Race and the Jury

Racial Disenfranchisement and the Search for Justice

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Preface

The study of the jury and race has preoccupied social psychologists and other behavioral scientists, who have examined the intertwining relationship of the attitudes and the psychological characteristics of jurors and their inclination to reach particular verdicts. Such sociopsychological concerns tended, for many years, to crowd out a consideration of macrolevel issues about the selection of racially unbalanced juries that have indicted and convicted members of racial minorities.

Reductionist and psycholegal approaches have negated a critical examination of the structural mechanisms that have maintained and perpetuated racial discrimination in the jury system. For example, a variety of informal mechanisms in the jury selection process identify prospective minority jurors and exclude them from serving on juries. Such structural and institutional discrimination includes (1) gerrymandered judicial districts that exclude minority-dominated neighborhoods from the jurisdictional boundaries; (2) the use of registered-voter rolls (ROV) as a source list to identify the candidates for jury service, as low registration rates by racial and ethnic minorities systematically exclude minority populations from jury service; and (3) juridical discrimination, including blue ribbon juries, less-than-unanimous verdicts, and small-size juries, all of which have the propensity to be empowered by the racial majority.

The book is divided into two parts. Part I contains four introductory chapters that examine the institutional and structural mechanisms that have maintained the underrepresentation of racial and ethnic minorities on juries. Chapter 1 considers two specific cases that illustrate the relationship between the racial backgrounds of jurors and their verdicts. Chapters 2 and 3 examine the use of structural and macro approaches to evaluate the racial inequality in the jury system and in jury selection. Chapter 4 examines U.S. Supreme Court reviews that dealt with the underrepresentation of minority populations on juries between 1880 and 1980. The minorities discussed are blacks, Hispanics, women, and the poor.

Part II presents a sample of substantive problems in the methodological application of various statistical techniques to evaluate racial representation on juries. Chapter 5 examines economic excuses, which are the often-used excuses in voluntary self-exclusion from jury service. This chapter examines the extent to which organizational resources and company supports influence racial and ethnic representation. Chapter 6 presents an in-depth analysis of scientific jury selection in *voir dire*. A number of sophisticated statistical models, such as Markov chains and multiple regression, are used to evaluate jury representation and the selection of minority populations in *voir dire* to create racially balanced juries. Chapter 7 offers the optimal statistical design for obtaining a racially representative jury. The chapter examines the application of the cluster-sampling method with probability proportionate to size (PPS) to jury selection procedures. The technique is of great importance because it has the potential to eliminate the effect of gerrymandered judicial districts on the racial and ethnic composition of jury panels.

In light of the theoretical analyses of racial disenfranchisement presented in Part I and the methods for creating more egalitarian juries presented in Part II, Chapter 8 examines the *voir dire* jury selection by the defense in the *McMartin* child-molestation trial, one of the most notorious jury trials in American history. The chapter examines the trial background, the pretrial publicity and its influence on people's perceptions, the importance of race on the screening of prospective jurors, the verdict, and the aftermath of the trial. We were involved in the trial as jury consultants and helped the defense attorneys, Dean Gits and Danny Davis, to select the most impartial jurors to try the unpopular defendants, Raymond Buckey and Peggy McMartin Buckey. Jo-Ellan Huebner Dimitrius, our collaborator in the *McMartin* and many other jury trials, was a principal contributor to Chapter 8.

Thus the book is organized on a discussion of basic problems in the theory of race, law, and the jury. It does not seek to provide additional support to previous psycholegal research that has established the close relationship between the racial and ethnic backgrounds of jurors and their perceptions of trial outcomes. Rather, the book is designed to address macrolevel problems of racial disenfranchisement and judicial inequality. We will demonstrate throughout the book the utility of this macro approach. For the moment, let us offer two justifications.

First, all research entails both theoretical and empirical issues. By orienting our thinking around these two kinds of issues, we hope to provide a more systematic understanding of race and the jury than could be obtained from the psycholegal literature.

