has to be very small in order to be suppressed, we are confident that this limitation has little impact on our analyses.

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<sup>10</sup> For example, according to Rakesh Kochhar, Associate Director for Research at the Pew Hispanic Center, 70% of first generation Hispanics are “Spanish-dominant” while only 10% of second generation Hispanics (who by definition are citizens) are “Spanish-dominant.” ([http://knowledge.allianz.com/en/globalissues/demographic\\_change/gender\\_diversity/hispanics\\_us\\_kochhar.html](http://knowledge.allianz.com/en/globalissues/demographic_change/gender_diversity/hispanics_us_kochhar.html)).

<sup>11</sup> Data suppression did not play a role in the decision to use citizenship status as a controlling variable. The level of data suppression was the same for citizenship and language ability.

**Table 2: Race by Citizenship Status**

<b>County</b>	<b>White</b>	<b>Black</b>	<b>Asian</b>	<b>Am. Indian</b>	<b>Hispanic</b>
Dakota	Available	Suppressed	Suppressed	Suppressed	Available
Dawson	Available	Suppressed	Suppressed	Suppressed	Available
Douglas	Available	Available	Available	Suppressed	Available
Hall	Available	Suppressed	Suppressed	Suppressed	Available
Lancaster	Available	Available	Available	Suppressed	Available
Madison	Available	Suppressed	Suppressed	Suppressed	Available
Sarpy	Available	Suppressed	Available	Suppressed	Available
Scotts Bluff	Available	Suppressed	Suppressed	Suppressed	Available

Initial Pool

The initial pool is defined as the pool of individuals who received and returned a juror qualification form and are thereby included in the pool of potential jurors (irrespective of eligibility criteria).

Eligible Pool

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; does not read, speak or understand English; not over 18 years of age); 2) they are disqualified (they are a sheriff jailer, deputy, clerk or judge; they are a party to a pending case; or have a criminal offense which disqualifies them); 3) they opt out (over 65 years of age, nursing mother, active military, or recent prior jury service). The “eligible pool” thus includes those that remain after removing individuals from the initial pool who do not meet statutory eligibility criteria, are disqualified by statutory criteria, or those that opt out of jury service.

Currently, 63.4% of the initial pool is eligible for jury service and 36.6% are not eligible. The majority of jurors that are removed from the eligible pool do so because

they opted out (65.4%). Twenty-eight point six percent (28.6%) do not meet requirements and only 6.0% are removed because they are disqualified.

### Analyses

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.

## **III. Findings**

### **Are the Differences between the County and the Initial Pool Significant?**

Data indicate that the racial/ethnic differences between the county population and the initial pool are statistically significant (see Table 3, the far right column). The racial and ethnic groups implicated and the strength of the significant differences differs by county (see Table 3, 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).

Data indicate that across counties whites are typically proportionately represented in the initial pool or significantly overrepresented in the initial pool (Douglas and Sarpy). Blacks tend to be significantly underrepresented in the initial pool (Douglas, Hall, Lancaster, Madison, and Sarpy). American Indians tend to be proportionately represented

in the initial pool or significantly underrepresented in the initial pool (Dakota and Lancaster).

There appears to be no clear pattern for the representation of Asians or Hispanics. In some counties Asians are significantly overrepresented (Douglas and Lancaster), in others they are significantly underrepresented (Dakota, Dawson, Hall and Sarpy), and in the remaining counties their representation is reflective of the county demographics. Likewise, in some counties Hispanics are significantly overrepresented (Hall, Lancaster and Madison), and in others they are significantly underrepresented (Douglas and Sarpy), and in the remaining counties their representation is reflective of the county demographics.

It is important to consider the findings of the initial pool in conjunction with the findings of the next stage of the compilation process, the creation of the eligible pool of jurors. Examining the findings in this context allows for two important clarifications. First, examining the eligible pool clarifies the patterns of representation for Asians and Hispanics in the initial pool. Second, it illustrates the fact that disparities at one stage can be manifested in subsequent stages of the process.

