

Chapter 1

INTRODUCTION TO RACIALLY MIXED JURIES

“I was stunned by the verdict. It shows that racial profiling seeps so deeply in our society that a wallet in the hand of white man looks like a wallet, and the wallet in the hand of a black man looks like a gun.”

—Bill Bradley, former Democratic presidential candidate in reacting to the acquittal verdict of four white police officers in the Amadou Diallo murder trial in 2000.

“Today the system failed us.”

—late Los Angeles Mayor Tom Bradley in responding to the acquittal verdict of four white police officers in the Rodney King assault trial in 1992.

“The court system has worked.”

—then President George Bush in reacting to the same acquittal verdict in 1992.

“You’d almost have to be black to understand. All their grievances, all their distrust of the system, all the beliefs people had in the evil of the system. Suddenly, it all turned out to be true.”

—Clarence Dickson, the highest-ranking black administrator in the Miami Police Department, in responding to the 1980 acquittal verdict of four white police officers in the murder trial of Arthur McDuffie, a black motorist, by the all-white jury.

“They kill with love.”

—Innocent black death row inmate John Coffery, telling the head guard, Paul Edgecome (played by Tom Hanks), before facing his own electrocution in *The Green Mile*.

The fact that a minority defendant is tried by an all-white jury can be a nightmarish thought for racial and ethnic minorities.¹ In reality, however, a minority defendant in most jurisdictions is often confronted by white police officers, indicted by an all-white grand jury, prosecuted by a team of all-white district attorneys, convicted by a predominantly, if not all, white jury, sentenced by a white judge, denied appeals by white state appellate court jurists and white federal judges, and executed by a team of white prison officials. Such criminal proceeding and jury trials carry a long lasting impression of racial inequality in the criminal justice system. Race, then, becomes a critical emblem which members of minority race carefully assess trial fairness, verdict legitimacy, and the quality and integrity of the criminal justice system.

In the eyes of many marginalized segments of our community, an all-white jury that convicts a black defendant, or acquits a white defendant against overwhelming evidence of his guilt, is deeply disturbing. The fact that a jury is all-white has the powerful effect of racializing the jury proceeding. Even in earlier

times in the South, following the Civil War, atrocities continued in the Ku Klux Klan's epidemic of violence against blacks and white Republicans, lynching frenzy gone unpunished by all-white juries. "It is notorious that practically never have white lynching mobs been brought to court in the South, even when the killers are known to all in the community and are mentioned in name in the local press," Gunnar Myrdal's 1944 work on race relations declared (Myrdal 1944, 552–553).

Judicial and political efforts to diversify the jury, however, have been extremely slow. Before the Civil War, Massachusetts was the only state to allow African-American men on the jury (Graber 1997). In 1875, Congress prohibited jurisdictions from excluding qualified citizens of color from jury service, and in 1880, the Supreme Court in *Strauder v. West Virginia* declared that West Virginia law deprived African-American defendants of equal protection of the law. Despite such a judicial pronouncement and the institution of remedial programs that followed the 1880 decision, many legal and extra-legal factors, exclusionary practices, discriminatory procedural mechanisms, and socioeconomic barriers have prevented black residents from effectively serving as jurors (Fukurai, Butler, and Krooth 1993).

Today, issues of racially mixed juries and racial balance in trials involving inter-racial crimes continue to pose unique challenges to our judiciary, the criminal justice system, and the community. Despite the potential benefits of racially diverse tribunals, racial and ethnic minorities continue to be substantially and significantly underrepresented in the vast majority of state and federal criminal courts. The continued lack of minorities' jury participation reduces the chance of ensuring racially diverse juries in criminal trials that involve highly sensitive elements of racism.

To best explain procedural deficiencies and exclusionary practices, we diagram the jury selection method used in most court jurisdictions today and examine selection criteria and exclusionary elements at various jury selection stages—venue selection, source list development, the purging and merging methods to create master files, qualification list questions, jury summons development, jury venires and panels, voir dire selection, trial jurors selection, and even jury foreperson selection in the final jury. Figure 1.1 reveals these eight distinct stages of jury selection procedures. As we will show, each and every stage of jury selection excludes a disproportionate number of racial and ethnic minorities from effectively serving as jurors.

The first stage of jury selection begins with a determination of the place or venue of the trial. In many racially sensitive trials, trial sites have often been moved from minority dominant areas to jurisdictions with very small minority-race residents. The change of venue usually takes place when courts determine that the "media hype" or other improprieties impacting the original trial venue makes the selection of impartial jurors impossible. The

1992 Rodney King assault case, for example, was moved from Los Angeles, where almost two-thirds of residents were racial minorities, to Simi Valley where almost 80 percent of residents were white (Fukurai, Butler, and Krooth 1994).² The 2000 Amadou Diallo murder trial of four white defendants was moved from the black- and Hispanic-dominant Bronx (61 percent nonwhite) to Albany, with very small minority populations (11 percent nonwhite) (McShane 1999).

