

Schult v. State of Franklin

NOTE: This is a closed-case problem. The only sources which can be used to argue from are the facts below and the provided cases. For more information, see footnote 6 or Rule 3.5.

The city of Silliman is a small-sized city of approximately 200,000 people.¹ It is the capital and largest city in the State of Franklin and is notable for its diversity and multiculturalism. From the period of April 15th to July 7th 2019, there have been a string of arson attacks in the city with seven local businesses destroyed during the night. There have been no deaths; however, each business that has been targeted has been completely destroyed and nine passersby have been injured with two hospitalizations since the arsons. Crime scene investigators have determined that the seven arsons were likely committed by the same person because each crime scene features a characteristic burn pattern in the shape of an X with a circle around it covering the floor of each room and there were traces of an ignition mixture made of kerosene and paint thinner in a signature 2 to 1 ratio found at all crime scenes.

When the Silliman Police Department was unable to solve this string of arsons, the Franklin State Police, the chief law enforcement body of the State of Franklin, took over the case. The Franklin State Police uncovered a blog called “Communism Global,” which has existed since February 13th, 2019. “Communism Global” is hosted by the popular blog platform LetterMill, which allows anyone to create a customized blog. In the blog’s description, it describes itself as a “manifesto for a communist world state.” The logo for the blog is a red X with a circle around it. On the blog, there are numerous posts decrying the capitalist world order and restrictive immigration policies. The blog has a recurring column titled “Accountability Time: Businesses That Thrive on Oppression,” which describes a local Silliman business who the author believes has taken advantage of racism for personal economic benefit. The Franklin State Police noted that each of the seven columns in the “Accountability Time” series corresponded to one of the seven businesses that were targeted by the arson attacks. The owner of the blog was suspected to have carried out these attacks.

Unable to determine the ownership of the blog, the Franklin State Police began investigating the records of individuals convicted of property crimes, including Ryan Schult, who had previously spent one year in prison for felony vandalism. Schult is a free spirit and noted his occupation as “SoundCloud rapper” on his most recent tax return. Ryan Schult is a lifelong citizen of Silliman and has no criminal record except for the past conviction of vandalism. The Franklin State Police began this investigation by viewing the internet history of these property crime convicts since January 2019, one month before the first publication on the “Global Communism” blog. The internet history was provided through the Internet Service Providers of the former property crime convicts, including home Wi-Fi networks and cell service providers, acquired under a court order.

In Ryan Schult’s internet search history, the Franklin State Police Department found specific searches flagged as suspicious, that were conducted over a 6-days shortly before the string of arsons began. On April 3, 2019, Schult searched on SearchPlex, a popular search engine, for “how to burn down a building” and visited 6 separate pages of Query, a user-generated question-and-answer

¹ Franklin is the 51st state of the United States. The capital city of Silliman is located in the northeast of the state. Franklin has a court system that consists of district courts which hear misdemeanors and minor civil matters, circuit courts which hear all other matters of first impression (along with *de novo* reviews of matters appealed from the district courts) and the Franklin Supreme Court, the state court of last resort which has non-discretionary appellate jurisdiction over all cases in the state.

website, that explained various forms of pyrotechnics and arson. On April 5, 2019, Schult searched the following: “how to make homemade lighter fluid,” “paint thinner flammability,” “kerosene and paint thinner combination burning temperature,” and “ratio kerosene paint thinner highest burning temperature,” visiting several more Query webpages, as well as multiple independently hosted websites centered around grilling and pyrotechnics. One of these web pages specifically recommended a 2 to 1 ratio of kerosene and paint thinner. On April 6, 2019, Schult looked up “arson laws franklin state.” On April 9, 2019, Schult searched “where to buy paint thinner Silliman.” In the months from April to July, 2019, when the Franklin State Police began their investigation, he searched the addresses of 11 local businesses, including all 7 of the businesses attacked using SearchPlex. SearchPlex offers a feature called “street-level view” where a user can select a location on a map and view a 360° image of any location. Schult entered a street-level view of these 7 businesses but did not do so for the other 4 businesses that he searched.