**Table 3: Comparison of the County Population to the Initial Pool<sup>12</sup>**

County	# of forms		White	Black	Asian	Am. Indian	Hispanic	Chi-Square Difference Significant?
Dakota								
		County Pop.	81.5%	1.0%	4.3%	2.3%	11.0%	
	1,536	Initial Pool	82.7%	0.3%	3.3%	1.3%	12.5%	***
		Standardized Residual	0.5	2.9	2.0	2.6	1.8	
		Significant		Under	Under	Under		
Dawson								
		County Pop.	84.3%	1.0%	1.1%	0.5%	13.1%	**
	1,041	Initial Pool	86.6%	0.3%	0.4%	0.8%	12.0%	
		Standardized Residual	0.8	2.3	2.2	1.2	1.0	
		Significant		Under	Under			
Douglas								
		County Pop.	83.7%	10.4%	1.5%	0.6%	3.9%	
	27,299	Initial Pool	86.6%	7.4%	2.4%	0.6%	3.0%	***
		Standardized Residual	5.3	15.3	12.3	0.7	7.6	
		Significant	Over	Under	Over		Under	
Hall								
		County Pop.	91.8%	0.9%	1.4%	0.5%	5.5%	
	3,151	Initial Pool	90.2%	0.5%	0.9%	0.3%	8.0%	***
		Standardized Residual	0.9	2.5	2.3	1.2	6.1	
		Significant		Under	Under		Over	
Lancaster								
		County Pop.	93.3%	2.6%	1.5%	0.6%	2.1%	
	25,054	Initial Pool	93.1%	1.8%	2.4%	0.5%	2.3%	***
		Standardized Residual	0.3	8.1	11.0	2.6	2.1	
		Significant		Under	Over	Under	Over	
Madison								
		County Pop.	93.8%	1.4%	0.7%	1.0%	3.2%	
	2,958	Initial Pool	93.9%	0.5%	0.5%	0.9%	4.1%	***
		Standardized Residual	0.05	3.9	1.0	0.5	2.8	
		Significant		Under			Over	
Sarpy								
		County Pop.	90.4%	3.8%	1.9%	0.4%	3.4%	
	5,309	Initial Pool	93.1%	2.3%	1.5%	0.4%	2.7%	***
		Standardized Residual	2.0	5.5	2.4	0.4	2.6	
		Significant	Over	Under	Under		Under	
Scotts Bluff								
		County Pop.	84.1%	0.3%	0.7%	1.3%	13.6%	
	1,954	Initial Pool	85.9%	0.3%	0.7%	0.8%	12.3%	
		Standardized Residual	0.9	0.05	0.08	1.8	1.6	
		Significant						

**Definitions**

County Population: 2006 Census data (does not include the population under the age of 19 or non-U.S. citizens).

Initial Pool: Those that received and returned a juror qualification form.

\*\*\* significant at the  $p < .001$  level

\*\* significant at the  $< .05$  level

\*significant at the  $p < .10$  level

-- not enough cases to determine

<sup>12</sup> Data analyzed as of December 15, 2008.

**Are the Differences between the County and the Eligible Pool Significant?**

Once the initial pool has been created, the forms are checked to determine if the potential juror meets the statutory eligibility criteria (previously discussed). Ineligibility rates differ by race and ethnicity (see Table below). Blacks (31.8%) and American Indians (32.0%) have comparable rates of ineligibility to whites (30.7%) -- meaning that they are as likely as whites to be eligible for jury service. Asians (58.2%) and Hispanics (50.0%), on the other hand, have substantially higher rates of ineligibility (are less likely to be eligible for jury service).

**Table 4: Percentage of Initial Pool Ineligible for Jury Service by Race**

	<b>Whites</b>	<b>Blacks</b>	<b>Asians</b>	<b>Am. Indian</b>	<b>Hispanic</b>
Percentage Ineligible for Jury Service	30.7%	31.8%	58.2%	32.0%	50.0%

Data indicate that the racial/ethnic differences between the county population and the eligible pool are statistically significant (see Table 5, the far right column). The racial and ethnic groups implicated and the strength of the significant differences differs by county (see Table 5, 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).

Given their representation in the initial pool and their higher rates of eligibility, whites are more likely to be overrepresented in the eligible pools of jurors. Despite their higher rates of eligibility, the significant underrepresentation of Blacks and American Indians in the initial pool causes them to remain significantly underrepresented in the eligible pools.

