

# RACIAL AND ETHNIC DISPARITIES IN ALAMEDA COUNTY JURY POOLS



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## I. Introduction

Alameda County Superior Court suffers from systemic underrepresentation of African-American and Latino jurors in its jury pools. Despite the diversity of the county, Alameda County trial attorneys have had to select jurors from pools with insufficient representation from communities of color. We undertook this data collection and research project to understand the jury summons process and response rates in Alameda and similar California counties, the extent and cause of racial and ethnic disparity in Alameda County Superior Court jury pools, and how this problem can be remedied.

This study involves the review and analysis of data related to the jury summons process used by several California counties and demographic data for jurors in 11 Alameda County Superior Court felony cases. As part of our research, we also interviewed experts in the field of jury selection. This report summarizes our research and findings as well as makes policy recommendations for remedying the problem.

## II. Research and Findings

### a. Jury Summons Process

In 2008, the ACLU sent a Public Records Act (PRA) request to superior courts in 14 counties<sup>1</sup> regarding the jury selection process used in each county. Of the counties surveyed, 10 provided substantive responses, including Alameda County. In addition, an expert in jury systems at the National Center for State Courts (NCSC) was interviewed regarding her extensive knowledge of jury systems in California.

According to the Alameda County Superior Court, its jury summons process is implemented by Affiliated Computer Services Inc. (ACS Inc.).<sup>2</sup> Twice a year the county generates and provides directly to ACS Inc. two source lists: (1) a list of registered voters within the county, and (2) a Department of Motor Vehicles list of licensed drivers and identification cardholders residing within the area served by the court. ACS Inc. then processes the two lists using the computerized jury management system, Juror For Windows (JFW). The lists are merged to create a new Master Source List, which is then run through the National Change of Address Registry to update addresses. After creating the Master Source List, ACS Inc. generates the lists used to send weekly summonses and then mails the summons to prospective jurors. It is not clear if the change of address registry is checked only when the Master Source List is generated, or if it is also checked prior to issuing a summons. Neither Alameda County Superior Court nor ACS Inc. collects or maintains demographic data for jurors or prospective jurors.

Alameda County Superior Court has no system in place for addressing jurors who fail to respond to a summons. In 2008, an official who works for the Planning and Research Bureau of the Alameda County

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<sup>1</sup> The 14 counties surveyed were: Alameda, Colusa, Contra Costa, Imperial, Kern, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Barbara, Stanislaus, Tulare, and San Diego. All of the counties provided substantive responses except: Contra Costa, Kern, Sacramento, and Santa Barbara.

<sup>2</sup> In response to the PRA request, the Alameda County Superior Court provided a brief description of its jury selection process and produced a July 2, 2007 Service Agreement between ACS and the Superior Court.

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Superior Court reported that the Superior Court was developing a plan to implement a failure to appear program for jurors. To our knowledge, the plan was never implemented.

Of the superior courts responding to our survey, Alameda County was the only one that did not have a process in place to respond to jurors who fail to appear. San Diego County stated that jurors who fail to respond may be held in contempt. The other eight counties that responded to our PRA request provided detailed explanations for their process for responding when a juror fails to appear. Some counties simply mail a post card informing the juror that s/he failed to appear and must appear at a second court date or s/he may be held in contempt. Other counties actually hold contempt calendars for jurors who fail to appear.

The NCSC expert confirmed that Alameda County Superior Court is one of only four in California that continues to use the JFW computer program. The expert reported that most counties now use JSI Jury+ Next Generation, which she described as a more sophisticated program that allows the local superior court to easily track and create reports on juror reporting rates by zip code. Although not an exact science, analyzing jury contact and responses by zip code can be an effective proxy for race and ethnicity because housing in Alameda tends to be highly segregated.

The expert also noted that Alameda County Superior Court routinely summons many more jurors than it actually needs. Looking at data from 2007, the last year available, the expert noted that Alameda County Superior Court qualified over 190,000 potential jurors, but only 41,000 served.<sup>3</sup> In other words, the Superior Court summoned almost five times as many jurors as needed, at an enormous cost to the court.

### **b. Demographic Data from 11 Alameda County Trials**

To determine whether certain minorities are in fact underrepresented in Alameda County jury pools, attorneys with the Alameda County Bar Association Indigent Defense Panel and the Public Defender's Office cooperated in collecting jury pool data. Our goal was to capture demographic information for all jurors that were sent to a court room for trial in ten cases, including jurors ultimately dismissed for hardships. We were able to collect race and ethnicity data for potential jurors in 11 felony cases set for trial in the Rene C. Davidson Courthouse, two from 2009 and nine from 2010. In total, we collected demographic information for nearly 1,500 potential jurors.

