

Liberty Includes Right to Jury Of Peers

By James Barnes
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Under a new bill zigzagging its way through the Unicameral at lightning speed, several thousand Nebraskans issued state identification cards may soon enjoy the same civic privilege as those citizens issued a driver's license and voter registration cards – the opportunity to serve on a jury.

Thanks in large part to a recommendation resulting from a comprehensive study conducted by the Nebraska Minority Justice Committee's Minority and Justice Taskforce – a joint effort of the Nebraska Supreme Court and the Nebraska State Bar Association – District 2 State Senator Brenda Council is leading the effort to introduce the first bill in state history that will add Nebraska state identification card holders to the source list database used to compile jury pools.

"I was approached by members of the Minority Justice Taskforce who identified the expansion of the jury pool as being one of the steps that can be taken towards achieving equity in the justice system," said Council, a practicing attorney prior to being elected as the state's first African American woman to serve as Nebraska state senator from District 2. "It made absolute sense to me that those individuals [issued state identification cards] should be



Chairs and staff of the MJC: From left: Jane Schoenike, executive director of the Nebraska State Bar Association; Hon. John Gerrard, Nebraska Supreme Court and co-chair of the MJC; Linda Crump, Office of Equity Access and Diversity UNL and co-chair of the MJC; Liz Neeley, PhD, project director of the MJC; and Judy Beutler, Nebraska Administrative Office of the Courts.

included in the source from which jury pools are drawn because the whole process is if you don't have sufficient numbers in the source pool, you're not going to have sufficient numbers in the jury pool."

According to Council, the primary reason for introducing the legislation was to provide for the addition of persons issued state identification cards as a legitimate addition to the jury source pool.

As of December 15, 2008, the Nebraska Minority Justice Committee received, entered and analyzed data from more than 115,000 juror qualification forms. For the purpose of analysis, the Committee chose to focus on counties with significant minority populations reflecting more than 10 percent, and counties that submitted enough juror qualification forms for statistical reliability.

In the study, the Nebraska Minority Justice Committee posed two critical questions: to what extent are the initial pools of jurors representative of the

counties they serve? And, to what extent are the eligible pools of jurors representative of the counties they serve?

The latter question required a comparison of the demographics of the initial pool and eligible pool for each county. According to the final study report, 2006 data from the U.S. Census Bureau was obtained for counties with significant numbers of minorities to obtain an accurate assessment of each county's demographics. Other criteria for the study included that individuals under the age of 19 are not eligible for jury service. As such, 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.

For example, according to the

study conducted in conjunction with the University of Nebraska Public Policy Center, nearly 22 percent of the population of Douglas County, which had the third highest number of non-whites by percentage behind Dakota and Dawson counties respectively, is made up of non-white citizens. However, Douglas had more than 27,000 juror qualification forms analyzed, the highest number of any county evaluated for this study.

According to the study's conclusions, "based on an examination of juror qualification forms from eight of Nebraska's most diverse counties, data indicate that there are significant racial disparities in the initial and eligible pools of jurors." And, following a thorough review of other state jury compilation processes, it was ultimately determined that including additional source lists "was the best option for attempting to achieve master jury lists which are more representative of our communities."

The Committee's report ex-

plains that state law provides that master jury lists are comprised by combining the lists of registered voters and registered drivers in Nebraska. According to the report, anecdotal concerns were raised that because minorities may be less likely to be registered to vote and to drive, "the current source lists may not effectively achieve a representative master list."

Non-white ID Card Holders

In a press release obtained from the Minority Justice Committee, it said, "data provided by the Department of Motor Vehicles does suggest that non-whites (Asians, Blacks, Hispanics and American Indians) comprise a much greater percentage of state identification card holders than of registered drivers."

In this context, it was determined that the addition of state identification card holders as a source list would likely increase the diversity of the master list and increase the pool of potential jurors by up to six percent or See PEERS, page 6

Peers

(Continued from page 2)

approximately 77,000 individuals.

"The United States Supreme Court has made it clear that the selection of jurors from a representative cross section of the community is an essential component of the U.S. Constitution's Sixth Amendment right to a jury trial; that '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,'" commented Riko Bishop, co-chair of the Minority Justice Committee's Access to Justice Subcommittee.

Mark Young, co-chair of the Access to Justice Subcommittee, expressed the importance of

continued observation of the jury system. "The jury system is a fundamental element of the justice system. The assurance that a defendant will receive a trial by a representative cross section of his or her community is essential to maintain confidence in the court system. The clerks of the District Court and jury commissioners in Nebraska should be applauded for their cooperation in examining this systemic issue and their collective efforts in working with the Minority Justice Committee to find ways to improve the jury selection process."

This is not the first time that the Committee has played a role in making legislative changes to improve the jury selection process. LB 19 was passed in 2003 to require that jury pool master

LIBERTY

The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty; but in using the same *word* we do not all mean the same *thing*.

— Abraham Lincoln April 18, 1864

lists be updated on an annual basis, so that the master list better reflected the current community population. Prior to that time, master lists were refreshed much less frequently, often due to cost factors, so the new law brought greater consistency in practices across the state and resulted in more current data in

the jury selection process.

"This committee will remain vigilant in its monitoring of the jury selection process in Nebraska, and will continue to work hand-in-hand with court officials to explore additional options to ensure that Nebraska juries are drawn from representative cross sections of its com-

munities," said Bishop.

Senator Council likes the odds of LB 305 being passed.

"I think it has a very good chance. It advanced out of committee on a unanimous vote and it was unanimously voted to be attached to a bill that has been prioritized by the judiciary committee, so its chances of not only being heard this session but being enacted this session are greatly enhanced," Council said in April. "The fact that it's now included as a provision in an omnibus court bill increases, I believe, likelihood of passage."

The Minority Justice Committee's Report, "Representative Juries: Examining the Initial and Eligible Pools of Jurors" is available on the Nebraska State Bar Association's website: www.nebar.com.