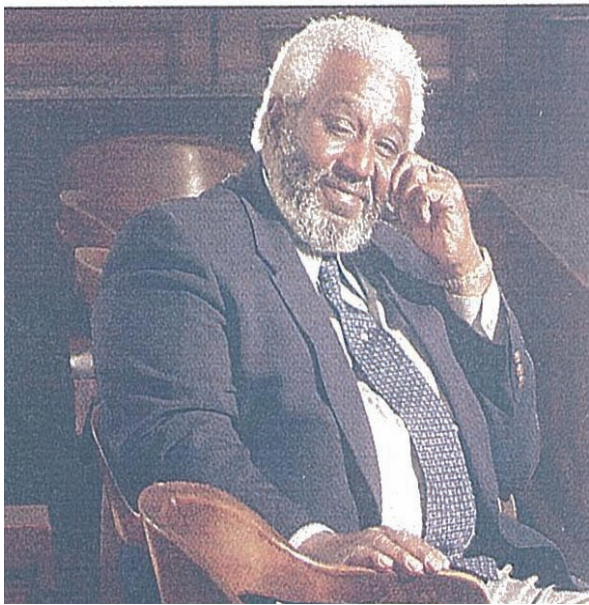


August 28, 2001

The push is on for more diverse juries

Minorities sue to change systems of choosing pool

By Joan Biskupic
USA TODAY



By David Planchet for USA TODAY

Jury still out on charges: The Rev. Bernard Martin, who has never been called for jury duty, joined a class-action lawsuit in Alabama to expand the methods used to select jurors. The new system's effectiveness is being monitored.

TALLASSEE, Ala. -- The Rev. Bernard Martin, 64, has lived much of his life here in Elmore County, about 30 miles east of Montgomery. But like many African-Americans in the Deep South, he never has been called for jury duty.

For Martin and many other black residents, being overlooked for such public service is more than a fluke of a court lottery, more than a personal slight. It symbolizes what they see as a key weakness of the U.S. justice system: Many minorities believe they are not treated the same as whites.

"Most of the time it seems that the jury is all white and the person on trial is black," Martin says. "It seems his chances are hopeless."

That's why Martin joined an unusual class-action lawsuit against Alabama officials 2 years ago. He and other Elmore residents claimed that although 22% of the county's adult population was black during the 1990s, only 15% of those called to jury duty were. In a settlement, they pushed the state to change its system for drawing jurors.

The Alabama case and similar moves elsewhere reflect new and increasingly aggressive efforts by community advocates, defense lawyers and governments to diversify jury pools, which government officials nationwide say frequently underrepresent minorities. At a time when police shootings of black men in Cincinnati and Seattle have fueled community protests and spotlighted many minorities' lack of confidence in the criminal justice system, legal analysts say improving jury pools ultimately could be as important as easing tension between residents and cops in heavily minority areas.

"There is no place where the participation of all people is more important than deciding questions of guilt or innocence," says Bryan Stevenson, director of the Montgomery, Ala.-based Equal Justice Initiative, which represented the Elmore County residents.

Court records and surveys indicate that African-Americans and Hispanics are more likely than whites to be charged with crimes, end up in prison and express distrust in the police and the courts. Blacks and Hispanics each make up about 12% of the U.S. population, but 46% of all state and federal prisoners are black and 18% are Hispanic, according to the Washington, D.C.-based Sentencing Project, which collects data on the criminal justice system.

"If people don't think that justice is applied fairly, they won't support the courts and they'll have contempt for the law," says Mary Crean, director of an Indiana project that is examining ways to diversify jury pools.

U.S. Supreme Court rulings do not guarantee racially representative juries, only that no "systematic exclusion" of any distinct group occurs. The extent of racial disparities in jury pools nationwide is difficult to determine because few courts keep statistics on the race of jurors --- in part, analysts say, to protect the courts from lawsuits.

Even so, interviews with more than three dozen court officials, defense lawyers, prosecutors and law professors indicate that minorities are significantly underrepresented in jury pools. Scattered lawsuits across the USA include statistics supporting that notion.

Several Remedies Tried

In previous generations, particularly in the South, racism among white officials who controlled local governments often kept minorities out of jury pools. Today, however, legal experts say, it's more a matter of court records not keeping up with an expanding minority population and a general absence of inducements -- beyond an occasional lawsuit -- for officials to address a problem made more complex by widely varying jury-pool policies from state to state.

