

VIII. APPENDIX—SUMMARY OF PUBLIC COMMENTS

List of Commenters	Introductory/General Comments
Alameda County Public Defenders by Brendon D. Woods, Public Defender	<p>The Alameda County Public Defender’s Office represents thousands of people accused of crimes in our county each year, including representing clients at jury trial. We are deeply committed to the Work Group’s stated goals of eliminating discrimination during jury selection and achieving a fair cross-section of the community in juries, both of which are essential to the fair administration of justice. We also appreciate the invitation to comment. Our responses to the questions posed by the Work Group follow.</p>
California Attorneys for Criminal Justice by Allison Zuvelda, President and Stephen A. Munkelt, Executive Director	<p>The California Attorneys for Criminal Justice (CACJ) thank you for the opportunity to comment on the challenges in providing fair juries which represent a true cross-section of the community for all defendants in California.</p> <p>We are aware that you have received extensive, detailed, well-sourced comments from other groups or organizations, including Professor Elisabeth Semel from Berkeley Law, the principal author of <i>Whitewashing the Jury Box</i> and a co-author of AB 3070, Lois Heaney and the National Jury Project, and a group of jury composition scholars including Professors Jeffrey Abramson and Nina Chernoff. CACJ supports the views expressed in those comments, and commends the source materials cited by those experts for study by the working group.</p> <p>Rather than duplicate those fine efforts, our comments are developed from CACJ members’ extensive experience in jury trials, including what we think are common-sense reforms to lower barriers to jury service, especially for racially diverse and lower income members of the potential jury pool. In that respect our comments are more like those from the California Public Defenders Association (CPDA) submitted by Laura Arnold than like the jury composition experts referenced above.</p>
California Judges Association by Nicole Virga Bautista, President and CEO	<p>In June of 2020, under the leadership of Hon. B. Tam Nomoto Schumann, then President of the California Judges Association (CJA), CJA established a Task Force on the Elimination of Bias and Inequality in Our Justice System. The Task Force is tasked with identifying sources of bias and inequality and making recommendations on necessary, and appropriate actions to eradicate them. The Task Force, in responding to the Supreme Court of California's Jury Selection Work Group’s Invitation to Comment on jury diversification, relied on the following sources to make suggestions as to how the process of jury service and summons can guard against impermissible discrimination in jury selection and further the goal of ensuring that all juries reflect a fair cross-section of the community:</p> <ol style="list-style-type: none"> 1. The report of the State of Connecticut Jury Selection Task Force, available at https://jud.ct.gov/Committees/jury_taskforce/ReportJurySelectionTaskForce.pdf. 2. Washington State Jury Commission, Report to the Judicial Administration, available at: http://www.courts.wa.gov/committee/pdf/Jury_Commission_Report.pdf. 3. Randall, Woods, and Martin, <i>Racial Representativeness of Juries : An Analysis of Source List and Administrative Effects on the Jury Pool</i>, (2008) (a study published in Vol. 29 of the Justice System Journal and partially funded by the State Justice Institute and the Ohio Supreme Court), available at: https://www.ncsc.org/_data/assets/pdf_file/0030/17499/racial-representativeness-of-juries.pdf. 4. American Bar Association’s <i>Principles for Juries and Jury Trials</i>, (2005), available at: http://www.amjudges.org/conferences/2010Annual/SpeakerMaterials/44%20-%20Mize%20ABA%20jury%20principles.pdf 5. Juror Participation Initiative Report, The First Judicial District of Pennsylvania, available at:

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	https://www.courts.phila.gov/pdf/report/FJD_JPIC_Final.pdf
California Public Defenders Association by Laura Arnold, President	<p>The California Public Defenders Association (CPDA), a statewide organization of approximately 4,000 criminal defense practitioners, in addition to endorsing the comments made by NJP Litigation Consulting and the comments made by Professor Semel and other law professors and social scientists engaged in research of the jury system, respectfully submits the following responses to the questions posed by the Judicial Council working group:</p>
Community Legal Services in East Palo Alto; Communities United for Restorative Youth Justice; Ella Baker Center; Initiate Justice; Justice Reinvestment Coalition of Alameda County; Silicon Valley De-Bug (“Legal Services Advocates”)	<p>On behalf of [advocacy organization]* I am responding to the invitation for public comment. We applaud this Work Group’s mission of eliminating discrimination in jury selection and achieving a fairer cross-section of the community. The idea that litigants can have their cases heard by peers – by the community itself – is a primary source of the justice system’s legitimacy. Juries can only speak with the voice and authority of the community if they truly and accurately reflect that community.</p> <p>The Jury Selection Work Group is well placed to help usher in a new era of fairness in California juries. Three new laws that will be implemented over the next few years have the potential to bring California much closer to the “fair cross section of the community” standard adopted by the United States Congress in 1968 with the Jury Selection and Service Act:</p> <ul style="list-style-type: none"> • Senate Bill 310, which allowed people with felony convictions to serve on juries • Senate Bill 592, which expanded the lists that jury commissioners draw from to create jury pools to include a list of state tax filers, and • Assembly Bill 3070, which created a procedure to eliminate the discriminatory use of peremptory challenges <p>The success of these reforms will be dependent on how they are implemented in individual courthouses in all fifty-eight California counties. A primary task that is essential to determining the impact of these efforts is to obtain accurate demographic information for juries across the state. Only with this data can a group like this measure whether its efforts are truly moving California juries toward a fair cross-section of the community.</p> <p>Eliminating formal barriers to jury service is only a part of the effort towards more fair juries. We would also urge this Group to look at practical barriers to jury service. Financial burdens and travel burdens fall particularly hard on communities of color. Policies that require travelling great distances, often via public transportation, or that force people to choose between their jobs or caring for their children and serving on a jury can be as detrimental as statutory exclusions. We cannot be satisfied with formal fairness but practical unfairness. Jury service must not be only for those who are affluent enough to participate.</p>
Stephen Dahm, Attorney	<p>I have a few thoughts answering some of the Working Group’s seven questions:</p>
Monica J. Diaz, MSW	<p>My name is Monica J. Diaz and I recently graduated from Humboldt State University receiving my Master in Social Work. I was required to work on a community Senior Project my last year of my program. For my Senior Project I studied, researched</p>

* Some of the legal services advocates included additional introductory comments which have not been included in the chart.

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	and wrote a report on the effects of jury service. I am submitting my report to the Jury Selection Work Group with hopes that they will consider the points I submitted in my report. Thank you for your time and consideration.*
Hon. George Eskin (Ret.)	(none)
Steven Fleischman, Attorney	I am writing in response to the Invitation to Comment from the Jury Selection Work Group. My email focuses on question No. 7 regarding AB 3070 and the lack of any demonstrated need to modify how <i>Batson/Wheeler</i> issues are handled in civil jury trial.
Laurie Hepler, Attorney	Good afternoon – I offer the following comments solely for myself, and not on behalf of my firm or anyone else.
Yolanda Huang, Attorney	(none)
Hon. Stephanie Jones, Superior Court of Solano County	(none)
Professor Joseph Kadane ¹	I take it that the legal value at issue in your inquiry is the right of all parties in civil and criminal cases to have a jury system free of bias, particularly racially, sexually, and culturally.
Hon. Curtis Karnow, Superior Court of San Francisco County	(none)
Joanne Kingston, Attorney	In Alameda County, the venire panels are not equally distributed between North County and South County. Obviously, people who live in North County would not like to commute the distance to South County, but it creates a misdistribution between the two parts of the county.
Jury Scholars ²	We are leading law professors and social scientists actively engaged in jury system research. We have written articles, conducted studies, and consulted with court systems on the process of jury selection. We are writing in response to the Invitation to Comment, specifically in response to the question: “ <i>What can be done to better ensure that juries represent a cross-section of their communities? In particular, what can courts do?</i> ”
Lawyers Club of San Diego by Yahairah Aristy, President	Lawyers Club of San Diego was established in 1972 with a mission to advance the status of women in the law and society. We are a feminist organization comprised of over 1,000 members who are judges, lawyers, law students, other legal professionals and nonlegal professionals. Our core values are to demand equality for women, lead on inclusivity and

* Because the paper submitted did not directly respond to the questions posed, the paper itself is not included in the chart.

¹ Leonard J. Savage University Professor Statistics and Social Sciences, Emeritus, Carnegie Mellon University

² Jeffrey Abramson, Professor of Law and Government, University of Texas at Austin School of Law; Nina Chernoff, Professor of Law City University of New York Law School; Shari Seidman Diamond, Professor of Law and Professor of Psychology, Northwestern University Pritzker School of Law Director, J.D.-Ph.D. Program; Jeffrey Fagan, Professor of Law, Columbia University Law School; Andrew Guthrie Ferguson, Professor of Law American University, Washington College of Law; Jacinta Gau, Ph.D., Associate Professor of Criminal Justice, University of Central Florida; Thaddeus Hoffmeister, Professor of Law, University of Dayton School of Law; David Kairys, Professor of Law, Emeritus Beasley School of Law, Temple University; Nancy S. Marder, Professor of Law, Director, Justice John Paul Stevens Jury Center Chicago-Kent College of Law; Mary Rose, Ph.D., Associate Professor of Sociology, University of Texas at Austin; Suja A. Thomas, Professor of Law, University of Illinois College of Law.

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	<p>diversity, inspire and mentor feminists, defend reproductive freedoms, advocate against gender-based violence and create value through enriching programs.</p> <p>In light of our mission and core values we seized the opportunity to review the Jury Selection Workgroup Questions for Public Comment and attached is our input.</p>
Edward Leonard, Attorney	(none)
Hon. Earl Maas III, Superior Court of San Diego County	(none)
NJP Litigation Consulting by Lois Heaney, President	<p>Thank you for inviting comments as you study “whether modifications or additional measures are needed to guard against impressionable discrimination in jury selection.” I would like to address the question posed in the Supreme Court memo, “Are there other impediments to eliminating impermissible discrimination in jury selection and better ensuring that juries represent a cross section of their communities?”</p> <p>By way of introduction, NJP Litigation Consulting, also known as the National Jury Project, was established in 1975 to study aspects of the American jury system and to work to maintain and strengthen that system. The NJP provides consultative and educational services to attorneys and social science professionals in criminal and civil litigation in federal and state courts throughout the United States. NJP has assisted attorneys in jury selection in thousands of civil and criminal cases. The NJP authored the text <i>Jurywork: Systemic Techniques</i>, which was first published in 1979, 2d edition 1983; and has been updated regularly, including the most recent edition, 2020-21.</p> <p>The process of jury selection is like an inverted triangle or funnel. At present, California jury service requires eligible jurors to be U.S. citizens, 18 years of age and older, resident in their counties, and either registered to vote or hold a California driver’s license or state issued identification card. In January 2022, we will add the list of tax filers to the source lists.</p> <p>California Code of Civil procedure section 203 specifies who is not eligible for jury service. Among those individuals are people who do not possess sufficient knowledge of English, are incarcerated, or are currently under state supervision, including parole or probation.</p> <p>The two, and soon to be three, source lists must be merged and duplicates (and triplicates) eliminated, a process often referred to as “merge and purge.” The problem, of course, is that more financially affluent people, who move infrequently will appear on all three lists. These lists may never reach poor or younger Californian residents who are eligible to serve.</p>
Superior Court of San Francisco County by Hon. Samuel Feng,	These comments are submitted on behalf of the San Francisco Superior Court.

