

Iowa's Jury Data Is a Public Record: How You Can Access and Analyze Jury Data and Help Ensure Representative Trial Juries in Your County

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What the Constitution Says, and What That Means

- The 6th Amendment to the U.S. Constitution guarantees an accused “in all criminal prosecutions” a number of well-known rights, for example, the right “to a speedy and public trial” or the right “to have the assistance of counsel for his defense.”
- Less well known is the right to “*an impartial jury of the State and district wherein the crime shall have been committed.*”
- The U.S. Supreme Court has held that the “impartial jury” right means that jury pools and jury panels represent a “fair cross-section” of the community served by the trial court—in other words, *does not underrepresent any distinctive group.*

Why Is an “Impartial Jury” That Reflects a “Fair Cross-Section” of the Community Important?

- A jury verdict should be based on the applicable law and the evidence introduced in court, *not* on bias, whether express or implicit.
- A jury drawn from a fair cross-section of the community provides protection against “the apprehended existence of prejudice” and promotes the appearance of justice, contrary to trials 250 years ago before judges beholden to the Crown for tenure and salary.
- Studies demonstrate that the presence of African-American jurors promotes exchange of information and improves the quality of deliberation.
- There is also evidence of disparities in convictions where African-Americans are not present or are underrepresented on jury panels.

U.S. Supreme Court Landmarks Implementing the “Impartial Jury” Right

- *Taylor v. Louisiana* (U.S. 1975): “jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative” of the community.
- *Duren v. Missouri* (U.S. 1977) articulated a three-prong test requiring proof that (1) “the group alleged to be excluded [from the jury system] is a ‘distinctive group in the community,’ (2) “the representation of the 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) “this under-representation is due to systematic exclusion of the group in the jury-selection process.”

Revitalization of the “Impartial Jury” Right in Iowa: *State v. Plain* (Iowa S.Ct. 2017)

- In a unanimous opinion, the Court overruled its 1992 decision in *State v. Jones*. In doing so, it recognized that both the 14th and the 6th Amendments protect the impartiality of the jury—
 - the 14th equal protection clause prohibits intentional or purposeful racial exclusion from the jury pool or jury panel, and
 - the 6th fair cross-section protection requires only proof of racial impact, it does NOT require evidence of intentional exclusion or purposeful discrimination from the jury pool or panel.
- The Court in *Plain* also recognized the existence of *implicit bias* and approved the trial court’s jury instruction addressing it.

Plain: Defendant Has Right to Access Jury Records and Data; Iowa Open Records Law Provides Non-Party Right

- At the time *Plain* was decided, there was no Iowa statute authorizing access to jury records by defense counsel. How could a defendant prove that the jury pool or jury panel violated the Fair Cross-Section requirement if he or she had no access to the court system's jury data?
- In *Plain* the Iowa Supreme Court unanimously held that defendant in a criminal prosecution has a constitutional right "to access the information needed to enforce their constitutional right to a jury trial by a representative cross-section of the community."
- Although not an issue before the Court, the NAACP's ongoing dialogue with the Judicial Branch has confirmed that the jury questionnaire and jury data are public records accessible to non-parties pursuant to Iowa Code §22. Grass roots advocacy at the local level is likely to play a very important role in encouraging the chief judge and jury manager in each county to adopt good jury management practices, which are critical to achieving not only fiscal savings and efficiencies but also juries that are truly representative.

NAACP Non-Litigation Advocacy: Improved Court System Jury Data Collection and Secured Juror Eligibility for Persons Who Have Served Their Sentences and Had Their Citizenship Rights Restored