The representation of Asians in the eligible pool of jurors decreases once eligibility criteria are considered. Whether this decrease leads to significant disparities depends on the extent of their over/underrepresentation in the initial pool. In counties

where Asians were significantly underrepresented in the initial pool, the magnitude of their underrepresentation increases after screening for eligibility (Dakota, Dawson, Hall and Sarpy). In counties where Asians were overrepresented in the initial pool, after accounting for eligibility criteria, one of two things happen: 1) Asians go from being significantly overrepresented to being significantly underrepresented (Lancaster); 2) the magnitude of their overrepresentation decreases (Douglas).<sup>13</sup> In Madison County where the initial pool of Asians was representative of county demographics, they became significantly underrepresented once eligibility criteria were considered.

The representation of Hispanics in the eligible pool of jurors also decreases once eligibility criteria are considered. Whether this decrease leads to significant disparities depends on the extent of their over/underrepresentation in the initial pool. In counties where Hispanics were significantly underrepresented in the initial pool, the magnitude of their underrepresentation increases after screening for eligibility (Douglas and Sarpy). In counties where Hispanics were overrepresented in the initial pool, after accounting for eligibility criteria, one of two things happen: 1) Hispanics go from being significantly overrepresented to being significantly underrepresented (Hall and Madison); 2) Hispanics go from being significantly overrepresented to being representative of the community (Lancaster). In counties where the initial pool of Hispanics was representative of county demographics, they became significantly underrepresented once eligibility criteria were considered (Dakota and Dawson).

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<sup>13</sup> For Asians in Douglas County, the overrepresentation in the initial pool was so great that even after their high rates of ineligibility, Asians remained significantly overrepresented in the eligible pool. According to statistics provided by the Department of Motor Vehicles the percentage of Asians registered to drive in Douglas County is twice their representation in the county, which likely accounts for their significant overrepresentation in the initial pool and subsequently in the eligible pool.

**Table 5: Comparison of the County Population to the Eligible Pool**

County	# of forms		White	Black	Asian	Am. Indian	Hispanic	Chi-Square Difference Significant?
Dakota	1043							
		County Pop.	81.5%	1.0%	4.3%	2.3%	11.0%	
		Eligible Pool	92.7%	0.3%	1.4%	1.3%	4.2%	***
		Standardized Residual	4.0	2.3	4.5	2.0	6.6	
		Significant	Over	--	Under	Under	Under	
Dawson	643							***
		County Pop.	84.3%	1.0%	1.1%	0.5%	13.1%	
		Eligible Pool	93.2%	0.2%	0.0%	1.1%	5.6%	***
		Standardized Residual	2.4	2.1	2.7	2.1	5.3	
		Significant	Over	--	--	--	Under	
Douglas	12,202							
		County Pop.	83.7%	10.4%	1.5%	0.6%	3.9%	
		Eligible Pool	87.0%	7.8%	2.0%	0.6%	2.6%	***
		Standardized Residual	4.0	8.9	4.4	0.1	7.2	
		Significant	Over	Under	Over		Under	
Hall	2241							
		County Pop.	91.8%	0.9%	1.4%	0.5%	5.5%	
		Eligible Pool	94.9%	0.4%	0.4%	0.3%	4.1%	***
		Standardized Residual	1.5	2.7	4.2	1.6	2.7	
		Significant		Under	Under		Under	
Lancaster	17,535							
		County Pop.	93.3%	2.6%	1.5%	0.6%	2.1%	
		Eligible Pool	94.7%	1.7%	1.1%	0.5%	2.0%	***
		Standardized Residual	1.9	7.7	3.9	1.4	1.3	
		Significant		Under	Under			
Madison	2,097							
		County Pop.	93.8%	1.4%	0.7%	1.0%	3.2%	
		Eligible Pool	96.0%	0.5%	0.3%	0.9%	2.3%	***
		Standardized Residual	1.1	3.6	2.0	0.6	2.3	
		Significant		Under	Under		Under	
Sarpy	3912							
		County Pop.	90.4%	3.8%	1.9%	0.4%	3.4%	
		Eligible Pool	93.7%	2.3%	1.2%	0.5%	2.4%	***
		Standardized Residual	2.2	4.8	3.4	0.6	3.5	
		Significant	Over	Under	Under		Under	
Scotts Bluff	925							
		County Pop.	84.1%	0.3%	0.7%	1.3%	13.6%	
		Eligible Pool	86.7%	0.3%	0.3%	0.6%	12.0%	**
		Standardized Residual	1.0	0.3	1.4	2.0	1.5	
		Significant				Under		

Definitions

County Population: 2006 Census data (does not include the population under the age of 19 or non-U.S. citizens).