State and local governments -- some on their own initiative, others under pressure of litigation -- are trying a range of approaches to try to increase minority representation in jury pools:

*In Wisconsin's Dane County, officials studying gaps in jury representation found that in the late 1990s, minorities made up 9% of the population but only 3% of those called for jury duty. As a result, county officials have begun a study of obstacles to jury service. They are following up on anecdotal data that suggest a significant number of minority residents are not on driver's license rolls, the main source for the county's jury pools, or avoid jury service because they fear losing a day's pay or have child-care problems.

The 2000 Census figures for Dane County released in the spring have added some urgency to the project, which began earlier this year: Minorities now make up 13% of the county's 430,000 residents.

*States are broadening their sources for jury-pool lists and in some cases are hiring consultants to help update residents' addresses. In the Alabama case involving Martin, state officials rejected claims of discrimination but agreed to expand jury-pool lists beyond registered voters and licensed drivers, guidelines that had kept minorities out of jury pools at disproportionate rates. As Census figures attest, minorities move more often than whites, so voter and drivers' license rolls are more frequently out of date for them.

*In Indiana, the state Supreme Court is considering whether to require counties to go beyond voter-registration lists, the basis for juror lists, and to use names from other sources such as utility records, property tax rolls and welfare lists.

*Courts in western New York and elsewhere are focusing on geographical pockets of minorities that are underrepresented on jury-pool lists. In the Buffalo area, officials are weighing whether to send extra jury summonses to some neighborhoods. Last year, judges in the region began allowing criminal defendants who were accused of a crime in the city of Buffalo to request a city-only jury, rather than one that included residents from suburban and rural areas where more whites live.

*Other states are trying to spur more minority participation through education programs that tout the value of jury service. Several jurisdictions also are increasing the daily pay for jurors and trying to make service more convenient for parents without alternative child care. Minnesota, for example, pays child-care costs for jurors of up to \$50 a day.

Such efforts have not been embraced universally. Some skeptics worry about tinkering with the random process of summoning jurors, particularly by targeting minority communities.

"My fear is that people are, in part, trying to make changes because they think it will produce different outcomes in trials, different verdicts," says John Lott, a research scholar at Yale University law school who has been critical of some methods used to promote racial diversity in law enforcement and the courts.

Lott also questions whether more racially diverse juries necessarily mean greater fairness for minorities.

"I'd like to believe that most people really care about doing the right thing," he says.

In the early 1990s, federal trial judges in the Detroit area tried a type of affirmative action to compensate for a dearth of blacks in jury pools in southeastern Michigan.

Court clerks systematically removed whites and Hispanics from jury-pool lists so that the percentage of blacks summoned to the pool matched the percentage of blacks in the jurisdiction. But in 1998 the U.S. Court of Appeals for the 6th Circuit struck down the practice, saying it unconstitutionally discriminated against those who were eliminated from jury pools because of their race.

U.S. District Judge Avern Cohn, who helped to create the system that was invalidated, continues to call for more minority representation in jury pools.

"Without juries that are representative of the community, people lack confidence in the outcome of a trial," he says. "It's not only for the African-American defendant but for his family, his wife, mother and children."

'We've made some progress'

Complaints about jury composition typically crop up in sensational cases, such as the 1992 acquittal by a mostly white jury in Simi Valley, Calif., of the white police officers who beat black motorist Rodney King.

Efforts in the Buffalo area to boost minority representation stem largely from controversy that arose in 1999, when renowned lawyer Johnnie Cochran complained that no blacks were on the jury that was hearing a civil case involving the death of a black woman, Cynthia Wiggins.

Wiggins was fatally struck by a truck in 1995 after getting off a bus and trying to cross a busy highway to her job at a shopping center. Her family's lawyers claimed the bus did not stop at the mall because the mall discouraged inner-city residents from shopping there.

Of the 95 people called as prospective jurors for the case, five -- or about 5% -- reportedly were black. Blacks make up about 12% of the county's population. The Wiggins case was settled out of court.