- What data was the Iowa Judicial System collecting and compiling as to the number of members of distinctive groups in its jury pools and jury panels, particularly with respect to race and ethnicity?
- How was the percentage of African Americans in the jury pools/panels to be compared to "the number [and percentage] of such persons in the the "jury-eligible population"—in order to measure whether the jury pools or panels over time bear "a fair and reasonable relation"?
- The NAACP's ongoing non-litigation efforts have focused on such questions, *e.g.*, that answering race and ethnicity question be mandatory, and a major effort that persons with felony convictions who have served their time should be eligible to serve as jurors.
- Executive Order No. 7; Revision of Criminal Procedure Rule 2.18(5)(a) has made eligible for juror services persons who have served their time and had their citizenship rights restored. Given the substantial racial disparities in the Iowa criminal justice system, this law change could have a positive effect on juror diversity. But see 2023 amended Juror Questionnaire.
- Recent NAACP advocacy has secured a commitment from State Court Administrator Bob Gast that OSCA will being to monitor "routine stuff." The NAACP has urged that the jury data be publicly accessible online and Gast will put that before the Court's Administrative Conference meeting next week, along with NAACP objections to the new Juror Questionnaire.

Adoption of Standard Deviation Test to Determine Underrepresentation and Recognition that Negligent Jury Management Practices Can Constitute Systematic Exclusion:
State v. Lilly (Iowa S.Ct. 2019)

- In a landmark opinion, a divided Iowa Supreme Court rejected popular but inexact tests for measuring underrepresentation, and held that the discipline of statistics and standard deviation analysis would be determinative.
- Based on NAACP arguments the Court interpreted the “impartial jury” right independently of the U.S. Supreme Court—*i.e.*, under Article I, Section 10 of the Iowa Constitution.
- Under-representation had two components: (1) statistically significant under-representation on historical jury panel data for the preceding 6-12 months, and (2) under-representation on defendant’s own jury pool and jury panel, determined on the day of trial, requiring only arithmetic.
- Relying upon Paula Hannaford-Agor’s expertise, it held that, if negligent jury management practices were the cause of the underrepresentation, that would constitute “systematic exclusion” under prong 3 of the Duren test.

How Much Under-Representation? One Std. Deviation (Iowa) vs. Two (Federal)

- When a Fair Cross-Section challenge is made under the Iowa Constitution, *State v. Lilly* held, “[W]e conclude the threshold should be one standard deviation—in other words, the percentage of the group in the jury pool must be one standard deviation or more below its percentage in the overall population of eligible jurors. As we understand it, when the variance is one standard deviation, . . . the probability would be 16% that the departure is a random event and 84% that it is not.”
- When a Federal 6th Amendment FCS Challenge is made, a greater showing of underrepresentation—two standard deviations—must be met. Then, there would remain a 2.5% probability that this result occurred randomly and 97.5% that it is not.
- The Equal Justice Institute’s Race & The Jury Report gave a shout out to the Iowa NAACP advocacy that achieved the more generous 1 standard deviation test.
- Standard deviation calculations can be done on the Excel spreadsheet program. It is beyond the scope of today’s presentation, but it does NOT require a statistician except when litigating a fair cross-section claim.

How Is the “Jury-Eligible Population” To Be Determined?

- In *Lilly* the Court held that the most current jury-eligible U.S. Census data must be used as a basis for comparison with the % of Blacks or Latinos in the jury pool or panel. General population data must be adjusted to eliminate ineligible person, *e.g.*, persons under 18 years of age, persons in prison, persons who are not U.S. citizens.
- The Census’s American Community Survey (ACS) has annual reports from which each County’s population of U.S. Citizens 18 years of age and older can be calculated, and it breaks down the data by race and ethnicity. It is updated annually.
- At the request of the NAACP, State Census Coordinator Gary Krob prepared a user-friendly jury-eligible population calculations for all 99 counties, by race and ethnicity, gender and U.S. Citizenship:
<https://www.iowadatacenter.org/data/acs/social/citizenship/18over-nativity>.

Questions

- So what does recent Iowa jury data show?
- Has there been improvement in the racial diversity of Iowa's juries as a result of the Plain/Lilly decisions and NAACP advocacy?
- Do Iowa jury pools and panels reflect a fair cross-section of the community served by the trial court?
- Is anyone monitoring the data? Is there a role for lay advocates?
- How can lay advocates access the data? How can they analyze it?
- If it appears there is underrepresentation, what can lay advocates do about it?