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Presiding Judge and Hon. Roger Chan ³	
Professor Elizabeth Semel, Clinical Professor of Law, Co-Director, Death Penalty Clinic, University of California, Berkeley	<p>I write in response to the Jury Selection Work Group’s request for public comment. I have been a member of the Berkeley Law faculty since 2001. I am the founding director of its Death Penalty Clinic, which I currently co-direct.</p> <p>I have been engaged in litigating and analyzing jury selection issues for close to three decades. A copy of my CV is available on my Berkeley Law faculty page. It does not, however, reflect my contributions to litigation in criminal and capital jury selection matters, including amicus curiae briefs in support of the appellant or petitioner in cases such as <i>Snyder v. Louisiana</i>, 552 U.S. 472 (2008); <i>Miller-El v. Dretke</i>, 545 U.S. 231 (2005); <i>Miller-El v. Cockrell</i>, 537 U.S. 322 (2003); <i>People v. Lenix</i>, 44 Cal. 4th 602 (2008); and <i>(George) Williams v. California</i>, 571 U.S. 1197 (2014).</p> <p>I am the lead author of the 2020 report <i>Whitewashing the Jury Box</i> with which the Work Group is familiar. I participated in drafting Assembly Bill 3070 (AB 3070), the subject of Question 7, and was involved in the legislative process that culminated in the bill’s passage.*</p>
Richard Spix, Attorney	<p>I am an attorney in Orange County and have had hundreds of jury trials in my career. I have observed that:</p> <p>a. Even an objective and evenly administered hardship exemption system has a disproportionate impact on persons of color being excluded from juries. Minorities are overrepresented in the lower income population, have larger family sizes and larger households. This means that outreach in those communities will encounter “shrinkage” and inhibited presence in the jury pool due to the economic realities.</p> <p>b. On the other hand, industries/sectors with an employment benefit that pays the juror their regular salary during service are over-represented in the jury pool. I refer to the West Justice Center’s petite venires as “defense contractor” panels (Boeing, Northrop, McDonald Douglas are nearby) because I would routinely have multiple employees of the defense industry in the jury box. I would regularly have to voir dire them to make sure they would not be a voting block or engage in any rivalry during deliberations. This over-representation by the defense industry is both relatively immune to a hardship exemption and under-representing persons of color in the private sector employee pool.</p>
Hon. Alison Tucher, Presiding Justice, First Appellate District, Division Three	<p>I applaud your efforts to tackle the difficult questions of how we can better eliminate discrimination in jury selection and empanel juries that better represent a cross-section of the community. I write to address the first and fifth questions enumerated in your request for comment: What can be done to better ensure that juries represent a cross-section of their communities? What are the biggest barriers to jury service, and how can we resolve them?</p>
Nancy Wallace, Clerk, Superior Court of Sacramento County	(none)
James Weakley, Attorney	(none)

³ Member, SF Superior Court Jury Diversification Subcommittee

* Professor Semel’s comment contained 32 footnotes which are not included in the chart.

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<p>Hon. Joan Weber, Superior Court of San Diego County</p>	<p>I have a few comments regarding the Jury Selection Work Group’s task. By way of background, I have been a trial judge in California for 31 years handling mostly criminal cases. I have taught for CJER on jury selection issues, particularly as they relate to death penalty litigation. I have long believed that California trial judges were not treating <i>Batson</i> challenges competently. Judges were not engaging in the cross-comparative analysis mandated by case law. I have also believed that one of the biggest concerns in California jury selection is the extraordinary number of peremptory challenges provided under California law in criminal cases. With those preliminary remarks, these are my comments:</p>

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Commenter	Question #1: What can be done to better ensure that juries represent a cross-section of their communities? In particular, what can courts do?
Alameda County Public Defenders	<p>We think there are at least three things that courts can do. The first is that they can demand that both prosecution and defense strictly adhere to the current <i>Batson/Wheeler</i> standards. (<i>Batson v. Kentucky</i> (1986) 476 U.S. 79; <i>People v. Wheeler</i> (1978) 22 Cal.3d 258.) The unfortunate truth is that courts have often been reluctant to call attorneys out for exercising race-based challenges and have been slow to recognize the impact of implicit or unconscious bias. Their reticence often manifests itself in ❶ a stingy approach to the prima facie showing of group bias, or ❷ an indifferent effort to separate “bona fide reasons” from “sham excuses” (<i>People v. Wheeler, supra</i>, 22 Cal.3d at p. 282.) A more vigorous application of <i>Batson/Wheeler</i>’s inquiry would go a long way toward preserving a representative jury.</p> <p>The second thing that the courts can do is prioritize training on the implementation of Assembly Bill 3070. (Code of Civil Procedure § 231.7.) Trial judges should be ready to implement this valuable tool for insuring a fair and representative jury on January 1, 2022, and should be encouraged to adopt the new law before then.</p> <p>Finally, jury commissioners should be required to collect demographic data for all people responding to a jury summons. This could easily be accomplished with a single page questionnaire that included – among other things - the prospective juror’s self-description of their race and their zip code. The data should be compiled in a quarterly report submitted to the presiding judge with the goal of determining whether those who show up for jury service are representative of the communities served by the court. In the interest of transparency, the report should be available to the public.</p>
California Judges Association	<ul style="list-style-type: none"> • Increase jury education/outreach efforts to address the importance of jury service. • Consider higher compensation for juror service and/or make additional incentives a priority. Consider decreasing ancillary costs and barriers to jury service by paying unemployed or part time jurors the prevailing minimum wage and reimbursement for travel and day care (parking, transportation vouchers, etc.). • Consider further expansions of the juror pool consistent with SB 592’s expansion of the jury pool (which starting in 2022, will include all tax payers under the new law, rather than those with DMV-issued identification and registered voters). Consider the efforts that other states have recommended or taken in regard to this issue, including but not limited to eliminating bars on jury service for criminal convictions after a certain period of time without subsequent offenses, increasing the age at which jurors can opt out from 70 to 75, including legal permanent residents, providing interpreters for jurors, etc. • Consider setting aside enough funds to reimburse jurors who serve on long trials for their lost wages to encourage small business owners and those who would not otherwise be paid while on jury duty to participate and therefore diversify the jury pool.
California Public Defenders Association	<p>Jury commissioners in each county should be required to collect demographic data regarding all who respond to a jury summons from the superior court in their respective counties. We recommend that this be done through a brief questionnaire, asking prospective jurors to self-describe race and zip code of their respective residences. We would suggest that this data be compiled and that quarterly reports be submitted to the presiding judge, for review and a determination as to whether the demographics of those who appear for jury service are consistent with the census demographics for the jurisdiction.</p>
Stephen Dahm	<p>Courts can streamline jury trials and make them shorter. Federal judges sometimes strictly limit time, and state judges could do the same. In tandem with that, pass legislation requiring all employers to pay employees who miss time from work for jury service.</p>
Hon. George	<p>Transmittal of jury service summons should be expanded to every potential source of citizen participation, including but not limited to</p>

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Commenter	Question #1: What can be done to better ensure that juries represent a cross-section of their communities? In particular, what can courts do?
Eskin (Ret.)	registered voters; licensed drivers; holders of DMV-issued identity cards; high school seniors, and students enrolled in colleges and universities; religious organizations; service clubs; homeowners and neighborhood associations; renters and residents of mobile home parks and retirement facilities, <i>etc., etc., etc.</i>
Laurie Hepler	An idea for both 1-2: When we are firmly beyond the pandemic, consider a docent program whereby courts could train community volunteers to give informative tours of the court in action – scheduling small groups (8-10) to come through and observe 15 minutes each of 2 criminal or civil trials (with basic introduction about each case), hearing a short talk or video by a staff attorney and/or a clerk explaining the court’s work on behalf of all of us, in terms lay people can understand, answering questions, and framing jury service as a privilege/opportunity in addition to just a “duty.” Participants can be reminded at the end that while the tour is over, this is their court, and subject to certain protections for juveniles, etc., they are free to watch any trial or other proceedings as long as they like. The more we can familiarize students, Scouts, Lion’s Clubs, Senior Friendship Clubs, and EVERYONE with the work of the judicial system, the less people will think of courts solely as a place they go only when trouble (or a summons) forces them to.
Yolanda Huang	<p>I just completed a 4 week jury trial in which out of 120 people in the jury pool, only 2 were black, and the DA challenged the only black person to reach the actual jury. The Judge's comments was to disregard AB 3070, and to say that the problem is because black people do not come and report for jury service.</p> <p>When Black people do not consider the courts as serving their interests, then there is no reason for Black people to report to jury duty. Black communities and communities of color view the criminal justice system is skewed toward convictions and weighed in favor of the prosecution. In my trial, the DA was a white male. The judge was a white male, and attorney for co-defendant was a white male. I was the only person who was not a white male who was a legal professional.</p>
Hon. Stephanie Jones	<ol style="list-style-type: none"> a. Eliminate bars on service for criminal convictions after a certain period of time offense free b. education c. higher jury service compensation
Jury Scholars	<p>We have identified five steps courts can take to better ensure that juries represent a fair cross-section of their communities:</p> <ol style="list-style-type: none"> 1. Maintain the diversity of the jury pool by reducing the number of undeliverable summons. The rate of undeliverable summons is often higher in communities of color. Courts can reduce the number of undeliverable summons by (A) increasing the frequency with which jurors’ addresses are updated, (B) programming the selection system to use addresses from the most frequently updated source list, and (C) requiring addresses to be regularly submitted to the national change-of-address database of the United States Postal Service for correction. 2. Maintain the diversity of the jury pool by following-up on people who fail to respond to the jury summons. The non-response rate to jury summons can diminish the diversity of the jury pool. Courts can (A) reduce the number of non-responses by sending a follow-up notice to potential jurors who fail to respond to the jury summons and (B) reduce the impact of non-responses on diversity by sending a replacement jury summons to the same zip code when a jury summons is returned as undeliverable or is not returned. 3. Maintain the diversity of the jury pool by increasing the amount of juror compensation. The financial burden of jury service can diminish the diversity of the jury pool. Courts can increase jury yield and diversity by increasing the rate of juror pay. 4. Monitor the diversity of the jury pool by collecting and reviewing data. Courts can monitor the diversity of the jury pool only if

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	<p>they (A) collect race and ethnicity data and (B) conduct periodic examinations of racial and ethnic diversity in the jury pool.</p> <p>5. Ensure transparency about jury pool diversity. Courts can increase transparency regarding the representativeness of the jury system by (A) making explicit the right of litigants to access jury selection records related to jury diversity and (B) specifying which jury selection records will be preserved and made available to litigants preparing a motion challenging the composition of the jury pool. Racially and ethnically diverse jury pools are necessary to produce juries selected from a fair cross-section of the community, a right that is guaranteed by the Sixth Amendment of the Constitution, the California Constitution, and California Code of Civil Procedure at sections 191 and 197. Diverse jury pools also encourage public confidence in the justice system and improve the quality of jury deliberations.</p> <p>Our recommendations are based on our own jury expertise and scholarship, and best practices identified by the American Bar Association’s Principles for Juries & Jury Trials and the National Center for State Courts, a national authority on judicial administration, as well as by reports from the Judicial Council of California and California’s 1996 Blue Ribbon Commission on Jury System Improvement.*</p>
Hon. Curtis Karnow	<p>Low income people, a group disproportionately represented by communities of color, cannot afford to serve on juries. That’s a blunt fact that must be addressed. The way to address it is to pay a reasonable sum for jury service: that means \$20+ an hour. We also need childcare services for jurors.</p> <p>There’s a larger issue, which is that lower income people, and communities of color, do not feel enfranchised and are not sure that the legal system is their system. This is very serious (I am assembling notes on this) but is beyond the scope of this Working Group.</p>
Lawyers Club of San Diego	<ul style="list-style-type: none"> • Expand sources for juror summons (e.g., FTB filers, Covered California) • Consider financial impact to eliminate barriers to increase jurors from a cross-section of communities: <ul style="list-style-type: none"> ○ Provide free daycare for jurors ○ Provide confidential pumping station for nursing mothers ○ Provide a jury service round trip shuttle service from various communities ○ Create different duration jury pools so jurors can self-select what works best with their lives (short term jurors (1-3 days); medium (3-5 days), long (5-7 days) and extra-long (7 days) ○ Advocate for legislation that mandates employers to provide paid jury service or county paid payment for jury service ○ Advocate for tax incentives for employers who do not pay their employees, but who serve jury duty. This tax credit will be based on the total days’ employees serve on jury duty and balancing employer size. The idea is to encourage employers promote service and help mitigate the impact on the employer when the employee is serving.
Legal Services Advocates	<p>As stated above, jury commissioners should collect demographic data for all people responding to a jury summons by having them fill out a single page questionnaire. They should be asked to self-describe their race and to state their zip code. This demographic data should be compiled quarterly, and a report should be submitted to the presiding judge concerning whether the demographics of those showing up for jury service are consistent with the census demographics for the area served by the court.</p>

* The chart includes only the summary of the recommendations.