For the purpose of determining the demographics of Alameda County's jury eligible population, we used a declaration that was prepared for the Alameda County trial of *People v. Stuart Alexander* in 2002. In the declaration, Professor Weeks, a demographer at San Diego State University, estimated the jury eligible population for Alameda County, using the 2000 Census data. To arrive at this estimate, Professor Weeks took into account the number of people who are not eligible for jury services because they do not speak English, are not citizens, are under 18, or have a felony conviction. Thus, his estimate should be an accurate assessment of who is actually eligible for jury service in Alameda County, much more so than simply reviewing the Census report of the race and ethnicity of all people living in Alameda County. It should be noted, however, that the Census data on which Professor Weeks relied is now ten years old and the demographics of the county may have changed by two or three percent in some categories.

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<sup>3</sup> The total number of individuals considered to have "served" jury duty includes individuals held on telephone standby or who appeared in court, but did not actually sit on a jury.

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As the charts below demonstrate, our data reveals a substantial underrepresentation of African Americans in Alameda County jury pools and, to a lesser extent, Latinos. African Americans represent 18% of the eligible jury pool in the county but comprised only 8% of the people who appeared for jury duty in the 11 trials surveyed. This is an absolute disparity of 10%. It also means that less than half of the African Americans eligible for jury service are actually appearing for jury service.

Similarly, Latinos represent 12% of the eligible jury pool but compromised only 8% of the individuals appearing for jury service. This is an absolute disparity of 6% and means that one-third of eligible Latino jurors are not appearing for service.

Interestingly, white jurors appeared in the jury pool in exactly the ratio predicted by Professor Weeks, 54%, while jurors who identified as Asian or Pacific Islander were actually overrepresented, constituting 26% of those who appeared for jury service but only 15% of the eligible population. The category “other” includes people who identified as mixed race without identifying one primary racial identity, and individuals who did not identify a race or ethnicity.

**Demographer’s Estimate of Alameda County Jury Eligible Population, based on 2000 Census**

Caucasian	Black/AA	Hispanic	Asian/PI	Other
54%	18%	12%	15%	01%

**Data from 11 Alameda County Jury Pools in Felony Trials, 2009-2010 Counts/Percentages**

	Caucasian		Black/AA		Hispanic		Asian/PI		Other		Total Number
	Total	Percent	Total	Percent	Total	Percent	Total	Percent	Total	Percent	
Keller 1	45	56%	8	10%	10	12%	18	22%	0	0%	81
Keller 2	65	53%	6	5%	12	10%	39	32%	0	0%	122
Arroyo	37	50%	6	8%	3	4%	28	38%	0	0%	74
Clay	45	56%	14	18%	4	5%	14	18%	3	4%	80
Giller	60	51%	13	11%	5	4%	36	31%	4	3%	118
Woods	44	58%	4	5%	5	7%	22	29%	1	1%	76
Penrod	218	62%	24	7%	25	7%	76	22%	8	2%	351
Billingsley	67	46%	13	9%	12	8%	44	30%	10	7%	146
Broom	96	53%	14	8%	12	7%	49	27%	9	5%	180
Giller 2	78	50%	12	8%	20	13%	36	23%	10	6%	156
Duvernay	25	36%	3	4%	6	9%	22	32%	13	19%	69
<b>TOTALS</b>	<b>780</b>	<b>54%</b>	<b>117</b>	<b>8%</b>	<b>114</b>	<b>8%</b>	<b>384</b>	<b>26%</b>	<b>58</b>	<b>4%</b>	<b>1453</b>

These disparities are shocking in their revelation, particularly because these statistics come from felony trials. Who sits on a jury can have a significant impact on the fairness of a trial. As a result, the federal courts and most state courts have adopted outreach strategies to increase the total number of prospective jurors and to create jury pools which reflect more accurately the communities from which they come. Based on our preliminary research, as shown above, the jury pools in Alameda County generally do not reflect the composition of the people who live in the county. There are substantial racial and ethnic disparities that call into serious question the fairness of the Alameda County Superior Court criminal justice system.