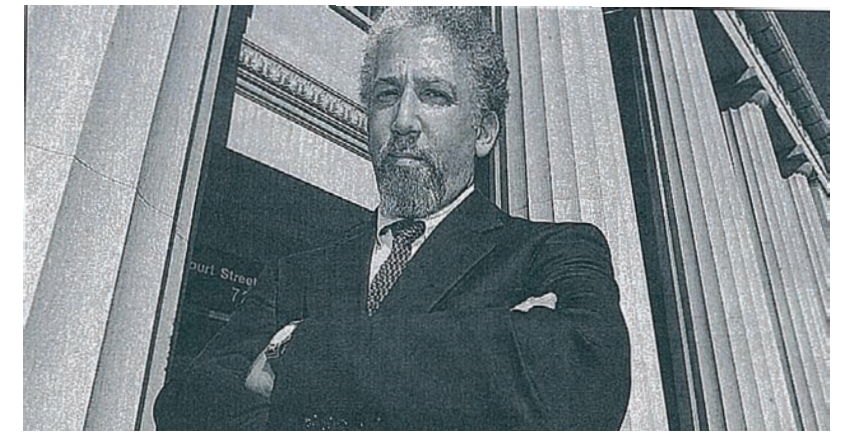
Today's initiatives to make juries more diverse are designed to address concerns before an incident becomes an emotional rallying point.

"We've made some progress" on jury-pool lists, says Temple University law professor David Kairys, who has studied juries for three decades. "Gone are the systems that had little N's and little C's (for 'Negro' and 'colored') penciled in next to the names of African-American citizens and kept them from being called. Today, it's less a matter of malice than a failure to see it as a problem and to want to do anything about it."

Kairys and other jury analysts also say factors inherent to some minority neighborhoods contribute to the problem. Besides moving more frequently than whites, minorities typically are less likely than whites to respond to jury summonses, in part because they are more suspicious of government, some analysts say.

In an ongoing case, public defenders in Contra Costa County, Calif., east of San Francisco, collected data in the 1990s that indicated the county was 8% black but only 4% of those called for jury duty were. A lower court found no "systematic exclusion" of black jurors, however, and said the underrepresentation in the county was "a longstanding problem dating back at least 20 years. No easy legal solution for it has been found."

Contra Costa public defender Oscar Bobrow, who represents an African-American murder defendant who is appealing that ruling, says some blacks may not show up for jury duty because of transportation problems or lost pay that service might bring. He says courts should address those issues. Prosecutors counter that the jury system is not required to cure all of society's ills.



By Jack Gruber, USA TODAY

Looking for answers: Contra Costa public defender Oscar Bobrow says courts should address transportation problems and lost pay resulting from jury service that might discourage people from showing up.

He's still waiting

When organizing the Elmore County lawsuit, the Equal Justice Initiative sought activists such as Martin, whose white frame house is filled with symbols of his civil rights advocacy, including a large picture of Frederick Douglass, the 19th century abolitionist.

The group also persuaded Henrietta Hunt, 66, to join the case. In the 1950s, Hunt was one of the first black women in the county to register to vote, after she passed one of the now-banned poll tests that were given to blacks in an attempt to keep them from voting.

Assistant Attorney General John Park, who represented Alabama officials in settling the dispute, said the state believed its selection process was fair but was willing to address minority residents' concerns.

The state Supreme Court amended its jury rules to allow counties to supplement jury-pool lists with information from utility records and other sources beyond driver's license and voter rosters.

Whether that has led to more minorities being called for jury duty in Elmore County won't be clear until later this year, when the results of an initial monitoring period will be released. Three of the original five plaintiffs in the lawsuit have been called for jury duty since the case was filed in 1999.

Martin is still waiting to be called, but is taking a longer view: "I want to see that the court system is operating for all of us."

Picking a jury

Jury selection methods vary from state to state, but generally juries are chosen this way:

*State or county officials determine the pool of people eligible for service. The most common sources for the pool are voter registration and driver's license lists. Most states require that prospective jurors be at least 18, have no felony convictions and be U.S. citizens and residents of the jurisdiction where a trial would be held.

*Local officials then use a computerized random-selection process to choose people from the master list to be summoned to court for a particular date. Summones are mailed to people's homes.

*Once at the courthouse and called for a particular trial, potential jurors are screened by the judge and lawyers for each side to check for any conflicts of interest. The lawyers may challenge a jury candidate "for cause" if they believe he or she could not be objective or fair. Each side then gets several "peremptory" strikes with which it may eliminate individuals from the jury pool without giving a reason. The U.S. Supreme Court has ruled that neither side may eliminate someone based on race, ethnicity or sex.

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