Eligible Pool: Those that remain in the potential pool after consideration of eligibility criteria.

\*\*\* significant at the  $p < .001$  level

\*\* significant at the  $< .05$  level

\* significant at the  $p < .10$  level

-- not enough cases to determine



## Summary of Findings

The table below summarizes the differences across the 8 counties from the county demographics to the demographics of the initial and eligible pools. The far right column indicates whether the percentage is significantly different from the county population. Bolded percentages indicate significant differences, followed by the standardized residual in parentheses. (Again, a standardized residual over 2.0 indicates a significant difference).

County	# of forms		White	Black	Asian	Am. Indian	Hispanic	Chi-Square Difference Significant?
Dakota								
		County Pop.	81.5%	1.0%	4.3%	2.3%	11.0%	
	1,536	Initial Pool	82.7%	<b>0.3% (2.9)</b>	3.3%	<b>1.3% (2.6)</b>	12.5%	***
	1,043	Eligible Pool	<b>92.7% (4.0)</b>	0.3%	<b>1.4% (4.5)</b>	<b>1.3% (2.0)</b>	<b>4.2% (6.6)</b>	***
Dawson								
		County Pop.	84.3%	1.0%	1.1%	0.5%	13.1%	
	1,041	Initial Pool	86.6%	<b>0.3% (2.3)</b>	<b>0.4% (2.2)</b>	0.8%	12.0%	**
	643	Eligible Pool	<b>93.2% (2.4)</b>	0.2%	0.0%	1.1%	<b>5.6% (5.3)</b>	***
Douglas								
		County Pop.	83.7%	10.4%	1.5%	0.6%	3.9%	
	27,299	Initial Pool	<b>86.6% (5.3)</b>	<b>7.4% (15.3)</b>	<b>2.4% (12.3)</b>	0.6%	<b>3.0% (7.6)</b>	***
	12,202	Eligible Pool	<b>87.0% (4.0)</b>	<b>7.8% (8.9)</b>	<b>2.0% (4.4)</b>	0.6%	<b>2.6% (7.2)</b>	***
Hall								
		County Pop.	91.8%	0.9%	1.4%	0.5%	5.5%	
	3,151	Initial Pool	90.2%	<b>0.5% (2.5)</b>	<b>0.9% (2.3)</b>	0.3%	<b>8.0% (6.1)</b>	***
	2,241	Eligible Pool	94.9%	<b>0.4% (2.7)</b>	<b>0.4% (4.2)</b>	0.3%	<b>4.1% (2.7)</b>	***
Lancaster								
		County Pop.	93.3%	2.6%	1.5%	0.6%	2.1%	
	25,054	Initial Pool	93.1%	<b>1.8% (8.1)</b>	<b>2.4% (11.0)</b>	<b>0.5% (2.6)</b>	<b>2.3% (2.1)</b>	***
	17,535	Eligible Pool	94.7%	<b>1.7% (7.7)</b>	<b>1.1% (3.9)</b>	0.5%	2.0%	***
Madison								
		County Pop.	93.8%	1.4%	0.7%	1.0%	3.2%	
	2,740	Initial Pool	93.9%	<b>0.5% (3.9)</b>	0.5%	0.9%	<b>4.1% (2.8)</b>	***
	2,097	Eligible Pool	96.0%	<b>0.5% (3.6)</b>	<b>0.3% (2.0)</b>	0.9%	<b>2.3% (2.3)</b>	***
Sarpy								
		County Pop.	90.4%	3.8%	1.9%	0.4%	3.4%	
	5,309	Initial Pool	<b>93.1% (2.0)</b>	<b>2.3% (5.5)</b>	<b>1.5% (2.4)</b>	0.4%	<b>2.7% (2.6)</b>	***
	3,912	Eligible Pool	<b>93.7% (2.2)</b>	<b>2.3% (4.8)</b>	<b>1.2% (3.4)</b>	0.5%	<b>2.4% (3.5)</b>	***
Scotts Bluff								
		County Pop.	85.9%	0.3%	0.7%	0.8%	12.3%	
	1,841	Initial Pool	85.9%	0.3%	0.7%	0.8%	12.3%	
	925	Eligible Pool	86.7%	0.3%	0.3%	<b>0.6% (2.0)</b>	12.0%	**