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Edward Leonard	<p>Having selected almost 200 juries over the years, the most frustrating thing to me is how easily business owners get out of jury duty. The sole and only excuses should be a prepaid vacation or a scheduled surgery. Beyond that, the jurors must serve. As for those jurors who claim they cannot be fair, tell them that they must serve on a jury and will be asked to come back daily to serve.</p> <p>The length of jury trials encourages some outrageous excuse making. We need time constraints on cases and judges who are intolerant of excuse making on speed at trial. A three week jury trial on a civil matter should be rare not the norm. Along those lines, full time courts are good. Having trial more than 4.5 hours per day would help too. Jurors never understand the 90 minute lunch break. I know it's a union deal, but the jurors do not. Hence they see wasted time and will do or say anything to escape the Court.</p> <p>AB3070 is mis-aimed at peremptory challenges. We just do not have enough of these to make a difference. The problem is not with the lawyers. It is with the jurors making excuses and the Court wanting to make friends rather than jurors.</p> <p>A different thing to do would be to have the clerks time clear the prospective jurors. If the next two weeks do not work, what two weeks do? Pin them down.</p>
Hon. Earl Maas III	<p>In almost 17 years as a judge, and over 15 before that as a trial lawyer, I believe this is the primary issue, not bias once jurors get in the courtroom. We generally start with underrepresentation before a single question is asked. To me, our enforcement is too lax. It is commonly known that there is no consequence for either failing to appear, or claiming hardship once present. If we enforce summons publicly, we will have a greater turn out and therefore, more diversity. It is unreasonable to suggest that lawyers (or judges) are biased because of underrepresentation of any particular group, if the panel is underrepresented before a single juror is excused.</p>
NJP Litigation Consulting	<p>Recommendation 1: The language of Civil Code of Procedure section 197(b)(1) requires that the merger of source lists shall be “substantially purged of duplicate names.” This standard, however, is troubling vague. NJP recommends that an audit be conducted to measure whether the “merge and purge” is effective, and whether the resulting lists represent a fair cross-section of eligible California residents and do not in fact continue to over-represent certain groups and underrepresent others.</p> <p>Several other source lists might better reach these underrepresented communities, including those used in other states such as public assistance roles and utility bill account holders. Contacting jury eligible residents is complicated by residential mobility, which is greatest among younger and less affluent people. Residential mobility is higher among renters than homeowners. The economic impact of the pandemic has caused a significant increase in residential transience as residents have lost their homes, moved in with family members or friends, consolidated into fewer households, or become homeless.</p> <p>Ninety-three percent of California residents now have cell phones, which strongly suggests that prospective jurors might also be reached by acquiring the billing addresses of cell phone holders or by text message. The National Center for State Courts recommends that source lists reach 85% or more of the jury-eligible population.*</p>

* Recommendations 2-5 appear under responses to question numbers 3, 4, 5, and 7.

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	<p>Recommendation 6: The courts should allow non-English speaking citizens who are otherwise qualified to serve on juries. California requires jurors to “possess sufficient knowledge of the English language,” a standard which is vague at best. Our state has the highest share of non-English speaking citizens in the nation. Reportedly nearly 45% of Californians five years and older do not speak English at home. In the diverse state of New Mexico, persons who otherwise meet the criteria for juror’s eligibility but lack sufficient English language knowledge may serve, and interpreters are available to jurors. The New Mexico Constitution, which was adopted in 1911, guarantees all citizens the right to participate on juries. Edward L. Chavez Former Chief Justice of the New Mexico Supreme Court, described the success of this program in an article appropriately titled <i>New Mexico’s Success with Non-English Speaking Jurors</i>, published in the Journal of Court Innovation.</p>
Richard Spix	<p>PROPOSAL</p> <p>Mitigation of these disparate results requires careful examination of the current system. I would propose a modification of the juror pay scale that would pay at least \$75.00 per diem to those without the employment benefit of full pay. This would save the county some money on the defense contractor pay and shift that money to form a magnet for low income persons to participate. It would reduce the number of hardship claims from the low income community. This proposal would substantially increase the cost to jury fees to litigants. This would be an additional burden on the sacred right to a jury trial that must be addressed at the same time. I have been involved in processing thousands of fee waiver applications and have observed the following:</p> <p>a. Judicial hostility to fee waivers tends to increase as the amount of fees waived increases. I have not had a box 3 waiver granted in my experience (earing more than 125% but can’t afford fees). Without adjustment, the increased access to jury panels by minorities would be offset by the working poor suffering restricted access by not having the money to pay the per diems.</p> <p>b. Even the present per diems can routinely be \$1500.00 for a modest jury trial. This amount is often out of the reach of the working poor who are already paying 50% of their income for housing.</p> <p>PROPOSAL</p> <p>Maximum incomes for fee waivers would be relaxed to allow for the working poor to reasonably exercise their rights to a jury trial.</p>
Superior Court of San Francisco County	<p>Legislative changes and additional funding are needed to increase jury duty pay. The courts are limited in what we can do absent action by the legislative and executive branches. For example, Code of Civil Procedure § 215 might be amended to explicitly permit counties to provide supplemental jury duty pay or other innovations.</p> <p>Employers, as consumers of the courts, should be encouraged to pay their employees during jury service. This will require different approaches for large and small businesses.</p> <p>Consideration should also be given to further expanding the source lists for the jury pool, similar to SB 592 that added all state tax filers to the jury rolls.</p> <p>It is also important for us to acknowledge that the decline in the San Francisco Black population is an impediment to their representation on juries in San Francisco. We recognize that this results from policy considerations outside the control of the Judiciary and this Work Group.</p>
Nancy Wallace	<p>Outreach to those communities the importance of having a jury of their peers and how they can make a difference in the judicial system. Work with Urban League, Black Lives Matter, other minority justice related organizations. Push that there is the 1 day, not selected done</p>

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Commenter	Question #1: What can be done to better ensure that juries represent a cross-section of their communities? In particular, what can courts do?
	with Jury Service for next 18 months. Raise the Jury Service Payment, mileage and include Public Transit Payment with the summons to get to the Court, as of now Public Transit Payment is given only after jury service 1 day and continual service in my court. If Public Transportation is used by a handicap person, who has the abilities to serve, needs transportation other than a regular bus or light rail, such as “Para Transit” type Public Transit pay the costs for the juror.

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Commenter	Question #2: How can courts improve engagement with underrepresented communities to increase summons response rates in those communities?
Alameda County Public Defenders	<p>We have five ideas:</p> <ul style="list-style-type: none"> • Encourage courts to immediately expand the list of eligible jurors to include tax filers. (See Code of Civil Procedure § 197.) The Work Group should also consider the feasibility of further expanding the jury pool to include utility customers and those receiving public aid. Many other states use these databases to ensure that jury panels are representative of the community. • Engage more with churches and other community organizations to encourage and promote juror participation. • Launch a campaign, using public forums and public service announcements to raise awareness of the benefits of participatory democracy through jury service. • Make travel vouchers [bus passes, BART tickets, etc.] to and from the courthouse available to low-income jurors. • Increase the jury service fee. The current rate of \$15.00 a day was set 20 years ago. It is now out of date and results in the disparate treatment of hourly wage earners. (See Code of Civil Procedure § 215(a).) The truth is that most middle and upper class jurors are paid by their employer for jury service. They should not receive any additional compensation. Section 215(b) of the Code of Civil Procedure should be amended to eliminate compensation for <i>anyone</i> who is paid by his or her employer, not just those who work in the public sector. Hourly wage earners, on the other hand, often receive no compensation. These jurors, who often come from underrepresented communities, should receive a stipend that better reflects the sacrifice they are making to serve on a jury.
California Judges Association	<ul style="list-style-type: none"> • Develop educational/outreach opportunities within a system to specifically address non-appearance to jury service. Develop both adult and youth educational campaigns to encourage participation. • Conduct community outreach, public campaigns and education efforts among the public, businesses and employers; create educational efforts geared towards including diverse communities. Consider involving and seeking feedback from community and non-profit organizations, law firms, religious institutions, and the media. • Seek community input to identify and remedy impediments that keep community members from responding to and participating in jury service. • Consider developing a specific action plan to address the identified challenges. Consider consulting with marketing experts to develop appropriate campaigns for both the general public and underrepresented communities. • Consider how technology could be utilized to increase jury response/communication.
California Public Defenders Association	<p>We recommend that civic, religious and community leaders be invited to participate in periodic meetings with court officers, so that juror participation in their respective communities can be promoted in a meaningful way. Public forums (by court officers or jury commissioners) should be conducted, so the attributes of participatory democracy through jury service can be promoted in underrepresented communities. Courts should also broaden the scope of their respective summonses for service, to include lists in addition to the CCP required statutory lists of ROV, DMV and tax filers.</p>
Stephen Dahm	<p>Courts have already taken steps on efficiency, e.g. only bringing jurors to courthouse when they will about to be sent to a courtroom. Keep that up and improve it.</p>
Hon. George Eskin (Ret.)	<p>The Judicial Council should put an end to the self-imposed isolation of judges and require them to become actively engaged throughout the community, spreading good will and information about the work of the judicial branch and the importance of jury</p>

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Commenter	Question #2: How can courts improve engagement with underrepresented communities to increase summons response rates in those communities?
	service. Judges should be required to greet every new jury panel in the jury assembly facility, and the Judicial Council should promulgate a script or checklist of topics that must be addressed.
Yolanda Huang	Courts have to be genuine about confronting and rectifying the obvious implicit racism in the court structure and the criminal justice structure. Courts are not inclusive. Too many judges are former prosecutors and they prosecuted and incarcerated people of color.
Hon. Stephanie Jones	Community outreach events where the court educates the public on the importance of diversity in the jury panel
Lawyers Club of San Diego	<ul style="list-style-type: none"> • Community events that educate public regarding jury service • Use bar associations, community advocates, cultural centers, communities of faith, etc., to educate and increase participation of citizens in jury service • Work with schools and children’s organizations such as Girl Scouts of America and Boy Scouts of America to create juror badge to create a sense of civic duty for jury service early in childhood
Legal Services Advocates	Invite community organizations to meet with court officers to regularly promote juror participation. Hold public forums explaining the benefits of participatory democracy through jury service. Have jury commissioners use nontraditional lists, in addition to ROV, DMV and tax filers, to summon potential jurors to court.
Hon. Earl Maas III	Without the will to enforce the summons, there is little you can do. Education about the fairness and need for these communities to participate would be helpful, but if a juror then responds to voir dire suggesting presence is due to intent to make sure the underrepresented community does not get hurt by the other communities, that juror is likely to be challenged.
Superior Court of San Francisco County	<p>Judicial Council resources are needed for public outreach and education in all counties.</p> <p>Use of online tools for jury reporting and selection will also increase summons response rates. The system that San Francisco Superior Court implemented in July 2020 in response to the pandemic is described in response to Question 4 below. It has minimized the in-court time for jury selection and has been welcomed by those jurors who have participated in the process.</p> <p>Obtaining email addresses—along with the U.S. mail address—for prospective jurors would facilitate the court’s communication with prospective jurors. Authority for this would require clarification by the Judicial Council or new legislation. Consideration should be given to maintaining juror privacy and for secure storage of confidential electronic information, and providing the requisite resources to do so.</p> <p>Effective public outreach also requires a communications strategy by the courts. Consideration should be given to a statewide public education effort to explain the importance of jury service. This could include both encouraging all employers to pay for jury service and explaining to prospective jurors the role of the jury. If the courts implement some of the recommendations in this letter, the public service announcements could also advertise the courts’ efforts to accommodate jurors by allowing remote check in to avoid unnecessary trips to the courthouse.</p> <p>In addition, each court should have a communications representative who could address the needs and unique</p>

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Commenter	Question #2: How can courts improve engagement with underrepresented communities to increase summons response rates in those communities?
	circumstances of that county. State funding for this role is essential to its success.
Nancy Wallace	Outreach to those communities the importance of having a jury of their peers and how they can make a difference in the judicial system. Work with Urban League, Black Lives Matter, religious organizations and other minority justice related organizations. Push that there is the 1 day, not selected done with Jury Service for next 18 months. Raise the Jury Service Payment, mileage and include, Public Transit Payment with the summons to get to the Court, as of now Public Transit Payment is given only after jury service 1 day and continual service in my Court. If Public Transportation is used by a handicap person, who has the abilities to serve, needs transportation other than a regular bus or light rail, such as “Para Transit” type Public Transit pay the costs for the juror.
Hon. Joan Weber	Counties should set up forums in underrepresented communities which include judges, prosecutors and defense counsel to discuss the critical importance of minority representation on the jury.