In the six months that the Franklin State Police viewed, Schult also regularly visited LetterMill. In particular, the URLs that he visited included the ones to edit the seven articles in the “Accountability Time” series, indicating that he was able to edit the articles. Using the evidence from his search and blog history, Ryan Schult was arrested and taken to trial.

At trial, Ryan Schult exercised his fifth amendment right to remain silent on the allegations. The only evidence provided at trial was the internet use history collected by the Franklin State Police. He objected to the use of his internet history, including his search history on SearchPlex and Query and his history on LetterMill on the grounds that it violated his 4th amendment right to be free from unreasonable search and seizure. During an exclusionary hearing to resolve the merits of Schult’s 4th Amendment claim, Schult testified that he searched the relevant terms using private browsing mode on the web browser Quest exclusively on his home desktop. Quest features a private browsing mode where users can browse without their internet search history being saved by the browser. Upon launch, Quest browser private mode has a message to users in the center of the screen in large font that says, “Welcome to private mode, where we won’t keep track of your internet history so you can browse securely.” At the bottom of the welcome page, in a much smaller font, there is a link that says, “click here to learn more about what is and isn’t tracked using private mode.” When you click on this link, a pop-up window with more detailed information about private browsing mode appears. On this page, a line reads “Although Quest does not track your internet search history, this information may still be available to others including your internet service provider or the administrator of your Wi-Fi network.” Ryan Schult claims that he has never clicked this link or viewed this pop-up window and thus retained a reasonable expectation of privacy. The trial court found Schult’s proffered explanations to be credible, but nevertheless declined to exclude the evidence.

Schult was tried in the Franklin First Circuit Court, whose jurisdiction covers the entirety of the city of Silliman and no other territory in Franklin. Separate to his 4th Amendment claims, and prior to the empanelment of the jury in his case, Schult raised a 6th amendment fair cross section complaint against the English-Speaking Jurors Act, which he contended violated his right to be tried before a jury that was composed of a fair cross-section of the community. Schult self-identifies as a white, non-Latino, non-Hispanic man, and has consistently identified himself as such on every decennial census.

The English-Speaking Jurors Act is a state statute in the State of Franklin that was passed in order to, as noted in the preamble of the statute, “ensure that Franklin jurors were capable of

understanding and communicating the full details of the case and the law.” The act requires all jurors in the State of Franklin to be conversant in English. If a person is not conversant in English when they are called to jury service, then they are not selected for the jury panel. Furthermore, they are permanently struck from the jury pool with no chance of reinstatement. There is no law in the state of Franklin requiring that juries represent a fair cross-section of the community nor any provision in the Franklin State Constitution that does so, meaning any claim rests entirely on the Sixth Amendment to the U.S. Constitution.

The State of Franklin uses the Department of Motor Vehicles (DMV) records to create a list of potential jurors. All citizens 18 or older who live within the jurisdiction of the court hearing the case are qualified for jury service unless barred by another law such as the English-Speaking Jurors Act, or an act exempting active-duty military members or those currently serving a sentence for a felony. The juror list only receives new registrants from the DMV from the time of the last list creation, as opposed to receiving a list of all currently registered motorists in the Silliman area. The State of Franklin also sends a form to all citizens that allows them to request exemption from jury service for an undue hardship, which may include the need to care for a sick family member, a personal disability, a need to care for an infant, or a similar emergency. This form is sent in both English and Spanish.

In order to provide a sufficient number of potential jurors to each courtroom, each day the clerk’s office of the Franklin First Circuit Court randomly selects a set of people from the court’s maintained list of potential jurors and orders them to appear at the clerk’s office. Once a potential juror arrives at the clerk’s office, they are asked a series of screening questions, including if they can understand the English language. If they answer this question in the negative, they are thanked and excused from jury service, and their name is permanently deleted from the Court’s list of potential jurors, per the English-Speaking Jurors Act. After those deemed ineligible for jury service are removed in this manner, those sent to each court room for a panel to be selected from each day known as a venire.

