

NAACP Advocacy and Dialogue with Iowa Chief Justices and State Court Administrators has brought about demonstrable progress in achieving representative juries in Iowa: 2014-2024

1. New Legislation improved coordination between OSCA and local jury managers.
2. Revision of “race/ethnicity” question on Juror Questionnaire no longer optional; E-Juror Questionnaire can’t be submitted unless all questions answered.
3. *State v. Plain* (Iowa 2017): Fair cross-section (FCS) challenges arise under the Sixth Amendment “impartial jury” right and require proof of significant racial impact caused by “systematic exclusion,” “that is, something “inherent in the particular jury-selection process utilized” but Not proof of intentional racial discrimination as in equal protection claims.
4. *Plain* overruled *State v. Jones* (Iowa 1992) 10% absolute disparity test, recognizing there was no County in Iowa in which Blacks were 10% of jury-eligible population.
5. *Plain* held defendants have a constitutional right to access jury data pretrial in order to evaluate whether a meritorious fair cross-section challenge can be made. Jury data is crucial to proving underrepresentation and systematic exclusion.
6. *Plain* encouraged trial judges to address implicit bias. Racially diverse juries are best protection against implicit bias infecting jury deliberations.
7. *State v. Lilly* (Iowa 2019): FCS claims are (a) based on anonymous, aggregate historical jury data, typically the 6 months or 1-year preceding defendant’s trial date, (b) are enforceable under the Iowa Constitution independent of the U.S. Constitution, and (c) under the Iowa Constitution require proof of aggregate underrepresentation at the 1 standard deviation test level of significance, in contrast to 2-standard deviations under the 6th Amendment.
8. *State v Lilly*: Systematic exclusion can be caused not only by a formal policy but also by negligent jury management practices when they cause underrepresentation. E.g., failing to renew names on master list frequently; failing to use NCOA to secure current addresses to decrease non-deliverables; failing to enforce nonresponses to summons; using obsolete computer software that won’t allow more than 2 lists to be used to fashion master jury list.
9. State Data Center webpage summarizes most recent Census data, broken down by race, e.g., % of Blacks who are U.S. Citizens 18 years of age and older.
10. Since 2018, pursuant to the Iowa Open Records Act, OSCA has provided NAACP with anonymous, aggregate historical Iowa Jury data for all 99 Counties, broken down by race at the jury pool, jury panel, and 12-person jury stages. The data disclosed is anonymous; no juror’s name or personal information is disclosed.
11. In 2021 the Iowa Supreme Court amended Rules of Criminal Procedure and made eligible for jury service 93% of persons with previous felony convictions who had served their sentences and had their citizenship rights restored.
12. In 2023 the Black % of the jury pools of all 8 Counties with the largest Black populations were fully representative! In 4 of the 8 Counties the Black % of trial jurors was fully representative and close in 2 Counties. In 2023 the Hispanic % of trial juries of 6 of the 9 counties with the largest Hispanic populations was fully representative. See Charts for Jury Pool, Jury Panel, and Trial Jury data prepared by NAACP Legal Redress Co-Chair Russ Lovell.

Iowa Office of State Court Administration Juror Data, Jan.-Dec. 2023: Black Jurors

Persons who checked “Black/African American” box on Judicial Branch Questionnaire in Comparison to “Black/African American alone” Census jury-eligible population (U.S. Citizens 18 years of age and older), State Data Center, <https://www.iowadatacenter.org/index.php/data-by-source/american-community-survey/nativity-and-citizenship-status-race-and-ethnicity>.

| County | B%-J-E Pop. | B% Jury Pool | B% Jury Panel | B% Trial Jurors | Panel Stat. Signif. |
|------------|-------------|--------------|---------------|-----------------|---------------------|
| Black Hawk | 8.0% | 10.3% | 7.7% | 8.8% (59/673) | |
| Des Moines | 4.3% | 5.1% | 2.4% | 3.2% (6/188) | |
| Dubuque | 2.5% | 2.9% | 2.1% | 2.5% (6/241) | |
| Johnson | 4.3% | 7.3% | 5.2% | 3.9% (8/207) | |
| Linn | 4.1% | 5.4% | 3.4% | 4.2% (20/475) | |
| Polk | 5.5% | 6.0% | 3.9% | 3.7% (20/546) | 0.03 < 0.16 |
| Scott | 6.1% | 7.6% | 4.3% | 6.9% (29/418) | |
| Woodbury | 3.2% | 3.4% | 2.5% | 2.8% (8/282) | |

Definitions

Jury pool: persons selected for jury duty and summoned and reporting to Courthouse

Jury Panel: members of the Jury Pool directed to a courtroom to serve as jurors for a trial

Trial Jurors: 12 Persons who actually served as the jury in a case

Summary

Jury Pools. The Black representation % on each of the 8 Counties was higher than the Black jury-eligible Census population %. Each County was fully “representative” at the Jury Pool stage.

