JURY DIVERSITY IN WASHINGTON:

Hollow promise or hopeful future?

NINA CHERNOFF * CUNY SCHOOL OF LAW
GOALS

1. Importance of fair cross-section promise
Courts have power to improve racial and ethnic representation in jury pool.
• Importance of fair cross-section promise
Community’s judgment
Community’s judgment
SIXTH AMENDMENT
IMPARTIAL JURY

FAIR CROSS-SECTION
OF THE COMMUNITY
Fair cross-section protected by statute or state constitution
1

- Importance of fair cross-section promise

History

Perception
CRITICAL

REPRESENTATIVE
78%

Jury system = fairest way to determine guilt or innocence

Perceptions of the U.S. Justice System, American Bar Association (Feb. 1999)
78% Jury system = fairest way to determine guilt or innocence

69% Juries = most important part of our justice system
“decisions reached by racially diverse juries are more fair than decisions reached by single race juries”

“decisions reached by racially diverse juries are more fair than decisions reached by single race juries”

67% ALL AGREE

75% HISPANIC AGREE
“decisions reached by racially diverse juries are more fair than decisions reached by single race juries”

- 67% ALL AGREE
- 75% HISPANIC AGREE
- 91.6% BLACK AGREE
ACQUITTED

CONVICTED
“[T]he perception of being treated fairly is more important than a favorable outcome in predicting whether a person views authority as legitimate.”

The perception of fairness can be critical, and it can be difficult to achieve that without racial or ethnic diversity among the jurors who are deciding a case. Therefore it is hard to overstate the significance of the lack of diversity on jury panels.

1. Importance of fair cross-section promise

- History
- Perception
- Reality
MULTIPLE PERSPECTIVES ON HUMAN EVENTS
HIGHER QUALITY DELIBERATIONS
RACIALLY MIXED JURIES

- Deliberate longer
- Discuss more case facts
- Fewer factual errors
- Fewer uncorrected factual errors
- More statements about race
<table>
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<tr>
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<th>White Participant All-White Jury</th>
<th>White Participant Diverse Jury</th>
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<tr>
<td>Number of novel case facts raised</td>
<td>4.32</td>
<td>5.27</td>
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<tr>
<td>Number of factual inaccuracies</td>
<td>1.21</td>
<td>0.73</td>
</tr>
<tr>
<td>Number of race-related issues raised</td>
<td>0.35</td>
<td>0.55</td>
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“Jury representativeness can be more than a moral or Constitutional ideal; it is sometimes an ingredient for superior performance.”
3

LESS

BIASED

OUTCOMES
Jury drawn from all-white jury venire

785 felony trials

Jury drawn from venire with at least one black person
In cases with no black people in the jury pool (typically consisting of around 27 people) blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time.
POTENTIAL JURORS

When the jury pool included at least one black person, the conviction rates were nearly identical.

71% CONVICTION 73% CONVICTION

http://today.duke.edu/2012/04/jurystudy

Duke OFFICE OF NEWS & COMMUNICATIONS

Design by Tamberly Ferguson
“The black-white conviction gap declines by an average of 16 percentage points in all trials in which there is at least one black member of the jury pool.”
African-Americans: 4% of jury pool
“[E]ven small changes in the composition of the jury pool have a large impact”
“[S]ervice at the courthouse has a relatively large positive impact on jurors’ confidence in the quality of the jury system itself.”
96 percent of jurors talked about jury service
“[D]eliberating on a jury causes previously infrequent voters to become more likely to vote in future elections.”
1. Importance of fair cross-section promise

History

Perception

Reality
1. **Importance**
   of fair cross-section promise

2. **Hollowness**
   of promise & consequences
DISCRIMINATION
• Hollowness of promise & consequences
Court-appointed committees “throughout the country have found minority underrepresentation in jury composition”

Best Practices for Jury Selection and Service in Pennsylvania, The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, 8 (Sept. 2016) (Source list “often leads to a panel of prospective jurors that is over-representative of . . . non-minority members of the community.”); Final Report of the Pennsylvania Supreme Court Comm. on Racial & Gender Bias in the Justice System, 54 (2003) (“[Jury selection policies] fail at each step of the process to include a representative number of minorities.”)

Final Report and Recommendations, N.D. Comm’n to Study Racial & Ethnic Bias in the Courts, 18 (2012) (“Minority under-representation on North Dakota juries is a continuing concern for state courts.”)


Third Judicial Circuit of Michigan Jury System Assessment, Paula L. Hannaford-Agor & G. Thomas Munsterman, Ctr. For Jury Studies, Nat’l Ctr, for State Courts, i (2006) (“[T]he proportion of African-Americans in the... jury pool was approximately half of what was expected given their representation in the community.”)

Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service 41-42 (Feb. 2004) (“The study concluded that the racial and ethnic composition of registered voters and licensed drivers did not totally reflect the diversity of the population of Lucas County.”)
Report of the Alaska Sup. Ct. Advisory Comm’n On Fairness & Access, 83 (1997) ("Ethnic minority respondents were under-represented in some communities when compared to the proportion of ethnic minorities counted in census data.")

Let Justice Be Done: Equally, Fairly, and Impartially, Georgia Sup. Ct. Comm'n on Racial & Ethnic Bias in the Court Sys. (1996) ("[T]he proportion of [non-black] ethnic minorities serving in these communities are generally less than the proportion [reported in the census].")


Report of the New York State Judicial Commission on Minorities, N.Y. State Judicial Comm'n on Minorities (1992) ("Minorities are significantly underrepresented on many juries in the court system.")

Reforming Practices Which Impede the Dispensation of Justice to Minorities in Florida, Fla. Sup. Ct. Racial & Ethnic Bias Comm’n, 13 (1991) ("The present system of selecting jurors... does not result in juries which are racial and ethnic composites of the community.")
Most juries are not representative of the community.
56% AGREE

Most juries are not representative of the community

National

Strongly or somewhat

How the Public Views the State Courts: A 1999 National Survey, by the National Center for State Courts, funded by the Hearst Corp.
57% AGREE

Most juries are not representative of the community

Washington

Most juries are not representative of the community.
Most juries are not representative of the community in Washington.
DISCRIMINATION
THE COMMUNITY

MASTER LIST

QUALIFIED WHEEL

VENIRES

RACE DATA
Why jury systems are not representative

1. Source lists not representative
2. Incorrect addresses on master jury list
3. Economic hardship of jury service
4. Problems with summons process
5. Automation errors
Why jury systems are not representative

1. Source lists not representative
2. Incorrect addresses on master jury list
3. Economic hardship of jury service
4. Problems with summons process
5. Automation errors
THE COMMUNITY

Registered Voters

Licensed Drivers

MASTER JURY LIST
Why jury systems are not representative

1. Source lists not representative
2. Incorrect addresses on master jury list
Homeownership Rates by Major Racial Category and Hispanic/Latino Ethnicity

Homeownership rates for Black/African American, Hispanic/Latino and mixed race households are significantly lower than for Asian and White households.

- Asian: 46%
- Black / African American: 29%
- White: 52%
- Two or more races: 33%
- Hispanic / Latino (of only one race): 27%

48% overall in Seattle

Higher geographic mobility
Why jury systems are not representative

1. Source lists not representative
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3. Economic hardship of jury service
Why jury systems are not representative

1. Source lists not representative
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4. Problems with summons process
Using phones to summon jurors:
Cascade County, MT

- 5% of white households without phone service
- 29% of Native American households without phone service

*State v. LaMere*, 2 P.3d 204, 207 (Mont. 2000)
Using phones to summon jurors: Cascade County, MT

Excluded one-third of prospective jurors
Dividing the district: Cook County, IL

- Split district into North & South for admin purposes
- 25.4% of registered black voters in North vs. 75.4% in South

*People v. Peeples*, 616 N.E.2d 294, 305 (Ill. 1993)
Dividing the district:
Cook County, IL

Jury drawn from North:
Half as many black jurors
Why jury systems are not representative

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4. Problems with summons process
5. Automation errors
United States v. Jackman, 46 F.3d 1240, 1242-43 (2d Cir. 1995)
Hartford + New Britain

63% of the voting-age black population

68% of the voting-age Hispanic population
Why jury systems are not representative

1. Source lists not representative
2. Incorrect addresses on master jury list
3. Economic hardship of jury service
4. Problems with summons process
5. Automation errors
• Evidence of a hopeful future
• Importance of fair cross-section promise
38 states appointed state commissions or task forces between 1996-2006

Shared interest in improvements

Negative consequences
Shared Interest in Representative Jury Pool

- Defendant
- Government
- Courts
- Jury Office Personnel
Jury summons mailed
Jury summons mailed

Jurors at court (qualified & available)
Jurors at court

- Saves money
- Reduces burden
- Increases diversity
Increase yield

Studies

Increase diversity
Shared Interest in Representative Jury Pool

DEFENDANT

GOVERNMENT

COURTS

JURY OFFICE PERSONNEL
National Experts

State Reports

Studies
1. Follow up on non-responders.
2. Reduce undeliverables.
3. Increase juror pay.
4. Shorten jury service.
5. No categorical exemptions.
6. One-step summoning.
7. Add names to source lists.
8. Make deferrals easier.
1. Follow up on non-responders.
2. Reduce undeliverable.
3. Increase juror pay.
4. Shorten jury service.
5. Make deferrals easier.
FOLLOW UP ON NON-RESPONDERS
Thurston County Superior Court
2000 Lakeridge Drive SW, Bldg. 2
Olympia, WA 98502

Juror Call-In Phone #: (360) 786-5566

Official Jury Summons Thurston County

You have been summoned for jury duty for the week of:
Monday, Jan. 1 thru Friday, Jan 5, 2015

Group #

John Doe
111 1st Avenue
City, State Zip
Courts that send a second summons or notice report non-response and failure-to-appear rates

34% - 46% LESS than courts that don’t follow up

Los Angeles, CA

Kings Co., NY

Eau Claire, WI

"Polino Co."