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Commenter	Question #3: Are there any other ways in which the summons process could be improved?
Alameda County Public Defenders	<p>Jury commissioners’ offices must have a process whereby they follow up on all summons that do not result in a response or are returned as undeliverable. Economically disadvantaged persons tend to move more frequently making them difficult to locate to deliver a juror summons and are less likely to respond to a summons due to the prohibitive costs associated with jury service.</p> <p>The creation of a task force that investigates the new addresses of those persons who were unable to be served would yield information that can be used to update master lists. These master lists should be updated with increased frequency so that fewer summons are returned as undeliverable.</p> <p>Also, because economic hardship is the greatest barrier to jury service for the majority of people in underrepresented communities, establishing a right to a living wage for jury service has the potential to improve the response rate. This right should be clearly communicated in the actual summons, but public service announcements on local radio and television programs, road-side billboards, and flyers in community centers/establishments could also be used to get the word out about this right to a living wage.</p>
California Attorneys for Criminal Justice	<p>Low income individuals are more likely to change jobs and addresses than more affluent persons. They also have lower rates of voter registration and DMV licensing. These demographic realities mean a summons for jury duty sent to low income and minority neighborhoods is more likely to be returned as undeliverable. The same factors reduce representation in the master pool of persons eligible to receive a summons. Several ways to address these issues have been suggested by others, including the use of additional source lists for the master pool that reduce or eliminate the under-representation, more frequent updating of lists to capture changed addresses, and sending a new summons to the same neighborhood to replace those returned as undeliverable.</p> <p>Voluntary failure to respond to a jury summons is another aspect of the jury composition problem. In some places the return on a summons (i.e. the number who appear in court after receiving a summons) is only one in three. Courts have to summon 120 people in order to assure 40 or more will come to court. This almost certainly has a negative effect on the cross-sectional representation of the panels. The poor and persons of color are more likely to have fraught relationships with the police and government agencies, therefore less likely to respond to court to serve.</p> <p>One way to increase the response rate would be to follow up the initial summons with a second summons to a court date for those who did not appear on the trial date. The court can then inquire as to the reason for nonappearance and encourage attendance in the future. It seems very few courts have done follow-up when summoned jurors fail to appear - very likely most people in the community are aware that you can ignore the summons without consequences. Changing that to a public awareness that you can be brought to court if you blow off the summons could make a significant contribution to the response rate.</p>
California Judges Association	<ul style="list-style-type: none"> • Consider adjusting the summons system to increase the statistical likelihood of a representative jury (for e.g. utilize data to adjust to the summons process to reflect response rate, compliance, etc.). Further study and analyze the summons process to determine how barriers like employment, transportation and economic hardship and other factors may adversely impact jury response and/or participation. • Consider conducting frequent address checks and review of the summons pool to ensure addresses are accurate and updated.
California Public	We recommend that task forces be created in each jurisdiction to track summonses which are returned as “undeliverable” and to

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Commenter	Question #3: Are there any other ways in which the summons process could be improved?
Defenders Association	attempt to locate the current residential addresses of those summoned. Master lists with current residence information of prospective jurors should be updated quarterly.
Stephen Dahm	Can't think of much other than voting rolls, drivers licenses and state-issued IDs.
Hon. George Eskin (Ret.)	The Work Group should examine a typical jury summons from the perspective of a non-lawyer. There is too much information presented in a font too small to read and in a formalistic design that is off-putting. The Judicial Counsel should hire a graphic designer to make a uniform user-friendly summons, attractive and interesting to read, and recognize some recipients may be unable to read!
Laurie Hepler	Incorporate the idea of “the community welcoming and needing your judgment about how a case should come out”—again, so it's not just a commanded duty, but also an opportunity to exercise civic power.
Yolanda Huang	There is currently no outreach that I know of to communities of color, and particularly to young people in those communities.
Hon. Stephanie Jones	Allow jurors to select the date in which they wish to serve. For example jurors will get a mailer advising them to select the date of their choice by a certain deadline or one will be chosen for them
Lawyers Club of San Diego	<ul style="list-style-type: none"> • Develop an effective cross-checking address tool with all accessible databases • Update records with any returned summons
Legal Services Advocates	The court should track returned summonses that are marked “undeliverable” and update current addresses as necessary.
Hon. Earl Maas III	The most common excuses I hear are that 1) my employer will not pay me; or, 2) my teachers will fail me. Creating mechanism to neutralize this would increase turnout.
NJP Litigation Consulting	<p>Recommendation 2: There should be an audit to ascertain the rate of non-deliverable jury summons by zip code and census tract followed by remedial steps, including sending replacement summons to other residents within the most impacted census tracts, which are likely to be the less affluent areas with higher numbers of people of color. This is a form of stratified sampling.</p> <p>Recommendation 3: The initial juror questionnaire that is sent with the summons to prospective jurors in all counties should contain demographic questions such as age, race/ethnicity, gender, occupation and education as it does in some counties and the results should be tabulated with any disparities reported. These questionnaires should then follow the jurors who appear for jury service so that demographic information is available to the court and parties for the purpose of facilitating rulings on cause and peremptory challenges when race/ethnicity or gender are at issue as well as ensuring that appellate courts have the demographic information, which is necessary to properly review claims related to those challenges.</p> <p>There is good reason to examine what happens at the next points of reduction, that is, who responds to jury notices and appears in court and what hardships are granted to postpone or excuse prospective people from jury service.</p> <p>Recommendation 4: There should be an audit of the excusals and postponements granted prior to court appearance, and again, of those who respond and appear for jury service.</p> <p>Jury pools have long been impacted by economic hardship and the lack of available and affordable childcare. This has become a</p>

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Commenter	Question #3: Are there any other ways in which the summons process could be improved?
	<p>more severe problem in the jury panels assembled in the aftermath of the pandemic. However, even before the pandemic, financial hardship profoundly skewed jury pools, especially in cases lasting more than a few days, and we can expect this to continue. As courts have started to resume trials, it is our experience that far greater numbers of people are requesting hardship excusal or postponement of their jury service, and courts have been understandably accommodating. The reasons are usually economic, e.g., jury service is not paid for by their employers and people cannot make ends meet with another interruption in their paychecks; and others lack childcare or have COVID 19 health concerns for themselves or household members. As the data has shown, the individuals hardest hit by the pandemic have been people with the least economic means, most often people of color.</p> <p>Even absent the pandemic, in general, whites have far more wealth and economic security than do people of color. This is the result of centuries of discrimination in employment, housing, education and public policies that have benefitted whites at the expense of all others. The pandemic compounded these profound financial inequities.</p>
Superior Court of San Francisco County	<p>Clear jury reporting requirements available on each court’s website are essential. The San Francisco remote jury selection program has demonstrated that the antiquated use of mail, telephone communication and in-person appearance for preliminary procedures is an impediment to jury service. The jury summons should be revised to explain clearly that the prospective juror can use the internet to minimize the time and effort needed to respond for jury service.</p> <p>The model jury summons form includes the admonition that “Failure to respond to this summons will subject you to a fine, a jail term, or both.” The efficacy of this admonition should be studied to see if the threat of a fine or jail term increases or discourages response rates, especially in underrepresented communities who may already distrust the court system. If the penalties do not increase response rates, the penalty statutes might be changed and the admonition removed from the summons.</p>
Nancy Wallace	<p>Include in the summons, as to how important it is to have a jury of their peers, from their communities, to facilitate the judicial system. Push that there is the 1 day, not selected done with Jury Service for next 18 months. Included Public Transit Payment with the summons to get to the Court, as of now Public Transit Payment is given only after jury service 1 day and continual service in my Court. If Public Transportation is used by a handicap person, who has the abilities to serve, needs transportation other than a regular bus or light rail, such as “Para Transit” type Public Transit pay the costs for the juror.</p>

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Commenter	Question #4: How can courts determine trends and track progress in order to make the jury pool more representative of the community?
Legal Services Advocates	This again highlights the importance of maintaining accurate demographic information for the jury pool. Once that data is analyzed, it may be necessary to increase the number of summonses going to communities with a higher concentration of underrepresented populations.
Alameda County Public Defenders	We believe that the key is maintaining accurate demographic information for the jury pool. This includes not only collecting data on those who respond to the jury summons but also keeping track of those who do not. Once that data is analyzed, courts can better assess who is showing up for jury duty and who is not. If the data shows that certain groups are underrepresented, courts should make the data available to other criminal justice stakeholders and solicit their input as to how best to rectify the shortfall. This is the kind of problem that surely benefits from a diversity of viewpoints.
California Attorneys for Criminal Justice	<p>CACJ understands that common sense is not always good sense. Jury composition problems can only be understood in detail with sufficient data. If corrective measures are implemented the effects can only be understood by collecting sufficient data. The Working Group should consider and recommend procedures for collecting relevant data to identify areas of under-representation today, and to track the effect of any reform efforts. At a minimum this would seem to require collection of demographic data on prospective jurors.</p> <p>It is suggested that the current source lists for the master panel tend to under-represent the poor and persons of color. Demographic information for the state population by race and income is readily available. But there is a need for similar information about the composition of each county’s master panel. The makeup of petit jurie also needs to be established, for example by having jury commissioners collect information on age, gender, gender orientation, racial and ethnic identification and any other relevant factors, and submit it to a statewide database. Over time this would provide the data needed to objectively evaluate the impact of efforts to assure that trial juries truly represent a cross-section of the community.</p>
California Judges Association	<ul style="list-style-type: none"> • Consider carefully monitoring non-response and undeliverable rates for jury summons, specifically as it relates to participation by diverse communities.
California Public Defenders Association	If the data, obtained through measures implemented in the answer to question one, indicates that a particular minority population or other protected class is underrepresented in the region, and it is determined that the court’s summonses are not reaching those necessary to ensure a representative cross section of the community, jury commissioners should increase the number of summonses issued to those residing in communities with a higher concentration of individuals of that underrepresented minority population and/or protected class.
Stephen Dahm	Judges can meet at end of year and report to presiding judge or Judicial Council how diverse the juries were in that year. Judges can fill out a form of some kind at end of every trial.
Yolanda Huang	Census data, and economic data are readily available.
Hon. Stephanie Jones	a. track ethnicity, gender etc of individual reporting for service and selected

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Commenter	Question #4: How can courts determine trends and track progress in order to make the jury pool more representative of the community?
Professor Joseph Kadane	<p>The most important suggestion I can make is to collect the requisite data. Without data, the system and the public cannot know of the extent of possible bias. Without data, even your working group cannot know whether the reforms you may propose are needed, and if adopted, whether they had the hoped-for effect.</p> <p>The federal jury system uses the juror qualification questionnaire to collect demographic data on its jury venires. The federal law stipulates (28 USC at 1869(h)) that the federal questionnaire requires name, address, age, race, occupation etc. Furthermore, the federal system (28 USC at 1864) requires when there is “an omission, ambiguity or error in the form, the clerk or commission shall return the form with instructions...to return the form...within ten days.” Thus, the federal system requires the disclosure of demographic information, without exception.</p> <p>The California system to collect such information needs to respect people’s privacy and not expose them to perceived risk, even if there’s no reality to the perception. A way to collect demographic information on people available to be jurors would be to do it anonymously at the courthouse. Such a questionnaire could ask for sex, race and ethnicity, etc. (I would suggest using Census Bureau categorizations) but not name. Thus the potential jurors could give the information without it being tied to it personally.</p> <p>I’m guessing that the principal worry about doing this is whether it would be acceptable to jurors. That’s an empirical question. I suggest doing experiments in a few courtrooms to find out. There are well-established social science practitioners who could help devise a questionnaire and do a pilot study to assess its acceptability.</p> <p>It is my understanding that California uses the voters list and drivers lists as sources, and will soon add tax files. Although I was an early advocate for the use of multiple lists* I must also concede that adding more lists does not always result in a jury system with less bias.</p> <p>Until we have the data, whether there is a demographic imbalance in California, and if so, the nature and extent of the imbalance, is anyone’s guess. Consequently, improvements in the source lists, the method of eliminating duplicates, and, whether there are problems in the process of excuses, disqualifications and challenges for cause have to depend on the data that are currently unavailable.</p> <p>Your working group can set the stage for improvements to the jury system by moving forward on data collection.</p>
Lawyers Club of San Diego	<ul style="list-style-type: none"> • Educate jurors regarding the need for collection of racial, ethnic, gender, and gender identity data, and then collect the data to compare with demographics at the state and county level.
Hon. Earl Maas III	<p>I don’t know. With more and more individuals identifying as representing multiple groups, the ability to categorize becomes harder. This seems like an issue for an academic. However, it would be unfortunate if this desire to “track” used the limited funds which are available. The same underrepresented groups are also denied court access because of the lack of clerks available to assist them.</p>

* Footnote not included.