Definitions

County Population: 2006 Census data, do not include the population under the age of 19 or non-U.S. citizens

Initial Pool: Those that returned a juror qualification form.

Eligible Pool: Those that remain in the potential pool after consideration of eligibility criteria.

\*\*\* significant at the  $p < .001$  level

\*\* significant at the  $< .05$  level

\* significant at the  $p < .10$  level

-- not enough cases to determine

As previously mentioned, this report focuses on the first two stages of the jury compilation process, creating the initial pool of jurors and determining the eligible pool of jurors. The importance of examining these initial stages is that representative jury panels are necessarily dependent on the extent to which the initial and eligible pools are representative of the community. The Committee will continue to collect information on each stage of the juror compilation process. When enough information has been collected on the subsequent stages, including the demographics of the final impaneled juries, an additional report will likely be issued. Some preliminary data from Lancaster County (see Table 7) does indicate that as the compilation process evolves minorities are less likely to be represented in proportion to their representation in the county.

**Table 7: Lancaster County Progression from Initial to Impaneled Pools<sup>14</sup>**

Number	Comparison	White	Black	Asian	Am. Indian	Hispanic
	County Pop.	93.3%	2.6%	1.5%	0.6%	2.1%
25,054	Initial Pool	93.1%	1.8%	2.4%	0.5%	2.3%
17,535	Eligible Pool	94.7%	1.7%	1.1%	0.5%	2.0%
2,111	Impaneled	95.4%	1.4%	0.6%	0.5%	2.0%

County Population: 2006 Census data (does not include the population under the age of 19 or non-U.S. citizens).

Eligible Pool: Those that remain in the potential pool after consideration of eligibility criteria.

Impaneled: Those that actually served on a jury.

<sup>14</sup> Lancaster County was selected because at the time of this report, it had provided the most data on impaneled jurors.

### Summary of Findings

1. There are significant racial disparities in the initial jury pool.
2. There are significant racial disparities in the eligible pool.
3. Because Blacks and American Indians have comparable rates of eligibility to whites, their underrepresentation is largely a function of their underrepresentation in the initial pool.
4. Eligibility criteria have a large impact on the representation of Asians and Hispanics in the eligible pool. When Asians and Hispanics are significantly underrepresented in the initial pool to begin with, the representation of these groups' decreases further after eligibility criteria are considered.

## IV. Exploring Policy Solutions

### The Current Compilation System

State law provides that master jury lists are comprised by combining the lists of registered voters and registered drivers in the state of Nebraska.<sup>15</sup> There have been anecdotal concerns that because minorities may be less likely to be registered to vote<sup>16</sup> and less likely to be registered to drive, the current source lists may not effectively achieve a representative master list.

A second issue is the high level of duplication. Nebraska statute requires that the Department of Motor Vehicles ask applicants if they would like to register to vote following their registration for a driver's license.<sup>17</sup> According to MIPS County Solutions, the entity that combines the voter and drivers registration lists for many of Nebraska's counties, the percentage of duplication was roughly estimated to be around 90% (i.e., approximately 90% of individuals registered to vote are also registered drivers).<sup>18</sup>

### Potential Additional Lists

The Minority Justice 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.

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<sup>15</sup> Neb. Rev. Stat. §25-1628.

<sup>16</sup> Seventy-one percent (71%) of eligible Whites are registered to vote in the U.S.; in contrast, 61% of eligible Blacks, 49% of eligible Asians, 54% of eligible Latino voters, and 61% of "Other" racial groups are registered to vote. Hess, Douglas (September, 2007). *Representational Bias in the 2006 Electorate*. Washington D.C: Project Vote. Research by Domitrovich (1994) also indicates that "jurisdictions that rely primarily upon voter registration lists to develop source lists effectively exclude a significant number of minorities even before the selection process begins." Domitrovich, S. (1994). "Jury Source Lists and the Community's Need to Achieve Racial Balance on the Jury." 33 *Duquesne Law Review*, 39:42.