Each venire sits before the attorneys in the case, who put the jurors through a process known as voir dire, where they ask questions of the jurors. These questions are designed to show if the juror is suitable for the case. A juror may be removed for reasons such as prior information on the case, knowing a party to the case, or any prior experiences or beliefs that would make a juror biased. If at any point a juror is unable to respond to a question due to a language barrier, that juror is removed from the jury pool per the English-Speaking Jurors Act. After removing these jurors for cause, attorneys may then remove a limited quantity of jurors without cause until 12 jurors are selected. Schult did not raise a 14th amendment claim, and does not argue that the prosecutor exercised any of their peremptory strikes on any impermissible basis.

Silliman is a common destination for immigrants from Mexico, Central America, and South America. As a result, a large proportion of the population of the city is Hispanic, an immigrant, or a non-native English speaker. Table 1 displays the proportion of Hispanic citizens of Silliman, as designated by the United States Census, a naturalized immigrant, or a non-native English speaker, meaning someone who does not speak English as a first language. These statistics are for the year 2019; however, they are largely similar to the numbers in previous years. 95% of immigrants to Silliman come from countries with a predominantly Hispanic population, and because of this high level of immigration from Spanish-speaking countries, 90% of those who are non-native English speakers in Silliman speak Spanish as their first language. 75% of non-native English speakers are

fully conversant in English and 80% of those who speak English only as a second language have learned it since moving to Silliman.

Table 1: Demographics of Silliman			
Population	National Proportion	Proportion in Silliman	Proportion on Jury Venires in Silliman
Hispanic	18% ²	38%	29%
Naturalized Immigrant	7% ³	20%	9%
Non-Native English Speaker	18% ⁴	27%	8%

The court typically recognizes 3 methods to measure the extent to which a jury venire is unrepresentative. These are absolute disparity, which is the difference in the percentage of people from a group in the population from which the venire is drawn and the percentage of the people in jury venires from that group, comparative disparity, which is the absolute disparity divided by the percentage of the relevant population in the community at large, and standard deviation, a statistical measure of how far a measure is from the average based on how far apart different observations are expected to be. Typically, 99.7% of all observations are within 3 standard deviations, 95% of observations are within 2 standard deviations, and 68% of observations are within 1 standard deviation of the mean. These three measures for these three demographics in Silliman are displayed in Table 2.⁵

² “Office of Minority Health,” Hispanic/Latino - The Office of Minority Health, accessed February 27, 2022, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=64#:~:text=According%20to%20the%202019%20U.S.,of%20the%20U.S.%20total%20population.>

³ “Immigrants in the United States,” American Immigration Council, September 21, 2021, <https://www.americanimmigrationcouncil.org/research/immigrants-in-the-united-states>.

⁴ Jeanne Batalova and Jie Zong, “The Limited English Proficient Population in the United States in 2013,” [migrationpolicy.org](https://www.migrationpolicy.org), July 20, 2020, <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states-2013>.

⁵ For the purposes of this case, the math behind these measures is not essential beyond what is included in this case description. Students only need to understand that all three measures offer different ways to quantify jury disparity and that a higher number indicates a stronger disparity within each measure.

Table 2: Three Measures of Disparity			
Population	Absolute Disparity	Comparative Disparity	Standard Deviation
Hispanic	9%	24%	1.31
Naturalized Immigrant	11%	55%	1.94
Non-Native English Speaker	19%	70%	3.03

Ryan Schult received an evidentiary hearing to challenge the jury composition. In his submissions through counsel, Ryan Schult cited a study commissioned by the Silliman City Council on the effect of the English-Speaking Jurors Act on the Silliman Circuit Court, which estimates that 90% of jury summons call someone who is dismissed on account of their inadequate English ability and that jury 4% of those summoned to jury service are non-native English speakers, all of whom are removed permanently from the jury pool. Ryan Schult argued that the permanent removal of Spanish speakers from the jury list systematically created an unrepresentative cross-section of the community and therefore violated his rights under the Sixth Amendment to the United States Constitution.

Contrary to his pleas, Schult was convicted of multiple counts of arson by the First Circuit Court of Franklin and was sentenced to 127 months in prison. Schult appealed his decision to the Franklin State Supreme Court on two constitutional grounds. First, that the state violated his reasonable expectation of privacy by looking at his internet history without receiving a warrant, and second, that the English-Speaking Jurors Act constituted a violation of his Sixth Amendment right to a jury that represents a fair cross-section of the community. The Franklin State Supreme Court affirmed the decision of the circuit court on both issues, so Schult petitioned for a writ of certiorari, which the United States Supreme Court granted on the following two issues:

1. Was viewing Ryan Schult’s internet history an impermissible search under the Fourth Amendment protection of activities where the individual possesses a reasonable expectation of privacy?
2. Does the English-Speaking Jurors Act violate Ryan Schult’s Sixth Amendment right to an impartial jury?