Second, factual knowledge in the expanding investigation of rela-

tions between race and the jury has often proved highly elusive. The knowledge of this topic of just a decade ago has been superseded by recent, more thorough analyses (see Butler, Fukurai, Huebner-Dimitrius, & Krooth, 1992; Fukurai, 1985; Fukurai & Butler, 1987, 1991, 1992a, 1992b; Fukurai, Butler, & Huebner-Dimitrius, 1987; Fukurai, Butler, & Krooth, 1991a, b). Thus, it seems far more important to present a *theoretical framework* for and an *analytical approach* to how social scientists evaluate racial representativeness on juries and the legitimacy of the resulting verdicts. Therefore, the theory of racial disenfranchisement in Chapter 2, the step-by-step evaluations of racial representation in Chapter 3, and the statistical techniques applied to the evaluation in Chapters 5, 7, and 8 provide the critical sociological and methodological perspectives on this topic.

Finally, we hope that this book will help provide both theoretical and methodological frameworks within which to examine the structural causes of racial disenfranchisement on juries, to eliminate the sources of such nonegalitarian social structures, and to help in the search for justice and equality in the jury system in the United States.

Acknowledgments

This book is based on a review of historical and contemporary court cases, research literature, and our actual experience in a vast number of capital punishment trials, mainly involving racial and ethnic minorities as the defendants. So far, at least one of these cases has reached the Supreme Court of the United States; others have failed to go beyond the local superior court level.

Over the years, we have been fortunate, while participating in these endeavors, to come into contact with many dedicated people involved in the jury system. Thus, in writing this book, we came to appreciate the great contributions made by several specific individuals. Specifically, we thank Jo-Ellan Huebner-Dimitrius, our coauthor in another book on jury selection in the *McMartin* child-molestation case in Los Angeles County, California. We appreciate her contribution to our general education on the jury selection process and her helpful comments on many aspects of this book.

Raymond Arce, of the Jury Commissioner's Office, Los Angeles County, California, was one of our primary adversaries. Much of the information reported in this book has come from his office in Los Angeles over the years. We are thankful for his recognition that our opposition was based not on personalities but on our mutual commitment to both democratic and egalitarian principles in regard to the jury system. Our contacts with other jury commissioners and their representatives were also favorable, and we came to appreciate a number of jury commissioners, their staffs, and the efforts they go through to bring jurors to the courtroom.

In the process of carrying out research and testimony involving the underrepresentation of racial and ethnic minorities on juries, we have worked closely with a host of defense attorneys—too many to mention by name here. We found them to be outstanding attorneys who have a serious and abiding interest in the law and justice. On the whole, we felt that the defense attorneys were more interested in pursuing social justice than the vast majority of prosecuting attorneys, many of whom probably

knew that jury selection laws were being systematically violated but appeared to be uninterested in judicial reform, social justice, or administration of the laws as written. For the most part, their focus was more on getting the "jury challenges" out of the way than on diligently applying the law. There were several prosecuting attorneys, however, who have won our great respect and who in a very real sense advanced our knowledge of the jury selection process by forcing us to pursue a greater depth in our jury research. To them, we express our sincere admiration.

Finally, once again, we wish to convey our indebtedness to everyone who contributed to the research effort. Here we wish to recognize the help and contributions of others.

At various stages of completion, discussions about the manuscript were held with Jon Alston and Letitia Alston of the Sociology Department at Texas A & M University, and a number of undergraduate and graduate students at Texas A & M University and the University of California, Riverside, also worked closely on the research reported in this book; to them, we offer our congratulations for a job well done.

We would also like to thank those who contributed their expert knowledge in the period before this particular manuscript took form. Notable here are Mary Zey, Thomas Glass, Karen Wilson, Gail Thomas, and Ben Aguirre of the Sociology Department at Texas A & M University; Dean Gits and Danny Davis, defense attorneys in the *McMartin* child-molestation trial in Los Angeles; Glenda Jones of the Sociology Department at the University of California, Riverside, and Jim Pick at the University of Redlands; and Troy Duster, Robert Bellah, and office staffs in the Sociology Department at the University of California, Berkeley.

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We also appreciate the assistance of Plenum Press and anonymous reviewers for their helpful comments and suggestions. Finally, the book would not have been completed if it had not been for the outstanding efforts, dedication, and continued support and encouragement from our collaborators: Letitia Alston of the Sociology Department at Texas A & M University; Millie Almy of the Education Department at the University of California, Berkeley; and oral historian and essayist Ann B. Krooth in Berkeley.

Needless to say, we accept full responsibility for the contents, the facts presented, and the elaboration of the relationship between race and the jury in this book.

HIROSHI FUKURAI
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