<sup>17</sup> Neb. Rev. Stat. §60-484.

<sup>18</sup> A study of Dakota County Minnesota (1993) estimates the duplication rate of voter and driver registrations to be 67%. Sames, Roger, (1993). *Is Less than 100% Enough?* Williamsburg, VA: Institute for Court Management.

As the table below shows, the majority of states rely on driver and voter registration lists, but many states supplement these lists with others such as: state identification cards, tax rolls, etc. Several states also grant power to the judicial branch or another oversight entity to decide what other lists should be used to supplement the lists already provided for in statute (see Table 8).

**Table 8: Summary Table of States Jury Source Lists**

Source List	Number of States	States Utilizing Lists
Driver Registration	43	All except for: MA, MS, MT, NV, PA, RI, VT
Voter Registration	43	All except for: AK, FL, ME, MD, MA, MI, OK
State Identification Cards	8	CO, GA, IL, KS, ME, MD, MI, MN
Tax Roll	15	AL, CT, HI, IL, IN, KY, NJ, NY, ND, PA, RI, TN, VA, WV, WI
Unemployment	3	NY, RI
State Aid Recipients	3	NY, PN, WI
City/County Directories	3	IN, PA, VA
Utility Customers	8	AL, CA, ID, IN, IA, NY, ND, WI
Telephone Directory	5	CA, IN, PA, VA, WI
Discretion of the Judicial Branch Or Other Oversight Agency	14	DC, GA, ID, IA, LA, ME, MN, NV, NC, ND, OR, SC, TN, VA

Source: Bureau of Justice Statistics, 2004

The Committee explored the possibility of including the following lists: state identification cards, tax rolls, unemployment 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. Information regarding each considered list is below.

## State Identification Cards

State identification cards are issued through the Nebraska Department of Motor Vehicles.<sup>19</sup> As of October, 2008, the total number of individuals with state identification cards (but not drivers' licenses) was 77,111. What are the qualifications for 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. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director."<sup>20</sup>

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 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 9: Drivers License Holders vs. State ID Card Holders**

<b>Race</b>	<b>Driver License</b>	<b>Percentage</b>	<b>ID Card</b>	<b>Percentage</b>
Asian	23,768	1.85%	3,284	4.26%
Black	47,626	3.71%	13,672	17.73%
Hispanic <sup>21</sup>	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	100.00%	77,111	100.00%

<sup>19</sup> Neb. Rev. Stat §60-4181.

<sup>20</sup> Neb. Rev. Stat. §60-484 (f)(i).

<sup>21</sup> 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.

Source: Nebraska Department of Motor Vehicles.

Thus the addition of state identification card holders as a source list would likely increase the diversity of the master list. It is not likely that the change would overly diversify the pool. First, the additional names represent only a 6% increase of the total pool. Second, since Nebraska law also requires that the Department of Motor Vehicles ask applicants if they would like to vote following their registration for a state identification card,<sup>22</sup> we expect that there will also be a high level of duplication—meaning many of the state identification card holders may already be captured by the voter registration lists (this means that the addition of state identification card holders would likely increase the total pool of potential jurors by less than 6%).

The Department of Motor Vehicles did not express concern with providing state identification cards as an additional source list. Since the department already provides the list of registered drivers, it appears to be quite easy for them to also include state identification card holders. The Department of Motor Vehicles did not report any additional cost to counties for providing this information.

### Tax Rolls

The Committee attempted to get information on tax rolls from the Nebraska Department of Revenue. The list would include anyone reporting income tax to the State of Nebraska. Based on recent research from Indiana,<sup>23</sup> this was considered to be an inclusive list.

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<sup>22</sup> Neb. Rev. Stat §60-418.