### c. Potential Causes of Disparity

Our research coupled with interviews with the National Center for State Courts and David Kairys, a law professor at Temple University and expert on jury issues, identified several potential causes of the underrepresentation of African Americans and Latinos in Alameda County jury pools:

- i. **Problems with the computer program:** In some places, computer programs have been improperly designed to randomize the source list. As a result, individuals whose names are spelled a certain way or who live in a particular town have been completely excluded from jury service. An error such as this could explain the overrepresentation of Asians in the Alameda County juror pools, although the NCSC expert said such problems are rare with commercial software (as opposed to “homemade” programs). The expert also stated that the current computer program, JFW, is no longer used by the majority of counties and that there are more sophisticated programs with greater tracking availability that is used in many locations.
- ii. **Delivery failure:** One high likely contributing factor to the racial and ethnic disparities in the county’s juries is the failure to deliver the summons to the correct address. Especially in the current economy, more people are moving more often. Individuals with less money are more likely to move within a year, and African Americans and Latinos are more likely to be lower income. Delivery rates can be improved by: (1) using additional source lists for services, such as public benefits payments, utilities, or other services where an individual is more motivated to maintain a current address than with DMV or voter registration records; (2) using the change of address registry before mailing the summons, rather than only when the master list is created, and (3) reviewing by hand summons returned to sender and updating records accordingly.
- iii. **Lack of failure to appear program:** In the National Center for State Courts expert’s opinion, the absence of a failure to appear program in Alameda County is the most likely explanation for the disparity. She reports that simply sending a second notice to jurors who failed to appear increases response rates by 25-46%. Generally speaking, increasing the response rates of jurors also increases the diversity of jury pools. More aggressive programs that include a highly publicized contempt docket and work with people to accommodate their jury service, are even more effective. She suggested the costs of such a program could easily be provided for if the Superior Court reduced the number of people unnecessarily summoned for jury service in the first place.

### III. Policy Recommendations

Although this is a small scale study, our research has revealed that there is in fact a racial and ethnic disparity in the composition of Alameda County Superior Court jury pools. Having established this disparity, it is essential that the Superior Court take aggressive steps to determine the extent to which the problem exists and to continue to monitor the efficacy of any solutions implemented to address the problem. Our research has also led us to several potential solutions for addressing the problem, including:

- **Implement policy changes to minimize delivery failure:** As discussed above, Alameda County Superior Court jury summons delivery rates can be improved by: (1) using additional source lists for

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services, such as public benefits payments, public utilities, or other services where an individual is more motivated to maintain a current address than DMV or voter registration; (2) using the change of address registry before mailing the summons, rather than only when the master list is created, and (3) reviewing by hand summons returned to sender and updating records accordingly.

- **Update the computer program used to generate jury lists:** Alameda County Superior Court should require its vendor to use more sophisticated jury selection software, such as JSI Jury+ Next Generation, in generating both the Master Source List and the weekly jury summons lists. It is essential that any computer program selected be able to track and otherwise monitor demographic information for potential jurors and their response rates to ensure that the Superior Court can monitor the composition of its jury pools.
- **Institute a failure to appear program:** Alameda County Superior Court should consider instituting a failure to appear program that requires, at a minimum, the issuance of a second notice to prospective jurors. The Superior Court is likely to improve its response rates by at least 25% by this simple change to its current policy. Although there are costs to implement such a program, the Superior Court is likely to cover such costs by reducing the number of people unnecessarily summoned in the first instance.

### IV. Conclusion

Alameda County Superior Court jury pools suffer from a racial and ethnic disparity that jeopardizes the administration of justice. The Alameda County Superior Court should take immediate action to address the disparities revealed by this report by establishing and implementing a plan for improving its jury selection process.

**Appendix:**

**Resources for Improving Alameda County's Jury Selection Process**

The following resources are available to assist the Alameda County Superior Court in remedying the underrepresentation of African-American and Latino jurors and generally improving the jury management system used by the Superior Court:

**Paula L. Hannaford-Agor**

Director of the [Center for Jury Studies](#)

National Center for State Courts

(800)616-6164

[phannaford@ncsc.org](mailto:phannaford@ncsc.org)

Ms. Hannaford is one of the nation's leading experts in jury system management and provided background information for this report. She indicated that she would be more than happy to provide technical assistance to the Alameda County Superior Court to address these issues.

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Ms. Greenaway at the AOC is also available to provide technical assistance to California Superior Courts seeking to improve their jury systems and often works with Ms. Hannaford.







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