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Commenter	Question #4: How can courts determine trends and track progress in order to make the jury pool more representative of the community?
NJP Litigation Consulting	<p>In sum, there is an enormous need for the systemic collection of data in order to ascertain the degree of underrepresentation, the points or bottlenecks where it is occurring, and to test the effectiveness of proposed remedies. Robust, independent studies are needed. Qualified, independent social scientists have sufficient expertise to collect the necessary data in ways that protect juror privacy when appropriate. Without data, we can neither “follow the science” nor make “evidence-based” decisions. Public confidence in the integrity of our judicial system requires nothing less.</p>
Superior Court of San Francisco County	<p>To determine trends and track progress, the courts need reliable data. There are three barriers to individual superior courts collecting and analyzing data to determine trends and track progress. First, the courts need authorization from the Judicial Council or through legislation to gather demographic data on the race and ethnicity of prospective jurors. Second, if the court is allowed to collect this demographic data, the individual courts will need guidance on the best practices, or a standardized approach, for questioning prospective jurors. Third, data collection and analysis of the composition of juries obviously requires staff and funding resources that are not currently available.</p> <p>Although each county’s demographic data is available from the Department of Finance, this overall data is not as valuable as more specific data of the jury pool. If data analysis resources are made available, the court can target outreach based on the response rates from specific zip codes, which might include drilling down to specific barriers such as inadequate transportation.</p>
Nancy Wallace	<p>Outreach with minority justice advocate organizations, School Districts, Urban League, Black Live Matter, religious organizations.</p>

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Commenter	Question #5: What do you see as the biggest barriers to jury service? What can be done to resolve each of the barriers you identify?
Alameda County Public Defenders	<p>Economic hardship and disadvantage represent the greatest barrier to jury service for members of underrepresented communities and establishing a right to a living wage for jurors who lose income by their jury service would likely be the single most effective way to reduce these financial barriers.</p> <p>The court can also alleviate employers’ concerns by reimbursing small business owners for the cost associated with the loss of the employee due to jury service. Imposing financial sanctions on employers who penalize employees for jury service would not only serve as an effective deterrent but would likely also create a larger juror pool.</p> <p>The lack of transportation is another barrier for the economically disadvantaged, and the court can resolve this barrier by providing shuttle services or travel vouchers for public transportation. Where courthouses are not easily accessible by public transportation, the court should provide shuttle services from the nearest public transportation hub.</p> <p>Finally, another barrier related to economic hardship is family care. The court needs to identify potential jurors with family care needs well in advance of the service date. This can be done by including a question in the juror summons about the family care needs of any potential juror. With greater lead times, these needs can be identified and arranged for well in advance of the service date. The court can eliminate this barrier altogether by providing on-site childcare or vouchers for drop-in childcare and in-home care.</p>
California Attorneys for Criminal Justice	<p>We see poverty as the most significant barrier to jury service and a fair cross-section in jury pools. There is a well-documented correlation between race and economic success, as median white income exceeds median income for persons of color wherever the issue is studied. Thus to the extent the jury summons and selection process operates to screen out low-income people, it automatically creates under-representation of black and brown jurors as well.</p> <p>The Working Group should propose measures to directly reduce economic barriers to jury service. The present \$15 per day and \$0.34 mileage one way as compensation is woefully inadequate. Prospective jurors who are employed are generally not compensated for time off work.* This means jury service causes a loss of income to those who are employed. The per diem barely reimburses the cost of lunch, and would not cover parking or public transportation costs, so each prospective juror is also faced with out-of-pocket expenses in order to serve.</p> <p>No person or family should fear being evicted or going hungry in order to do public service by sitting on a jury. When they do face that fear the most likely response will be to disregard the summons in order to avoid the expense of serving.</p> <p>This aspect of the problem has a common-sense solution: provide enough financial support so that the unemployed and low income employees do not suffer a financial loss for service to the community. A partial solution would be to require employers to provide PTO for jury service after the first day. For the unemployed a per diem linked to the minimum wage would encourage more participation. Transportation needs must also be met, for example with vouchers for public transportation and free parking for those who drive, plus</p>

* Footnote not included.

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Commenter	Question #5: What do you see as the biggest barriers to jury service? What can be done to resolve each of the barriers you identify?
	<p>reimbursement for travel costs to and from court. Child care must also be considered, as homemakers, the unemployed and low-wage employees with young children will not respond to a summons if they do not have access to safe child care. There should be a per diem amount for costs of child care, too.</p> <p>Payments and reimbursements also need to be provided in a timely fashion. Those living paycheck-to-paycheck need the pay for jury service to be delivered on the same schedule as their pay or they will suffer consequences for late payments on their bills and rent. So warrants need to be delivered within a week of the end of a trial, or for longer trials they need to be delivered bi-weekly as the trial goes on.</p>
California Judges Association	<p>Jury service may present significant hardship and inconvenience for jurors who lack financial security. Those hardships may be exacerbated by ancillary costs and/or the unavailability of adequate transportation. In 2018, the State of Pennsylvania formed a “Hardship and Inconvenience Workgroup” to address how the state could minimize or eliminate the logistical and practical burdens many in the community face. The Workgroup acknowledged that many instances of hardship “disproportionately affect minority communities and the impact the court’s ability to have jury pools that reflect a fair cross-section of the community.” The workgroup made the following recommendations for how government, specifically the legislative and judicial branches, could address these issues:</p> <ul style="list-style-type: none"> • Increase juror compensation. • Require employers to pay employees during their jury service and give employers a tax credit for their expenditures. • Provide economic support for jurors through parking vouchers and transportation discounts and reimbursements. • Consider the ways in which other jurisdictions, like Arizona, have funded additional juror compensation. Prioritize funding strategies that do not rely on unnecessarily increasing fees for the public. • Establish a juror fee donation program or provide government funding to create a lengthy trial fund. • Alleviate child care burdens by sponsoring a child care program or providing discount vouchers to independent programs. • Collaborate with other community resources to address the needs of potential jurors (e.g. pursue discounts with public transportation entities, parking lot operations, etc.) • Better inform citizens about scheduling options for those who need accommodation. <p>The Taskforce should consider whether these recommendations would help address hardships for the general public and underrepresented communities.</p>
California Public Defenders Association	<p>Among the largest barriers to jury service is disparate socio-economic status of members of the community. Additionally, studies have shown that a disproportionate number of prospective jurors who fall within a protected class cannot afford to miss work in order to serve. One solution to this problem would be for the government to reimburse employers, to enable them to operate their businesses in the absence of their employees who are selected for jury service. Further, the compensation for jury service can (and should) be increased, to be consistent, at least, with minimum wage laws.</p>
Stephen Dahm	<p>Time and money. Make trials faster, and make employers pay jurors who miss work in order to serve.</p>
Hon. George Eskin (Ret.)	<p>The biggest barrier to jury service is the attitude of judges who do not appreciate the sacrifice made by prospective jurors, are indifferent to invasions of personal privacy, assume everyone is prepared to adjust to the idiosyncrasy of court calendar management, present a haughty and arrogant demeanor, and exercise their power by demanding obsequious obedience with arbitrary court orders. I cannot propose a remedy for attitude adjustment, but lessons in humility, sorely lacking in too many judges, are essential as well as constant reminders about the importance of their public service. The Work Group should recommend mandatory and continuing training of judicial officers</p>

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Commenter	Question #5: What do you see as the biggest barriers to jury service? What can be done to resolve each of the barriers you identify?
	accompanied by testing to achieve the goal of an impartial judiciary.
Laurie Hepler	<i>The time commitment</i> , which is just an unworkable hardship for many people in hourly jobs or running small businesses. Most trials are too long—I know from having read many transcripts. Within reason, judges should move trials along and not let counsel become repetitive (rare is the situation when the client won’s also benefit ...). There must always be a witness ready, with court/counsel housekeeping confined to designated time periods whenever humanly possible. Another idea: If the pandemic produced workable practices for remote conduct of hardship screening, keep them. Anything to make it <i>easier to comply</i> with a summons will help bring more participants into the jury pools.
Yolanda Huang	Financial, transportation, lack of interest and the failure of our criminal justice system to truly represent the interests and point of view of communities of color.
Hon. Stephanie Jones	Employers not paying for jury duty- Require employers to pay for at least 3-5 days of jury service Childcare- provide a childcare stipend Transportation- provide a transportation stipend Jurors not understanding the importance of jury service- Education campaign about the importance of jury service and have a diverse group of jurors
Hon. Curtis Karnow	Employers must be encouraged to pay while their employees are in jury service. A few days of pay is pointlessly insufficient—jury selection alone can take days. Large companies are often involved in suits and use court services –but they can be notoriously stingy in allowing for jury service for the employees. Even law firms frequently give very few days to employees. Thus, we should work with chambers of commerce, the Bar, PR efforts; other ways we can reach the business community should be evaluated. Perhaps businesses can secure some sort of tax relief for the salaries they pay during jury service. The judicial branch should be concerned with public transportation to courthouse. Locations for new courthouses should consider this. Where the transportation system is clumsy or nonexistent, the branch should communicate with the other branches, including at the local level, in securing such transportation services.
Lawyers Club of San Diego	<ul style="list-style-type: none"> • Financial Reasons: Solutions with the following: <ul style="list-style-type: none"> ○ Provide free daycare for jurors ○ Provide confidential pumping station for nursing mothers ○ Provide a jury service round trip shuttle service from various communities ○ Create different duration jury pools so jurors can self-select what works best with their lives (short term jurors (1-3 days); medium (3-5 days), long (5-7 days) and extra-long (7 days) ○ Advocate for legislation that mandates employers to provide paid jury service or county paid payment for jury service ○ Advocate for tax incentives for employers who do not pay their employees, but who serve jury duty. This tax credit will be based on the total days’ employees serve on jury duty and balancing employer size. The idea is to encourage employers to promote service and help mitigate the impact on the employer when the employee is serving. • Apathy and distrust in the system: Solution is to create a sense of duty by doing the following: <ul style="list-style-type: none"> ○ Community events that educate public regarding jury service ○ Using bar associations, community advocates, cultural centers, communities of faith to educate and increase participation ○ Work with the Girl Scouts of America and Boy Scouts of America to create juror badge ○ Create a Mock Trial program for K-12 students

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	<ul style="list-style-type: none"> ○ Create a campaign similar to donation drive, voting (I donated, I voted, etc.) – I served.
Legal Services Advocates	The practical barriers discussed above are major factors that decrease juror participation. Both jurors and their employers should be reimbursed for the cost of jury service, at a minimum of \$15 dollars an hour.
Hon. Earl Maas III	The biggest barrier I see is unwillingness to serve. This is not something that gets any media exposure, but is, based upon juror questioning, the #1 reason we have a 20 percent (or less) response rate to summons. Potential jurors know there is no consequence to failing to appear, or know that a couple well placed comments will get them off any jury they may get called for.
NJP Litigation Consulting	<p>Recommendation 5: As noted above, the financial burden of jury service has long been the greatest barrier to securing juries that represent a true cross-section of the community. In a state with a very high cost of living, it is impossible for people without sources of income other than their wages or without substantial savings to sustain themselves on the meager \$15 a day jury fee the California courts provide.</p> <p>California would go a long way towards reducing barriers to service by increasing jury fees to \$120/day consistent with the minimum wage of \$15 per hour for an 8-hour day. Other innovations, such as court days that run from 8:30 to 1:00 p.m., would also permit more people to serve and still work part-time. The latter innovation, while helpful, often does not meet the needs of workers who lack flexibility in their employment schedules and cannot afford reduced hours of employment.</p>
Superior Court of San Francisco County	<p>The first barrier is a misunderstanding of the burdens and benefits of jury service. Rumors persist of jurors being summoned to waiting rooms for hours or even days in advance of being called. Whether or not this occurred previously, it has not been true in San Francisco for years. In San Francisco, our experience is that jurors who serve are overwhelmingly positive about their experience. The complaints focus on the process for obtaining a continuance or hardship and to voir dire.</p> <p>Valuable lessons learned about using technology effectively to streamline jury selection during the COVID-19 emergency should be applied post-pandemic.</p> <p>The San Francisco Superior Court developed procedures to allow prospective jurors to report for jury service remotely:</p> <ol style="list-style-type: none"> 1. When a prospective juror is summoned for jury service at 4:30 p.m. the evening before the report date, the prospective juror can report using the court’s website. The prospective juror provides an email address and telephone number which the court will maintain in confidence but will use to communicate with the prospective juror. 2. If the prospective juror requests a hardship, he/she/they do so on-line. The trial judge can begin reviewing and granting the hardship requests as soon as they are submitted. If the hardship is approved, the prospective juror receives an email from the court advising that the jury service requirement has been satisfied. 3. If the prospective juror does not request a hardship—in most cases—the prospective juror receives an email from the court which contains a link to a case-specific questionnaire, which the prospective juror completes and submits on-line. In addition to the general and case-specific questions, there are questions directed at the prospective juror’s ability to serve during the pandemic and any related concerns. 4. The prospective juror is advised of the date to report for in-person voir dire and jury selection. 5. The prospective jurors are required to complete the questionnaire by 5:00 p.m. on the report date. 6. The jury office creates a randomized list of all prospective jurors who completed the questionnaire. The questionnaires are organized