Table of Authorities⁶

Fourth Amendment:

[Katz v. United States, 389 U.S. 347 \(1967\)](#)

[Smith v. Maryland, 442 U.S. 735 \(1979\)](#)

[Florida v. Riley, 488 U.S. 445 \(1989\)](#)

[Indianapolis v. Edmond, 531 U.S. 32 \(2000\)](#)

[Kyllo v. United States, 533 U.S. 27 \(2001\)](#)

[Carpenter v. United States, 585 U.S. _____ \(2018\)](#)

Sixth Amendment:

[Carter v. Jury Commission of Greene County, 396 U.S. 320 \(1970\)](#)

[Taylor v. Louisiana, 419 U.S. 522 \(1975\)](#)

[Duren v. Missouri, 439 U.S. 357 \(1979\)](#)

[Lockhart v. McCree, 476 U.S. 162 \(1986\)](#)

[Holland v. Illinois, 493 U.S. 474 \(1990\)](#)

[Berghuis v. Smith, 559 U.S. 314 \(2010\)](#)

⁶ These are the only cases you may cite in your argument. You may use cases cited within these cases, but you must specify where the citation comes from. For example, if you wish to cite a quote from *Michigan v. Sitz* that is contained in the opinion for *Indianapolis v. Edmond*, you must say “*Michigan v. Sitz* as cited in *Indianapolis v. Edmond*” or use similar language to convey that you are citing a case contained within one of the approved cases.

Glossary:⁷

(All definitions taken directly or adapted from Wex at Cornell Legal Information Institute)

De novo: From Latin, meaning “from the new.” When a court hears a case de novo, it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case. An appellate court hearing a case de novo may refer to the lower court’s record to determine the facts, but will rule on the evidence and matters of law without deferring to that court’s findings. A trial court may also hear a case de novo following the appeal of an arbitration decision.

De novo review occurs when a court decides an issue without deference to a previous court's decision. Trial de novo occurs when a court decides all issues in a case, as if the case was being heard for the first time.

Disparity:

- **Absolute Disparity:** A calculation used to analyze a claim that a jury pool did not represent a fair cross-section of the community. Calculated by subtracting the percentage of a group in the jury pool from the percentage of that group in the general population.
- **Comparative Disparity:** A calculation used to analyze a claim that a jury pool did not represent a fair cross-section of the community. Calculated by dividing the percentage of absolute disparity by the percentage of the distinct group in the community.

First Impression: A new legal issue or interpretation that is brought before a court. In a case of first impression, the exact issue before the court has not been addressed by that court, or within that court's jurisdiction, thus there is no binding authority on that matter.

Cases of first impression often occur in connection with recently passed legislation, or when that issue has been addressed by other jurisdictions, but not in the jurisdiction of the presented court.

Courts may seek guidance from other jurisdictions, or by making analogies to related or similar issues.

Jury venire: A panel of prospective jurors. A jury is eventually chosen from the venire.

Jury voir dire: French for "to speak the truth." The process through which potential jurors from the venire are questioned by either the judge or a lawyer to determine their suitability for jury service. Also the preliminary questioning of witnesses (especially experts) to determine their competence to testify.

Peremptory Challenge: One of a limited number of special jury challenges given to each party before trial. A peremptory challenge results in the exclusion of a potential juror without the need for any reason or explanation - unless the opposing party presents a prima facie argument that this challenge was used to discriminate on the basis of race, ethnicity, or sex.

Writ of Certiorari: The process by which the Supreme Court of the United States (and some other appellate courts with discretionary jurisdiction) agrees to review a lower court’s ruling. “Granting certiorari” or “granting cert” means that the Court has agreed to hear a particular case.

⁷ This Glossary represents a non-exhaustive list of potentially challenging legal terms. To request additional definitions, please email yumc@yalemootcourt.org.