Jury Panels. Only Johnson County had a Black population percentage at the Jury Panel stage that was at or above the Black jury-eligible Census population percentage (5.2% > 4.3%). However, 4 of the Counties still had Black population percentages on the actual 12-person trial juries that were higher than the Black jury-eligible Census population percentage: Black Hawk; Dubuque; Linn; and Scott. The Des Moines, Polk, and Scott Jury Panel stage had Black population percentages that were nearly 2% below their jury-eligible Census populations: Des Moines (2.4% < 4.3%); Polk (3.9% < 5.5%); and Scott (4.3% < 6.1%). Scott made a remarkable recovery, with its Black trial jurors representing 6.9% of all jurors, well above its 6.1% Black jury-eligible Census population.

Trial Jurors. In 4 of the 8 Counties the Black % of trial jurors was equal to or greater than the Black % of the County’s jury-eligible Census population: Black Hawk, 8.8% > 8.0%; Dubuque, 2.5% = 2.5%; Linn 4.2% > 4.1%; and Scott, 6.9% > 6.1%. In all 4 of these counties the Black % of the Jury Panel was less than the Black % of jury-eligible Census population. In Johnson (3.9% < 4.3%) and Woodbury (2.8% < 3.2%) Counties the Black % of jurors was only 0.004 less than the jury-eligible Census population %. In Polk Blacks comprised 3.7% (20/546 = .0366) of jurors compared to their 5.5% of the jury-eligible Census population; 2 standard deviations below expectations in a random process (0.0312 > 0.025). In Des Moines County Blacks comprised 3.2% (6/188 = 0.0319) of jurors compared to their 4.3% of the jury-eligible Census population, but not statistically significant.

Prepared by Professor Russell Lovell, Co-Chair Iowa-Nebraska Legal Redress Committee

Iowa Office of State Court Administration Juror Data, Calendar Year 2023 (January – December): Hispanics

Distinctive Group: Persons who checked “Hispanic” box on Iowa Judicial Branch Juror Questionnaire.

Statistical Comparison based on “Hispanics alone” Census jury-eligible population (Persons 18 years of age and older who are U.S. Citizens) as reported on **State Data Center web page (H%-Jury-Eligible Population column).**

<https://www.iowadatecenter.org/index.php/data-by-source/american-community-survey/nativity-and-citizenship-status-race-and-ethnicity>.

| County | H% J-Eligible | H% Jury Pool | H% Jury Panel | H% Trial Jurors | Stat. Significance |
|-------------|---------------|-----------------------|---------------|-----------------|--------------------|
| Buena Vista | 15.5% | 18.1% | 15.4% | 23.1% (3/13) | |
| Crawford | 14% | 13.8% | 9.4% | 8.3% (1/12) | |
| Johnson | 4% | 4.6% | 4.6% | 6.3% (13/205) | |
| Linn | 2.6% | 2.7% | 2.90% | 2.9% (14/475) | |
| Marshall | 13.6% | 13.2% | 10.6% | 16.5% (23/139) | |
| Muscatine | 13.2% | 10.8% (1303/12011) | 9.9% | 10.7% (6/56) | Yes.2.98E-15< .025 |
| Polk | 4.8% | 6.3% | 5.7% | 60% (323/550) | |
| Scott | 5.3% | 4.9% | 5.1% | 5.3% (22/419) | |
| Woodbury | 10.9% | 9.9% | 10.1% | 8.5% (24/283) | |

Definitions

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Trial Jurors: 12 Persons who actually served as the jury in a case

Summary

Jury Pools. The Black representation % on each of the 8 Counties was higher than the Black jury-eligible Census population %. Each County was fully “representative” at the Jury Pool stage.

Trial Jurors: The Hispanic % of trial jurors in 6 of the 9 Counties was at or above the Hispanic % of the jury-eligible population, including all of the larger Counties: Buena Vista, Johnson, Linn, Marshall, Polk, and Scott. Crawford, Muscatine, and Woodbury were below, but Crawford had only 1 trial, Muscatine had 4. The Hispanic % on Woodbury juries was 8.5% compared to 10.9% J-E.