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	<p>using the random order and sent to the trial judge as a PDF with the random number assigned to the prospective juror on her/his/their questionnaire.</p> <p>7. The judge and lawyers review the questionnaires and stipulate to eliminate those prospective jurors as to whom a cause challenge would lie. Court and counsel also identify and agree to excuse those prospective jurors who have COVID-related concerns.</p> <p>8. Prospective jurors who are excused are notified by email that they have completed their jury service.</p> <p>9. Those prospective jurors who will report for voir dire receive an email informing them of the day, time, and location to report for jury selection.</p> <p>This process significantly reduced the amount of time needed for jury selection and has been applauded by appreciative jurors. Prospective jurors and court users are increasingly comfortable with and expect more online services. The San Francisco system was developed to address the pandemic. The current system allows us to summon jurors for only one case each day, which has created delays and burdened the staff. We are working with a vendor to develop a system which can accommodate multiple trials daily. Developing software for a statewide electronic jury management system is essential. Efficiencies may be achieved through a statewide advanced solution. Without a statewide approach, each court must work with its own vendors and these vendors in turn will “reinvent the wheel” to build new solutions such as the remote questionnaire process.</p> <p>Technology offers promising solutions, but the courts require more resources to implement electronic solutions.</p> <p>Other possible solutions all require additional funding, including making childcare available at the courthouse, using text messaging reminders for jury service, and ensuring that the source lists for jury pools include current addresses of prospective jurors.</p>
Hon. Alison Tucher	<p>I think the biggest barrier to jury service is the common view that responding to a summons is a big, unaffordable waste of time: You’ll sit around, maybe answer some questions, but never actually hear and decide a case, and in the meantime lose an entire day of your life for nothing. In these circumstances and given the pressures of daily life, many figure it’s easier to ignore the summons. Selecting a jury for a trial in Alameda County a few years ago, I had an irate citizen complain he was responding to the <i>eighth</i> jury summons he’d received in eight years. This was not unusual because our superior court issued almost as many summonses annually as it had citizens on the jury roll. Only the most conscientious responded each time they were called.</p> <p>I recommend two reforms that would require legislation but would substantially improve jury service. First, I would like to see California curtail, perhaps even eliminate, peremptory challenges. Second, I would like to see the state pay jurors minimum wage for every hour we require them to be in the courthouse.</p> <p>On eliminating peremptories, Justice Thurgood Marshall famously observed that the only way to “end the racial discrimination that peremptories inject into the jury-selection process” is “to ban them entirely from the criminal justice system.” (<i>Batson v. Kentucky</i> (1986) 476 U.S. 79, 102-103, 107 [Marshall, J. concurring].) Senate Judiciary Chairman Tom Umberg (D-Santa Ana), a former federal prosecutor, has a bill pending to do just that. I encourage the Work Group to study and consider supporting Senator Umberg’s bill, SB 212. Eliminating peremptory challenges in criminal trials would prevent attorneys from striking qualified jurors from the venire for reasons of implicit,</p>

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	<p>structural, or disguised bias. The result would be an empaneled jury that more closely resembles the racial make-up of the venire from which it is drawn. Eliminating peremptories would also be more respectful of jurors’ time. It would end the practice of attorneys sending home citizens who had devoted a day to performing their civic duty and been found qualified to serve, only to be released without explanation. Courts could halve the number of jurors summoned for criminal trials, since they would need to qualify only 12 jurors plus alternates for each trial, rather than this number <i>plus up to 20 more</i> to be struck on peremptory challenges. If Umberg’s bill seems too radical a departure from current practice, a compromise that cut the number of peremptories to two or three per side would be a step in the right direction. Umberg’s bill also could be broadened to address jury selection in civil, as well as criminal, trials.</p> <p>As for paying jurors better, I recognize that jury service is both a privilege and a responsibility of citizenship, but I see no reason to compel citizens to serve without compensating them for their time. Soldiers drafted into the U.S. Army got paid. Landowners forced to cede a portion of their property for a public purpose get fair market value in return. Those who respond to a jury summons, whether required to serve for a day or for a month, deserve no less. Our current practice of paying <i>nothing</i> for the first day of service and only \$15 for each subsequent day protects the public fisc at the expense of equity for those who are called. In a world where many do not have a benevolent employer paying them to spend time in the courthouse, nor a bank account that cushions the blow of foregone earnings, the financial hardship of jury service breeds resentment towards the judicial system and prompts large segments of the jury pool to opt out. In some of our communities, more than half of jury summonses are simply ignored. And many who make their living in the gig economy have a compelling excuse of financial hardship if they do take the trouble to respond to the summons. Having large segments of our population either ignore the jury summons or be excused for financial hardship has troubling implications for the right of criminal defendants to be judged by a jury of their peers.</p> <p>There are models for paying jurors better, albeit none as generous as the standard I urge. In federal court, jurors are paid \$50 a day, plus transportation and parking expenses, and \$60 a day after ten days of trial. (https://www.uscourts.gov/services-forms/juror-pay) Jurors in state courts in Colorado, Arkansas, South Dakota, Georgia, Massachusetts, and Connecticut receive similar amounts. (See http://juryduty101.com/juror-pay-by-state.) Under my proposal, jurors would make about twice as much as in these jurisdictions (\$15x7=\$105), though still less than many potential members of the venire earn by skipping out on their jury obligations. Paying jurors would make it possible for a larger cross-section of the public to serve, and would send a message louder than any judge’s welcoming speech that the judicial system values jurors’ time.</p> <p>You will note that there is a potential synergy between these two proposals, and with other ideas for improving jury service. For example, if we eliminate or curtail the use of peremptory challenges, then fewer jurors will be summoned and it will be more affordable to pay minimum wage to those who are called. If paying for juror service prompts a broader cross-section of the community to respond to the summons, then eliminating peremptory challenges will increase the chances that these new recruits, when they make it into the jury box, will end up staying to serve on the jury. And if the Jury Selection Work Group pursues proposals to expand the pool of potential jurors by better outreach to underrepresented communities, these efforts too will dovetail nicely with reforms that make responding to a jury summons more affordable and rewarding.</p>
Nancy Wallace	Biggest barriers I believe are: Employer does not pay full wages, Child Care costs; Transportation; not understanding the process; not

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Commenter	Question #5: What do you see as the biggest barriers to jury service? What can be done to resolve each of the barriers you identify?
	<p>wanting to judge others (religious reasons); scared of government involvement in their lives.</p> <p><u>Employer not paying full wage</u>: Pass legislation that mandates employer’s to pay full wages to employees on jury duty, and employees no longer receive juror payment, just like government employees.</p> <p><u>Child Care</u>: Have child care for jurors, close to court or/at the court, like court’s do for other person’s attending court hearings.</p> <p><u>Transportation</u>: Include Public Transportation payment with the summons to get to jury service, make arrangements and Para Transit (handicap persons) Public Transit Agency and make payment to and from court.</p> <p><u>Not understanding the process</u>: Push for high schools to include a robust section on jury service, who, what, where and why. To hopefully, encourage the future adult jurors to participate in jury service.</p> <p><u>Not wanting to judge others (religious reasons)</u>: Outreach to local religious leaders, find out what their take is on jury service and see what can be worked out to help these people participate in jury service.</p> <p><u>Scared of government involvement in their lives</u>: Outreach to local leadership organizations to help communities understand their role in jury service, that it is not about getting the government involved in their personal lives.</p>

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Commenter	Question #6: If economic hardships are a barrier, which financial reasons impact prospective jurors the most and what solutions would be the most helpful?
Alameda County Public Defenders	<p>Potential jurors who are self-employed, work as contract/gig workers, work informally or on “under-the-table” jobs, or whose employers simply do not pay for jury service, often cannot afford to serve because they will lose their income and lack the financial resources to absorb that loss. Potential jurors who are unemployed or underemployed may also be concerned that they will miss new job opportunities while serving on a jury.</p> <p><i>Paying a “living wage” to all seated jurors and potential jurors who appear for jury selection, with the exception of those whose employers pay for jury service (see response to Question 1, above), would likely be the single most effective way to reduce financial barriers. This “living wage” should be at least \$120.00 per day of service (the equivalent of eight hours per day at \$15.00) and should be assessed and adjusted on an annual basis. It will be important to publicize this change in juror fees widely.</i></p> <p>Despite the provisions of California Labor Code section 230, some potential jurors may fear that their employers will fire or otherwise penalize them for taking time off for jury duty. Increasing public awareness and enforcement of this section seems essential and providing prospective jurors with instructions and/or forms for filing a complaint pursuant to section 230(h)(1) may also be useful.</p>
California Public Defenders Association	<p>In addition to the foregoing, and fear of losing employment due to absence from work related to jury service, many prospective jurors from unrepresented communities cannot afford care for dependent children and adults during the time of their service. Still others lack transportation. If the government were to increase compensation for those called for service, the wealth-disparity among those who serve would not be as prevalent. In addition, consideration should be given to laws which would sanction employers who take any disciplinary or retaliatory action against an employee who is required to miss work to serve on a jury.</p>
Stephen Dahm	Time and money.
Hon. George Eskin (Ret.)	<p>Courts should do everything possible to minimize financial hardship, and the most helpful solutions would result in reducing the amount of time jurors are required to spend at the Courthouse and away from their normal activities. Jury trials should be assigned a Court’s highest priority and no other commitments should interfere with the progress of a trial. For example, there are judges in courts without master calendar systems who schedule jury trials on three random days during the week, setting aside time for prelims, law & motion calendars, specialty calendars and other matters that interfere with a continuous jury trial; this contributes to inconvenience and additional expense to jurors whose service is extended unnecessarily. Parking of vehicles within proximity of the courthouse must be provided free of charge, and consideration should be given to furnishing food, beverages and snacks as well as child care and transportation for children after schools.</p>
Joanne Kingston	Hold employers feet to the fire about paying for paid jury service.

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Lawyers Club of San Diego	<ul style="list-style-type: none"> • Consider financial impact <ul style="list-style-type: none"> ○ Provide free daycare for jurors ○ Provide confidential pumping station for nursing mothers ○ Provide a jury service round trip shuttle service from various communities ○ Create different duration jury pools so jurors can self-select what works best with their lives (short term jurors (1-3 days); medium (3-5 days), long (5-7 days) and extra-long (7 days) ○ Advocate for legislation that mandates employers to provide paid jury service or county paid payment for jury service ○ Advocate for tax incentives for employers who do not pay their employees, but who serve jury duty. This tax credit will be based on the total days’ employees serve on jury duty and balancing employer size. The idea is to encourage employers to promote service and help mitigate the impact on the employer when the employee is serving.
Legal Services Advocates	<p>The fear of losing a job, losing income, the inability to obtain child or elder care, and transportation costs are the most common financial concerns cited by prospective jurors. Juror who are unemployed and/or who are not receiving financial benefits while attending jury duty should be reimbursed to obtain a “living wage” for serving as jurors. Sanctions should be imposed on any employer who takes action against an employee for serving on a jury.</p>
Hon. Earl Maas III	<p>For those who show up, not being paid for their time here, or for more than 1 day, is the primary excuse.</p>
Superior Court of San Francisco County	<p>The current statutory fee for jurors of \$15 per day (\$2.14/hour if in trial session from 9:00 a.m. to 4:00 p.m.) is simply inadequate. Availability and costs of transportation and parking are also common financial barriers.</p> <p>We recommend a statewide survey of the public to hear their voices about the barriers to jury service, what should be changed, and what is adequate jury duty pay to allow prospective jurors to not suffer a hardship. This survey might be conducted through local community organizations to maximize responses. The results of the survey should guide the Governor and Legislature in budget decisions to support jury service participation.</p>
Nancy Wallace	<p><u>Employer not paying full wage:</u> Pass legislation that mandates employer’s to pay full wages to employees on jury duty, and employees no longer receive juror payment, just like government employees.</p> <p><u>Child Care:</u> Have child care for jurors, close to court or/at the court, like court’s do for other person’s attending court hearings.</p> <p><u>Transportation:</u> Include Public Transportation payment with the summons to get to jury service, make arrangements and Para Transit (handicap persons) Public Transit Agency and make payment to and from court.</p>

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Hon. Joan Weber	<p>The biggest financial hardships for jurors are employers not paying for jury duty and jurors in large urban courts having to pay exorbitant fees to park. Laws should be passed to mandate that employers allow employees to be paid for at least 5 days of jury duty. If the employer cannot pay for employees to do jury duty, a fund should be set up to reimburse employers who apply for compensation. Also jurors should not have to pay for parking to do jury duty. Counties should receive funding to reimburse jurors for parking. In my courthouse, San Diego Central court, jurors frequently have to pay \$25 to \$30 per day to do jury duty. Blue collar workers (which are disproportionately minorities) cannot pay that amount to do jury duty so they simply don't show up.</p>

