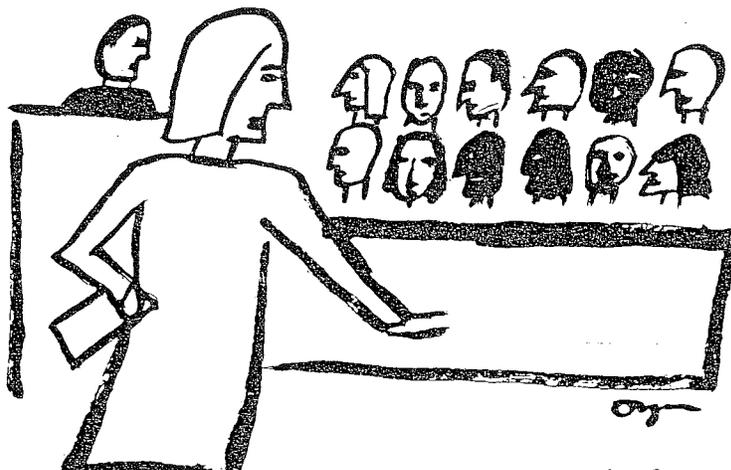


# Guaranteeing racially mixed juries



JOHN OVERMYER / Special to The Chronicle

By Hiroshi Fukurai and Richard Krooth

As Alameda County District Attorney Tom Orloff weighs whether to retry the three former Oakland police officers in the Riders case, we hope he sees it as a mandate for racial diversity on juries.

The acquittal of the men charged with assault and making false arrests was a painful reminder of the need for juries that reflect the community. Legal experts who wring their hands and say there's no solution are ignoring solid historical precedent.

"We absolutely should have had an African American perspective on this jury," one displeased juror said after the acquittals were announced. Indeed, in a city where 37 percent of residents are African American and all of the alleged victims are black, it is inexcusable — but not surprising — that no black juror served on the 12-member panel.

Shortcomings in today's jury selection procedures make it difficult to empanel racially diverse juries. Blacks and minorities are eliminated from serving on juries by a host of filtering methods at every stage of the process, from the use of registered-voter rolls and Department of Motor Vehicle records to create the list of potential jurors to the \$15 per day that jurors receive.

That's why we must turn back the clock and require that juries be racially representative of the communities in which they are impaneled.

Both England and the United States have historically mandated jury diversity. The so-called "split jury" was developed in medieval England when Jews were routinely discriminated against in court. The reform mandated that six of 12 jurors hearing cases against Jewish defendants be of Jewish descent, and it endured for almost 700 years.

Early settlers in the northeastern United States brought this system with them from England, requiring that Native Americans make up half the jurors in cases against Native American defendants. It remained in place from the 16th to the beginning of the 20th century.

Other models would require at least three minority jurors, or would give prosecutors and defense attorneys a fixed number of prospective jurors they could protect from challenge. As recently as 1990, Minnesota mandated that jury composition must reflect the proportion of majority and minority groups in the general population.

The Minnesota law was rejected as a racial quota in 1999, but we have to ask why racial quotas are acceptable in trade and immigration but not in our criminal justice system, where there is widespread consensus that a racially mixed jury offers many benefits, among them:

▶ With minorities on the jury, prosecutors can't rely on racially stereotyped arguments and nuances.

▶ The scrutiny of a diverse jury would help ensure that investigations

are undertaken in a nonracially discriminatory manner.

▶ A racially mixed jury helps ensure that evidence is gathered, presented and argued without racial discrimination.

Without fair, cross-sectional representation of all residents on juries, verdicts will continue to be suspect, whether in the Riders case or the criminal case against O. J. Simpson, in which a racially diverse jury dismissed charges because the evidence was not credible enough to convict. Reforming the racial composition of juries must be achieved to protect both criminal defendants and victims.

Racially and ethnically mixed juries would also have a ripple effect throughout the criminal justice system, helping to ensure the proper functioning of the police and district attorney's office. As they stand, the Riders verdicts offer little incentive to the district attorney and police department to improve police investigative procedures and policies.

Given the growing racial diversity of our nation's communities, juries mixed by race have the potential to be a force for fairness and justice.

Hiroshi Fukurai, an associate professor of sociology at UC Santa Cruz, and Richard Krooth, J.D., Ph.D., a jury consultant and educator, are co-authors of "Race in the Jury Box: Affirmative Action in Jury Selection" (SUNY Press, 2003).

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