<sup>23</sup> Personal communications with Michelle Goodman of the Indiana Statewide Jury Pool Project. According to the source, use of information from the states' Bureau of Motor Vehicles (using drivers' licenses, state id cards, and other vehicle registrations) and the Department of Revenue (income tax rolls) increased the representativeness of juries to where over 99% of eligible citizens are now included in the state's jury list. For more information see: <http://www.in.gov/judiciary/jtac/programs/jurypool.html>.

The Nebraska Department of Revenue indicated that this was not possible because the information is deemed confidential by state statute.<sup>24</sup> The Department indicated that a change in statute regarding confidentiality would need to be passed before this information could be shared. Cost information was not provided. The Department of Revenue does not have information on the race/ethnicity of individuals filing tax returns.

Unemployment Lists

The list of individuals receiving unemployment is overseen by the Nebraska Department of Labor. Some sample data from 2006 was issued to our Committee on the race/ethnicity data of those receiving unemployment (see Table below). The table indicates that blacks, Hispanics and American Indian comprise a greater percentage of this list than of registered drivers. The Department of Labor indicated that there would be a cost to creating a database query for this purpose, and that once the initial work to transfer the information was complete, that there would be a minimal on-going cost for counties in obtaining this information.

**Table 10: Drivers License Holders vs. Unemployment Recipients**

<b>Race</b>	<b>Drivers License Percentage</b>	<b>Unemployment Lists Estimated Percentage</b>
Asian	1.85%	1.03%
Black	3.71%	6.22%
Hispanic	0.24%	8.49%
Am. Indian	0.59%	1.86%
Other	3.92%	0.82%
Unknown	0.00%	4.29%
White	89.70%	77.17%
Total	100.00%	100.00%

State Aid Recipients

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<sup>24</sup> Neb. Rev. Stat. §77-27,119 (6).



The Department of Health and Human Services provided a county breakdown by race and ethnicity of individuals receiving state aid and who are over the age of 18. The total number of individuals in this category is 149,562. The list includes individuals receiving aid through the following programs: Aid to Dependent Children, Cancer Drug Repository Program, Child Care Support, Child Support Enforcement, Commodity Supplemental Food Program, Electronic Benefits Transfer, Emergency Cash Assistance, Employment First, Energy Assistance, Every Woman Matters, Food Distribution Program, Food Stamps, Homeless, In-Home Services, Kids Connection, Medicaid/Medicare, Refugees, Supplemental Security Income, and the Women, Infants and Children Program.<sup>25</sup>

The Department of Health and Human Services provided a county breakdown by race and ethnicity of individuals receiving state aid. The table below indicates that Blacks, Hispanics, and American Indians comprise a much greater percentage of state aid recipients than of registered drivers.

**Table 11: Drivers License Holders vs. State Aid Recipients**

<b>Race</b>	<b>Driver License</b>	<b>Percentage</b>	<b>State Aid</b>	<b>Percentage</b>
Asian	23,768	1.85%	2,312	1.55%
Black	47,626	3.71%	16,047	10.73%
Hispanic <sup>26</sup>	3,068	0.24%	21,672	14.49%
Native American	7,569	0.59%	3,668	2.45%
Other	50,354	3.92%	7,267	4.86%
Unknown	3	0.00%		--
White	1,152,354	89.70%	98,612	65.93%
Total	1,284,742	100.00%	149,578	100.00%

Source: Department of Motor Vehicles and Department of Health and Human Services

<sup>25</sup> For a description of these programs visit the Department of Health and Human Services website at: <http://www.dhhs.ne.gov/fia/fiaindex.htm>

<sup>26</sup> 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.

Thus, the addition of state aid recipients as a source list would likely increase the diversity of the master list. It is not likely that the change would overly diversify the pool. First, the additional names represent only an 11.6% increase of the total pool. Second, although not likely as high as the duplication between registered voters and state identification card holders, there is no doubt some duplication between those receiving state aid and the lists of registered drivers and voters. This could potentially be simulated by test running the addition of state aid recipients as a source list. The Department of Health and Human Services reports that there is a minimal ongoing cost (approximately \$15-\$20 per report) for the work involved in querying this list. The Department also reported that in future queries it may be possible to remove individuals for who they do not have address information (who may be ineligible for lack of proof of county residence and for the practical purpose of serving a summons) and non-citizens (e.g., refugees who are ineligible for service) from the lists created for counties.