Jury Pools: The Hispanic % of jury pools was at or above the Hispanic % of the jury-eligible population in 5 of the 9 counties: Buena Vista, Crawford, Johnson, Linn, and Polk. Two counties with jury pools below J-E% had trial juries that were above the J-E%: Marshall and Scott. Muscatine and Woodbury were below, and the underrepresentation of Hispanics on Muscatine jury pools was statistically significant at the 2 standard deviation level.

Jury Panels: 4 of the Counties whose Hispanic Jury Pool % was at or above the Hispanic % of the jury-eligible population also had Jury Panels above the J-E population: Buena Vista, Johnson, Linn, and Polk; Jury Panels in Marshall and Scott were below the J-E% but their trial juries were above. Crawford, Muscatine, and Woodbury jury panels were below J-E%.

NAACP recommendations for the Nebraska Judicial Branch's proposed new Rule and amendments to the Juror Qualification form:

1. Proposed Amendments to Court Rule §6-1002 and the Juror Questionnaire Represents a **First Step, but a Flawed Step** that Requires Correction
- A. Without question **the Current Questionnaire's text and the Judicial Branch's existing circumstances pose a serious obstacle** to achieving the Constitution's fair cross-section right for Nebraska's Black and non-white citizens. As Professor Chernoff has written: **No Records, No Right!**
 1. **Because of an obsolete computer system OSCA has not collected jury data since 2013!** Douglas and Lancaster Counties appear to be collecting jury data but do NOT input the data paper questionnaires—which are 30-40% of all completed questionnaires. **Furthermore, the nonresponse rate** on the Questionnaire's race question has historically been **between 40 – 48%** throughout the State, making the data statistically unreliable.
 2. **Current Questionnaire appears to impose a total bar on disclosure**—not only of each juror's response to the race/ethnicity/gender questions but **also to bar disclosure of aggregate, anonymous historical jury data** (i.e., cumulative data for most recent 6 months or 1 year) If so, that Policy Is **Contrary to Nebraska Jury Selection Act §25-1678** That Provides Defendants with a **Pre-trial Right to Disclosure of Aggregate, Historical Jury Data** in Order so Defense Counsel Can Evaluate Whether a Meritorious Fair Cross-Section Challenge Can Be Made. **5 of 5 Supreme Courts**, including Missouri and Iowa and the U.S. Supreme Court
 3. **NAACP's Court Precedent:** U.S. v. Test (SCOTUS); Lewis v. Maryland (Md. Ct. Appeals); U.S. Gause (D.C. Ct. Appeals); State v. Plain (Iowa S.Ct.); State ex rel. Garrett v. Saitz (Missouri S.Ct.)
- B. **The proposed amended Rule is totally silent as to its reasons** and the Notice of Comment Period, while it states that the Jury Questionnaire Amendments will “eliminate the confidential juror information section and move the request for demographic information to a different section,” it **totally fails to explain the strong reasons and truly important justification for these crucial changes, and, as a result, will likely encounter public resistance and opposition**
 1. The proposed amendments are necessary **first steps to ensuring the Nebraska's Jury Selection Act's commitment to achieving juries on which “all persons are selected at random from a fair cross-sections of the population”** and “no citizen is excluded from jury service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status.”
 2. It is crucial that, **as soon as possible, funding be provided to the Judicial Branch to obtain and install a 21st Century computer system and necessary jury data collection and analysis software** that will enable data collection, analysis, and reporting.
 3. **With the proper technology, the Nebraska Court System can provide defendants with the aggregate, historical jury data to which they are entitled by the Sixth Amendment and**

Neb. Rev. Stat. §25-1678 AND maintain the confidentiality of jurors names and personal information. Thus, the removal of the “Confidential Juror Information” heading and the assurance of nondisclosure are necessary and appropriate.

4. However, **the Court’s Rule must better explain the powerful fairness reasons for the fair cross section right and impress upon jurors the importance of answering the “race/ethnicity” question**, or run the risk that the jury data collected will be statistically unreliable. The Questionnaire continues to state that answering the **race/ethnicity question is optional**: “You are encouraged, but not required to provide this demographic data.” The Questionnaire also provides the juror with a “Prefer not to answer” box as an option. **Both should be eliminated.**
5. Although it has not found its way into any Nebraska Supreme Court opinion, the **best Nebraska example of analyzing aggregate, historical jury data was the Minority Justice Committee’s 2008 Report.**