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Commenter	<p>Question #7: Last year, Assembly Bill 3070 (AB 3070) was signed into law and its provisions appear to directly address many of the key questions outlined in the Jury Selection Work Group’s charge. Are there <i>Batson/Wheeler</i> related issues, whether or not addressed in AB 3070, that should be studied by the work group?</p>
Alameda County Public Defenders	<p><i>Yes.</i> The work group should collect jury selection data from all counties in California and conduct a study to determine the actual impact of AB 3070 and whether courts are effectively implementing AB 3070; to assess the composition of jury panels and juries across the state; and to identify areas of focus for future improvements to the jury selection process. We cannot effectively address bias and discrimination in our jury system without first measuring the problem and identifying the point(s) in the process where disparities arise.</p> <p>This analysis would require jury commissioners and court officers to collect and maintain a record of demographic data – including race and gender – for all jurors who are summoned, jurors who are assigned to trial panels, jurors who are granted hardship excuses, jurors who are excused for cause, jurors who are excused by peremptory challenge, and jurors who are selected to sit on juries. This data would need to be compared with overall demographic data for each county. Jury commissioners and court officers should also compile and maintain a record of the number of motions brought under Code of Civil Procedure section 237.1 in trial, and the number of these motions that are granted or denied.</p> <p>While the passage of Assembly Bill No. 3070 is a tremendous step forward, there is much work to be done. We commend the formation of this Work Group and its continued efforts to eliminate discrimination and disparities in jury selection.</p>
California Attorneys for Criminal Justice	<p>In Question 7 of the request for comment, the Work Group has asked whether there are any other areas related to <i>Batson/Wheeler</i>, whether or not addressed in AB 3070, that should be studied by the Work Group. Because the Judicial Council is responsible in large part of trainings received by judges throughout the state, CACJ believes that a fruitful area of inquiry for the Work Group is to ensure that the Judicial Council provides timely and insightful trainings on the newly enacted AB 3070.</p> <p>To ensure that the trainings are most effective, CACJ strongly believes that it would be helpful to reach out to those lawyers involved in the drafting and passage of AB 3070 - a CACJ sponsored bill - since those lawyers are most deeply familiar with the terms of the legislation and its legislative history. Members of our organization with deep familiarity with the problems of <i>Batson</i> and <i>Wheeler</i> which AB 3070 attempts to address, and who were directly involved in both the drafting and passage of AB 3070 include Elisabeth Semel, author of the <i>Whitewashing the Jury Box</i> report, Elias Batchelder, the Co-Chair of CACJ's Legislative Committee, and AJ Kutchins, another CACJ attorney with extensive expertise in <i>Batson/Wheeler</i> issues and who was involved in the drafting and passage of this landmark legislation.</p>
California Judges Association	<p>In 2020, the State of Connecticut Judicial Branch Jury Selection Task Force presented their final report to Chief Justice Richard A. Robinson of the Connecticut Supreme Court. The report made recommendations for systemic jury reform in Connecticut. One of the task force subcommittees was given the responsibility of assessing <i>Batson/Wheeler</i> issues within the context of using peremptory challenges and the creation of model jury instructions. Specifically, the scope of the subcommittee’s inquiry was described as follows:</p> <p style="padding-left: 40px;">The subcommittee will examine how the court can play a role in addressing implicit bias through the use of peremptory challenges and the creation of model jury instructions. In the discussion of peremptory challenges, the subcommittee</p>

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	<p>should consider how their use may contribute to imbedding implicit bias in the jury selection process. Should peremptory challenges be eliminated or at least severely limited? Should jurors instead be “conditionally stricken” and their status revisited at the conclusion of the voir dire process? Through the study of practices in other states, the subcommittee shall give consideration to the feasibility and impact of judges presiding over the civil jury selection process and what impact their presence may have on the use of peremptory challenges.</p> <p>When it comes to <i>Batson</i> challenges, most judges are loathe to make a finding of purposeful discrimination in concluding that the attorney in question has acted unethically and has willfully violated a potential juror’s constitutional rights. Further, the reputation, and integrity of the attorney may be called into question under the prongs of <i>Batson</i>, resulting in a referral to statewide bar counsel. This subcommittee will study all standards under <i>Batson</i> and whether the <i>Batson</i> rule should be divorced from the court’s requirement to find purposeful discrimination in upholding a <i>Batson</i> challenge.</p> <p>Further, this subcommittee should examine whether in practice, <i>Batson</i> serves to contribute to the implicit bias and discrimination it seeks to overcome. Further, this subcommittee should examine whether in practice, <i>Batson</i> serves to contribute to the implicit bias and discrimination it seeks to overcome. Does <i>Batson</i> in fact encourage the voir dire process to look the other way and ignore the very issues of race, stereotype and discrimination it is designed to guard against? ...</p> <p>The subcommittee will examine in detail, the relationship between <i>Batson</i> and implicit bias and make recommendations for sweeping and systemic changes to the jury selection process through a variety of remedies, including the legislative process and statutory revisions. In developing model jury instructions, the subcommittee shall conduct focus groups with stakeholders to be identified, to determine how the model jury instructions can be drafted to educate jurors about implicit bias and how to avoid it in their deliberations.</p> <p>Ultimately, the subcommittee (unanimously) made a recommendation to replace Connecticut’s modified version of the three-step <i>Batson</i> test with a “wholly different methodology.” The Jury Selection Workgroup should consider studying the same issues outlined above to determine how to address these issues</p>
California Public Defenders Association	Careful attention should be given to ensure that judicial officers have the education and willingness to adhere to and implement the new law. In addition, studies should be conducted, in each jurisdiction, to determine whether the law is actually making a difference as to the composition of juries in the region. The other recommendations stated herein, including collection of demographic information, from those summoned and evaluation and action responsive to that data, would be helpful.
Stephen Dahm	CCP 231.7 (AB 3070) is on the books for now, so the group should try to deal with it if possible. It seems to me that the language in the statute would more properly be part of Standards of Judicial Administration, Titles 3 and 4. If judges are trained to recognize discriminatory peremptories, they could say yes or no to a request for a peremptory, as they do now for challenges for cause. It seems that putting this in the lawyers’ hands will make the process much slower, and judges could do a better job.

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Hon. George Eskin (Ret.)	<p>The Work Group should conduct an intensive study into the unintended consequences of AB 3070 (Weber) as a result of expanding <i>Batson/Wheeler</i> concerns to “perceived membership” in other “cognizable groups” including, “...gender, gender identity, sexual orientation... or religious affiliation.” The Work Group must face the challenge of reconciling the tension between the constitutional privacy rights of prospective jurors with the parties’ rights to a fair trial. I have the highest regard and utmost respect for Justice William Murray, a member of the Work Group, and I respectfully disagree with his opinion that inquiry of jurors about sensitive personal matters must be avoided; the question should be, “How can the Court conduct a sensitive inquiry that constitutes an invasion of personal privacy?” For example, a defendant prosecuted for a hate crime is entitled to know whether a prospective juror is gay, lesbian, bi-sexual, transgender, or Jewish or has close relationships with other people who are “members of such a cognizable class.” Relying on the speculative “perception” of counsel and the Court is wholly inadequate and an invitation to rampant bias abuse.</p> <p>The Work Group should undertake a study of the process employed by courts throughout the state commencing with the arrival of prospective jurors at the Courthouse and prescribe “best practices” as well as those practices that should be discouraged. I urge the Work Group to recommend that a determination of hardship and other personal inquiries should occur in private communications at the jury assembly facility. The common practice of having jurors stand and explain their “hardship” justifying an excuse or deferment in open court should be prohibited; a juror, trying to suppress tears, stood at the lectern and explained to the judge that her husband had been suffered a heart attack the previous evening, was hospitalized in the ICU the previous evening, and she hoped to be excused to be with him. It is not uncommon for judges to inquire of prospective jurors in a domestic violence case, “Has anyone been a victim of domestic violence?”, and after a reluctant show of hands, to inquire further. This is humiliating and invasive. A certified public accountant who sought a deferment in March was ridiculed by the judge who suggested in the presence of the other prospective jurors that the claim of “tax season demands” was a ploy to avoid jury service.</p> <p>All of these grossly unpleasant experiences could be avoided if the Court utilized a system of exploring sensitive issues privately before the jurors arrived in the Courtroom, and inquiries about biases based upon gender, sexual orientation and religion should also be addressed there. We cannot “eliminate” bias despite the Judicial Council’s having embraced that term, but we can recognize, identify and acknowledge sources of unconscious bias and seek to minimize its prejudicial effect on decision making.</p> <p>I have reviewed the recently revised (2021) Jury Management Bench Handbook. I encourage you to convey to the Jury Selection Work Group the omission of any reference to the constitutional right of privacy which was adopted by the voters of California in November 1972, nearly 50 years ago. “Privacy” is established as an inalienable right in Article I, section 1 of the State Constitution and protects individuals against violations by state and federal government entities as well as violations by other individuals and private companies; it is self-executing and confers a judicial right of action on all Californians, including prospective jurors.</p> <p>Sadly, although there are a few passing comments about jurors’ privacy rights, the Revised Jury Management Bench Book is woefully inadequate in its failure to recognize the inherent tensions between the constitutional right to privacy and the constitutional rights to a fair</p>

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	trial. Hopefully, the Jury Selection Work Group will attempt to address the conflict and provide some guidance for trial court judges that suggests more deference, respect and appreciation for jurors’ rights.
Steven Fleischman	<p>AB 3070 is based on a June 2020 study of <i>Batson/Wheeler</i> appellate decisions performed by the Berkeley Law Death Penalty Clinic. That study, however, focused exclusively on criminal cases, primarily alleged <i>Batson/Wheeler</i> violations by prosecutors. There is no evidence that there is any comparable problem with <i>Batson/Wheeler</i> challenges in civil cases. Consider research I did several months ago when AB 3070 was being considered by the Legislature:</p> <ol style="list-style-type: none"> 1. <i>Batson v. Kentucky</i> (1986) 476 U.S. 79, has been cited in 1,407 California appellate decisions (published and unpublished). Of those cases, 1,400 were criminal cases and only 7 were civil cases. 2. <i>People v. Wheeler</i> (1978) 22 Cal.3d 258, has been cited in 1,921 California appellate decisions (published and unpublished). Of these cases, 1,900 were criminal cases and only 21 were civil cases. <p>This analysis shows that the purported problems with <i>Batson/Wheeler</i> challenges in criminal cases has not infected the civil justice system. Indeed, since civil cases are prosecuted and defended by privately-paid counsel, rather than court appointed attorneys, one would expect that they would have greater resources to research and pursue <i>Batson/Wheeler</i> challenges, yet the data suggests otherwise (at least as of several months ago). Given this data, I would therefore ask the Working Group to consider recommending that whatever changes it propose be limited to criminal cases and not to civil cases. I thank the group for its attention.</p>
Laurie Hepler	I see that law as well intentioned but jammed through hastily so that the Legislature could feel like it had done something, with <i>utterly unworkable</i> results. I’d sooner see peremptory challenges abolished in California than carry on with the mental corn-maze AB 3070 created.
Yolanda Huang	<ol style="list-style-type: none"> 1) Judges are refusing to implement because AB 3070 is not effective until 2022. 2) Sometimes one challenge may not appear to be racist, but when a pattern appears, it is often too late to raise the issue because the earlier jurors have already been excused. Under these circumstances, it should be mandatory that the defense be provided additional challenges.
Hon. Stephanie Jones	Track <i>Batson Wheeler</i> objections to determine if particular attorneys have a pattern or practice of systematically excluding members of a certain group.
Hon. Curtis Karnow	AB 3070 is likely to have very serious issues as it is implemented. In any event, peremptory challenges should be eliminated, for reasons cited by others, including Justice Marshall. It is unreasonable to expect that implicit bias can be eliminated by AB 3070 or other modification to the way peremptory challenges are handled. [The fear of the bar that without preemptory challenges attorneys will be unable to get rid of jurors who appear biased against their clients can be addressed by making cause challenges easier.] I understand that it may be a problem getting this through the legislature at this time, but the first decision of the working group should be whether we should so do; the political issues as to how to implement should be set aside for the moment.
Joanne Kingston	On bias about distrust of police officers, make that an implied bias objection where the prosecutor would have to explain why they are exercising the peremptory based on the race of the juror.
Lawyers Club of San Diego	<ul style="list-style-type: none"> ○ Include AB 3070 legislative findings in juror orientation ○ Develop auditing process to track judicial decisions on challenges raised.