## **V. Limitations of the Study**

Several limitations such as the suppression of U.S. Census data have already been discussed. An additional limitation to this examination is the multiple ways of measuring race and ethnicity data. Prior to 2008, the Department of Motor Vehicles did not collect information on Hispanics. The race/ethnicity data provided by the Department of Motor Vehicles for both registered drivers and state identification card holders, therefore, likely underestimates Hispanics and overestimates the “other” category. Rather than attempting to condense or remove these categories for purposes of comparison, the Committee

decided to be transparent about the different categorizations so we would not over or understate the differences.

Another data limitation is the unknown level of duplication among current and potential source lists. As of now, it is not possible to determine the levels of overlap between each of the proposed lists. The agencies that have so far provided data to the Committee have only done so at the aggregate level. In order to truly determine duplicate names on various lists, it is necessary to have the “raw” lists that contain each individual entry. Once access to this level of data is obtained, this limitation may be overcome by piloting (retroactively) a few counties with the assistance of MIPS County Solutions.

## **V. Discussion/Conclusions**

State law provides that master jury lists are comprised by combining the lists of registered voters and registered drivers in the state of Nebraska.<sup>27</sup> There have been anecdotal concerns that because minorities may be less likely to be registered to vote<sup>28</sup> and less likely to be registered to drive, the current source lists may not effectively achieve a representative master list. The findings of this examination support this assertion. Based on an examination of juror qualification forms from 8 of Nebraska’s most diverse counties, data indicate that there are significant racial disparities in the initial and eligible pools of jurors.

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<sup>27</sup> Neb. Rev. Stat. §25-1628.

<sup>28</sup> Seventy-one percent (71%) of eligible Whites are registered to vote in the U.S.; in contrast, 61% of eligible Blacks, 49% of eligible Asians, 54% of eligible Latino voters, and 61% of “Other” racial groups are registered to vote. Hess, Douglas (September, 2007). *Representational Bias in the 2006 Electorate*. Washington D.C: Project Vote. *Representational Bias in the 2006 Electorate*. Washington D.C: Project Vote. Research by Domitrovich (1994) also indicates that “jurisdictions that rely primarily upon voter registration lists to develop source lists effectively exclude a significant number of minorities even before the selection process begins.” Domitrovich, S. (1994). “Jury Source Lists and the Community’s Need to Achieve Racial Balance on the Jury.” 33 *Duquesne Law Review*, 39:42.

After a review of other state jury compilation processes, it was determined that adding additional source lists was the best option for attempting to achieve master jury lists which are more representative of our communities. This recommendation does come with costs. Fifty-four percent (54%) of counties (50 out of 93) contract with MIPS County Solutions to compile their jury lists (combine the voter and driver registration lists and remove the duplicates). To the extent that adding an additional source list increases the total number of potential jurors, there will be an additional cost for these counties.<sup>29</sup> The remaining 43 counties have either purchased or developed their own software to combine the lists and remove duplicates or they combine the lists manually. In these counties, the addition of another source list will likely require additional staff time devoted to the tasks of combining the lists and removing duplicates.

In proceeding with statutory changes to expand jury source lists (recommended below), the Committee recognizes an advantage in the legislation used by 14 other states (see Table 8), which grants authority to the judicial branch to have discretion over the source lists. This would allow for flexibility should other source lists be deemed more inclusive in the future or if a reason to remove a source list should arise (e.g., if the duplication of a source list is so high that there is little benefit to including it, etc.).

## **VI. Recommendations**

The Committee proposes the following recommendations:

1. Draft legislation which calls for the expansion of jury source lists in Nebraska.

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<sup>29</sup> MIPS County Solutions' pricing structure is .50 cents for first 1,000 names, .20 cents for each additional name. They include the master list, an index card with contact information for the jury pool, and mailing labels.

- a. The legislation should include language which requires state identification cards to be used as a source list.
  - b. The legislation should grant the judicial branch discretion for adding additional source lists.
  - c. The legislation should direct that source lists be provided at no cost to counties.
2. Should legislation be enacted, the Committee should conduct research on the impact of adding additional source lists.
3. The Committee should continue research on subsequent stages of the jury compilation process.