Paula Hannaford-Agor, Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded, 59 Drake L. Rev. 761, 785 (2011) (citing Los Angeles County, CA 2003 Summons Sanction Program (on file with author)).

Paula Hannaford-Agor, Improving Juror Response Rates in the District of Columbia: Final Report, Council for Court Excellence, National Center for State Courts, March 2006, (citing "Data provided to the National Center for State Courts by the Office of Court Administration, Unified Courts of New York State ")


- 38%

- 31%

- 10%

- 47%
Courts should adopt specific uniform guidelines for enforcing a summons for jury service and for monitoring failures to respond to a summons.
National Center for State Courts: Center for Jury Studies

FOLLOW UP

“increases overall jury yield and improves the representativeness of the jury pool”

REDUCE UNDELLIVERABLE SUMMONS
“Undeliverable rates are the single largest drain on jury yield, averaging 13% of all jury-related mailings nationally.”
“In almost every instance, the savings in printing and postage costs greatly exceed the cost of the NCOA update.”

U.S. Postal Service
National-Change-of-Address (NCOA) database

Average: 10%-15% of jury list addresses corrected

Update jury lists more frequently

Select best address when merging lists
Washington, D.C.

Undeliverables

43%

30.5%

INCREASE JUROR PAY & SHORTEN JURY SERVICE
ECONOMIC HARDSHIP
Excusal rate

Juror fee EXCEEDS national average

Juror fee LESS THAN national average

6.8%

8.9%

<table>
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<th>Juror fee</th>
<th>One-day/One Trial</th>
<th>Longer than One-day/One Trial</th>
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<td>EXCEEDS national average</td>
<td>4.1%</td>
<td>8.3%</td>
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<tr>
<td>LESS THAN national average</td>
<td>8.1%</td>
<td>9.3%</td>
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Principle 2(F)

Principle 2(C)

“reduces representativeness of the jury pool”
“relationship between the amount of juror fees . . . and minority representation in the jury pool”

“The [Washington State Jury] Commission views a fee increase as its highest priority.”
ELIMINATE CATEGORICAL EXCLUSIONS
Principle 2(A)(5): All persons should be eligible for jury service except those who: . . . Have been convicted of a felony and are in actual confinement or on probation, parole or other court supervision.
19 states do not bar all felons from jury service.

- Pennsylvania (2016)
- Florida (2001)
Felony conviction + not under authority of department of corrections

Wa. Rev. Code Ann. § 29A.08.520

RIGHT TO VOTE RESTORED?

RIGHT TO JURY RESTORED?
EXCLUDES 0.87% of all people in Washington from JURY SERVICE

EXCLUDES 3.71% of African-Americans in Washington from JURY SERVICE

State by State Data: Washington, The Sentencing Project
“[E]ven small changes in the composition of the jury pool have a large impact”
ONE-STEP SUMMONS PROCESS
TWO STEP

ONE STEP

Summons & Q’naire

Q’naire

Summons
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<td>Erie Co., NY</td>
<td>23%</td>
<td>+ 9%</td>
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<tr>
<td>Eastern Dist., MI</td>
<td>34%</td>
<td>+ 13%</td>
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Washington, D.C.

1. Registered voters
2. Licensed drivers
3. Non-driver’s ID
4. Personal income tax
5. Public benefits list
6. New naturalized citizens

Commission Recommendation:
“seek other source lists”

Add names to source lists

Jackson Co., MS

Sends FTA notice that gives juror choice of two additional dates on which to report

FAILURE TO APPEAR RATE

13.6% 7.2%

Beyond Failure to Appear Notices: A reexamination of Juror Attitudes in the Circuit Court of Jackson County, Missouri and an Examination of Other Techniques to Address Failure to Appear Patterns, Institute for Court Management (May 2008)
Washington, D.C.

Misdemeanor convictions

IN REAL LIFE
THE JURY
DECIDES
THE ENDING

Answer the call to jury service. Harrison Ford did.
www.abajury.org

10 Public outreach & education
Los Angeles, CA

- Improved source lists
- Follow-up effort
- Reduced term of service
- Juror-friendly automation

10% increase

New York, NY

- Improved source list
- Follow-up effort
- Repealed exemptions
- Expanded source lists
- Increased pay
- Easy deferrals

JURY YIELD

25\% increase

• Evidence of a hopeful future
Shared Interest in Representative Jury Pool

- Defendant
- Government
- Courts
- Legislature
- Taxpayers
- Jury Office Personnel
National Experts

State Reports

Studies
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Courts have power to improve racial and ethnic representation in jury pool