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	<ul style="list-style-type: none"> ○ Ensure AB 3070 training is included in the judicial college and at least once a year for all sitting judges
Legal Services Advocates	Yes, we urge this Work Group to oversee the effective implementation of AB 3070, along with SB 310 and SB 592.
Hon. Earl Maas III	I can only address the issue as it relates to civil. I have not seen the publicized and traditional claims of bias (Defendants challenging minorities). Indeed, I have seen more bias by lawyers against those who appear to show the same demographics of their clients, rather than the opposite, but more media reported, events. This used to surprise me, but no longer does. Because I have never received a <i>Batson</i> challenge to such actions, I can not say why the lawyers chose those potential jurors to challenge. I only notice because I try to keep track of any potential race related challenges during voir dire in anticipate of potential <i>Batson</i> challenges.
NJP Litigation Consulting	<p>Recommendation 7: Taking the lead from Washington state’s adoption of General Rule 37 in 2018, last year, the California legislature passed AB 3070, championed by now-Secretary of State Dr. Shirley Weber. AB 3070 prescribes a new procedure to eliminate the exercise of discriminatory peremptory challenges, which the <i>Batson</i> inquiry with its purposeful discrimination standard failed to accomplish.</p> <p>Justice Thurgood Marshall predicted that the <i>Batson</i> remedy would fail because lawyers would readily assert facially neutral reasons, creating a difficult burden for judges who must assess the credibility of these reasons. A recent study of peremptory challenges in our state, <i>Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors</i>, demonstrated that all too often the reasons prosecutors give for striking Black jurors penalize them for the experience of being Black in America today, for example, a juror who distrusts law enforcement, who believes there is racial profiling, whose relatives or friends may have criminal records, or is unemployed or less educated. <i>See also, People v. Triplett</i>, 48 Cal.App.5th 655, 688-93 (2020) (Liu, J., with Cuéllar, J., dissenting from the denial of review).</p> <p>AB 3070 is a new and essential tool which must be tried and evaluated. The information from Washington, while largely anecdotal, is that GR 37 achieving its intended objective. This is promising news for AB 3070. The new statute needs to be implemented and studied by experienced, independent jury scholars.</p>
Professor Elizabeth Semel	<p>Here, I address my comments to Question 7, and offer three recommendations:</p> <p>Recommendation 1: There should be an independent, empirical study of the effectiveness of AB 3070.</p> <p>Question 7 begins with the observation that the provisions of AB 3070 “appear to directly answer many of the key questions outlined in the Jury Selection Work Group’s charge.” I concur that the California Legislature’s findings offer conclusions about the failure of the <i>Batson-Wheeler</i> procedure to eliminate discriminatory peremptory challenges, and that new Code of Civil Procedure section 231.7 prescribes a radically different formula. However, the findings and the statutory remedy reflect, in significant part, the extensive empirical research and legal analysis presented in <i>Whitewashing the Jury Box</i>, the first study of its kind in California. The Work Group therefore would be well-served to look to the report in assessing whether AB 3070 is achieving its objective.</p> <p>As you know, in 2018, the Washington Supreme Court adopted General Rule 37 (GR 37), becoming the first state to dismantle the <i>Batson</i> jury selection regime. The California legislation is modeled on GR 37, but goes further in several respects. Anecdotal evidence from</p>

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	<p>Washington indicates that “the rule has served a critical role in judicial education in eliminating racial bias,” and suggests that attorneys and judges are adhering to GR 37, which has led to a decline in prosecutors’ use of peremptory challenges to disproportionately strike Black jurors as well as a decrease in their reliance on reasons that are “presumptively invalid” under the rule. Although still few in number, the opinions issued to date indicate that the judiciary has had no difficulty applying the de novo standard of review.</p> <p>The news from Washington is encouraging for California. However, independent research by jury selection scholars is the appropriate and reliable method for assessing whether the provisions of section 231.7 become “an effective procedure for eliminating the unfair exclusion of potential jurors based on race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, through the exercise of peremptory challenges.” Consistent with the findings and recommendations of the California Legislature and <i>Whitewashing the Jury Box</i>, the study should focus on determining whether the new procedure ends, or at least significantly reduces, the disproportionate removal of “African Americans, Latinos, and other people of color” from the jury.</p> <p>The study should be empirically rigorous and conducted independent of the judicial, legislative, and executive branches. Considerations essential to a meaningful outcome include the following:</p> <ol style="list-style-type: none"> 1. The researchers must be able to identify specific study periods before and after the implementation of AB 3070 to compare jury selection data. 2. The study period post-January 1, 2022 will have to account for the time necessary for courts to understand and properly implement AB 3070 and for the data to accrue. 3. The researchers will need to assess how much of the data should come from cases at the trial level and how much should come from cases at the appellate level. 4. Determining the length of the study periods will also depend on how frequently juries are selected in the counties that are the subjects of the study. In that regard, to draw meaningful conclusions about the effects of AB 3070 on California jury selection, the researchers should have the flexibility to conduct a multi-county study so that the sample size is sufficiently large as well as demographically and geographically diverse. <p>Recommendation 2: Data should be collected on prospective jurors’ race, ethnicity, and gender in an initial questionnaire to jurors who are summoned, which should be available during jury selection and on appeal.</p> <p>We undertook <i>Whitewashing the Jury Box</i> in part because there were no data on the exercise of peremptory challenges in California trials. Our research quickly revealed the lack of readily available, reliable demographic information on who is called for jury duty, who is excused (for whatever reason), and who serves.</p> <p>Last December, the Connecticut Supreme Court’s Jury Selection Task Force issued a report, which concluded: A crucial step to ensuring fair trials with diverse jury members is to begin collecting data on who is called for jury duty and selected to serve on a jury. Data is the foundation to any efforts to ensure diverse representation on juries – it is impossible to ascertain whether there is a problem with jury composition or the extent of the problem without robust data collection.</p>

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	<p>The same observation applies to jury selection. Counsel and judges should not be guessing about a juror’s racial or ethnic identity when the information can be obtained through a questionnaire that accompanies the jury summons. When jurors appear in response to a summons, the completed questionnaires should follow them as they are assigned to a courtroom for jury selection and should become part of the appellate record. This straightforward process obviates the need for speculation about jurors’ racial or ethnic identities or for the court to single out individual jurors to ask how they identify themselves. It will also improve the reliability of counsel’s arguments and courts’ rulings under AB 3070.</p> <p>Recommendation 3: AB 3070 should be applied retroactively. <i>Whitewashing the Jury Box</i> documents decades of failure of the <i>Batson/Wheeler</i> framework and its enforcement by California courts. The legislature’s findings with regard to AB 3070 tracked the report’s findings and recommendations. The California Legislature recognized that “peremptory challenges are frequently used in criminal cases to exclude potential jurors based on their race [or] ethnicity . . . , and that exclusion from jury service has disproportionately harmed African Americans, Latinos, and other people of color.” In particular, the legislature acknowledged that “the existing procedure for determining whether a peremptory challenge was exercised on the basis of a legally impermissible reason has failed to eliminate that discrimination.”</p> <p>A pressing question for the Work Group is how our reviewing courts should consider the hundreds of <i>Batson-Wheeler</i> claims in criminal cases that were tried before January 1, 2022. The first question is whether the California Supreme Court will hold that the new statute is retroactive. However, retroactivity is not the only remedy for the harms done by decades of discrimination. A judicial remedy cannot likely be fashioned for the thousands of people of color who were wrongfully excluded from juries and the thousands of defendants whose cases were tried by juries tainted by race discrimination over the years before and after <i>Batson-Wheeler</i>. At the very least, given the legislative findings underpinning AB 3070, a judicial remedy is owed and can be delivered to defendants whose cases are now on appeal or will have been tried before January 1 and subsequently appealed.</p> <p>The Work Group should recommend that the California Supreme Court follow the Washington Supreme Court’s lead. In 2013, in <i>State v. Saintcalle</i>, the Washington Supreme Court acknowledged deficiencies in the <i>Batson</i> inquiry, particularly with respect to the “strict ‘purposeful discrimination’” requirement, and foreshadowed the adoption of “a new, more robust framework,” which became GR 37. Two years later, in <i>City of Seattle v. Erickson</i>, the court amended its <i>Batson</i> analysis to “ensure a robust equal protection guaranty,” and adopted a “bright line” rule that “the trial court must recognize a prima facie case of discriminatory purpose when the sole member of a racially cognizable group has been struck from the jury.” In 2018, in <i>State v. Jefferson</i>, the court held that although GR 37 could not be applied retroactively to <i>Batson</i> challenges made prior to the effective date of the rule, it would act under the authorities identified in <i>Saintcalle</i> and <i>Erickson</i>: (1) state courts’ “‘wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult policy problems’”; (2) the court’s “inherent authority to adopt . . . procedures to further the administration of justice”; and (3) the “greater protection afforded under [Washington’s] state jury trial right.” The court announced:</p>

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	<p>[O]ur current <i>Batson</i> standard fails to adequately address the pervasive problem of race discrimination in jury selection. Based on the history of inadequate protections against race discrimination under the current standard and our own authority to strengthen those protections, we hold that step three of the <i>Batson</i> standard must change: at step three, trial courts must ask if an objective observer could view race as a factor in the use of the peremptory challenge.</p> <p>The Work Group should recommend that, consistent with the authorities relied upon by the Washington Supreme Court as well as California Constitution article I, section 16, our state’s independent fair cross-section guarantee, review of <i>Batson-Wheeler</i> issues in criminal cases tried before January 1, 2022, should be conducted under the provisions of AB 3070. Last year, Justice Liu, who has repeatedly criticized the California Supreme Court’s <i>Batson-Wheeler</i> jurisprudence and called for reform of the framework, offered a window into the California Supreme Court’s power to initiate these changes:</p> <p style="padding-left: 40px;">As it stands, our case law rewards parties who excuse minority jurors based on ostensibly race-neutral justifications that mirror the racial fault lines in society. This approach is not dictated by high court precedent, and it is untenable if our justice system is to garner the trust of all groups in our communities and to provide equal justice under law.</p> <p>Alternatively, the Work Group should recommend that the California Legislature pass and the governor sign into law a statute making AB 3070 retroactive to criminal cases tried before the bill’s implementation date. In considering the two options, I urge that this body be guided by the Washington Supreme Court’s acknowledgement in <i>Jefferson</i> that “[t]he current <i>Batson</i> test must be modified in order to prevent discrimination in jury selection.”</p>
Superior Court of San Francisco County	<p>We hope the Work Group will gather and share statewide data from the trial courts to understand the effectiveness of AB 3070. While not addressed in AB 3070, we also recommend that the Work Group study other aspects of jury selection such as whether there is discriminatory conduct in the hardship process. Mandatory CJER-sponsored statewide training on AB 3070 would also be of assistance.</p>
James Weakley	<p>I am expressing my concern about the changes to the use of peremptory challenges in civil trials. Our law firm represents governmental entities and employees, including law enforcement officers, in civil litigation. To preclude as valid reasons for using a peremptory challenges a potential jurors expression of distrust of or having a negative experience with law enforcement, expressing a belief that law enforcement engages in racial profiling, or having a close relationship with people who have been stopped, arrested, or convicted of a crime substantially risks the right of the defendant law enforcement officer of a fair and impartial jury. In addition precluding the use of peremptory challenges based upon dress, attire, or personal appearance would prevent challenging potential jurors who come to court wearing anti police wording on clothing, or displaying tattoos of violent gangs, again depriving the defendant law enforcement officer of a fair and impartial jury.</p> <p>While we are all opposed to the unfair exclusion of potential jurors based upon race, ethnicity, etc., there needs to be an equal concern about the parties right to a fair and impartial jury. Creating a presumption of invalidity places too great of a the burden on the party using the peremptory challenge, potentially eroding public confidence in our jury system.</p>

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Hon. Joan Weber	<p>Most definitely. The elephant in the room on <i>Batson</i> issues in California is that there are way too many peremptory challenges in all criminal case types. Thurgood Marshall wrote in <i>Batson</i> that the courts can never remedy the exclusion of racial minorities without doing away with peremptory challenges because there is no realistic way to police how lawyers use peremptory challenges. Shirley Weber’s bill, Assembly bill 3070, goes too far in the opposite direction by allowing jurors with legitimate, strongly held biases against law enforcement from being excused by way of peremptory challenges. I realize the California bar would never agree to the elimination of all peremptory challenges in criminal cases, but this working group should look into the issue of dramatically reducing them across the board. When a prosecutor has 20 peremptory challenges in a case, inevitably minority jurors are excluded at a larger rate than nonminority jurors. If the prosecutor had fewer peremptory challenges I am convinced that minorities would be better represented on the jury. Moreover when jurors come in to do jury duty and see 20 or 30 jurors excused from the panel by way of peremptory challenges that undermines juror confidence in the entire process. The typical juror has no understanding of why that many jurors would not be acceptable to hear the case. Senator Tom Umberg proposed a bill this year, Senate Bill 212, to eliminate peremptory challenges in all criminal cases. The bill did not get out of committee, most likely because it was mandating the elimination of all peremptory challenges. I urge the working group to consider this idea of reducing peremptory challenges in earnest. If accomplished I am convinced that California would see a larger representation of minority jurors in our courtrooms going forward.</p>