Federal law only requires the use of ROV (Registration of Voters) lists for the selection of potential jurors, though past studies have consistently demonstrated that the lists significantly underrepresent racial minorities (Fukurai, Butler, and Krooth 1993). Even in some state courts where additional source lists are required such as DMV (Drivers Motor Vehicle) records, infrequent updates and technical difficulties in eliminating duplicate names have led to the overrepresentation of white jurors. This is due to the fact that white residents are most likely to be identified in both ROV and DMV lists, and computer scanning programs often fail to correctly purge and merge duplicate names, thereby increasing or even improving the chance of selection of white potential jurors. Jury qualifications such as a residency requirement and no previous felony conviction, as well as jury excuses based on economic and personal hardship have also led to the significant exclusion of the poor and minority jurors (Fukurai, Butler, and Krooth 1991a).

Racial minority jurors are excluded for other reasons, too. Since both jury summonses and qualification questionnaires are mail delivered, geographically mobile groups such as racial minorities and the poor often fail to receive these documents and are thereby excluded from jury service. The lack of systematic follow-up procedures further contributes to the poor response rates by racial minorities. Even when they may receive qualification questionnaires or summonses, many of these recipients, mistrusting white-dominated court and criminal justice institutions, often fail to respond to jury calls, and again are excluded from subsequent jury selection procedures. While some minorities may actually receive jury calls, economically disenfranchised residents hardly display a willingness to appear at the courthouse, largely because jury pay in most jurisdictions remains minimal. In most California courts, jurors are paid \$15 for a day's service, hardly enough to cover, for instance, the cost of the care for a baby, children, or a dependent elderly person.

Abuse of peremptory challenges also exacerbates the exclusionary nature of jury selection, especially in criminal trials of minority-race defendants. While attorneys are legally prohibited from exercising race-based peremptory strikes during voir dire, they are often able to come up with apparent race-neutral reasons to rationalize their discriminatory practices. Some legal rationalizations for engaging in race-based peremptory exclusion include minority jurors' knowledge of either close friends, or relatives, of a defendant or a witness, their own

prior criminal records, unsatisfactory prior jury service, living near the residence of a defendant or a witness, speaking Spanish, being overweight, being welfare recipients, and having insufficient community ties (see Melilli 1996, for a list of latent race-neutral reasons for rationalizing the practice of race-based peremptory challenges). Such race-implicit peremptory strikes continue to ensure the systematic elimination of racial minorities from the final jury.

Even after twelve final jurors are chosen, selection of a jury foreperson becomes critical, because it is not determined on the basis of random selection or race-neutral reasons or procedures. The judges or bailiffs often nominate or appoint a jury foreperson prior to jury deliberations. On other occasions, the jurors themselves nominate or vote a jury foreperson at the beginning of jury deliberations (Moses 1997). Given the significant underrepresentation of racial minorities in the final jury, it is not uncommon that the jury foreperson nominated or voted by the fellow jurors is less likely to be a member of minority races (Fukurai 2000).

The influence of jury forepersons is not to be discounted. They are often able to alter the unique qualities and characteristics of jury deliberations. Study of small group dynamics suggests, for example, that the foreperson speaks approximately three times as much as the average juror, and the magnitude of difference in jury participation indicates that the foreperson contributes disproportionately to jury deliberations (Hastie 1993).

Discriminatory mechanisms and racially biased practices at each and every stage of the jury selection process also have a cumulative, exclusionary impact on minority participation in the final jury. Since a series of exclusionary, procedural mechanisms have eliminated racial minorities, long before they are even called to appear at the courthouse, it is no wonder that, in the vast majority of both state and federal courts, we hardly see racial minorities sitting in the jury box. While some minority members meet jury qualification requirements, respond to jury summonses, and appear at the courthouse, further screenings for exemptions, personal and economic excuses, and minimal jury remuneration further diminish their chances. Even though some of those minority-race candidates successfully make it to the courtroom for *voir dire*, the race-based exercise of peremptory challenges can weed out most of those with any remaining chances of serving on the final jury. Even so, a few may finally make it to the trial jury, although discriminatory selection of the jury foreperson can further diminish their participatory contributions to jury deliberations.

Given the overload of discriminatory mechanisms and exclusionary biases built into the jury selection process, racial minorities are most likely to develop strong skepticism and cynicism about legitimacy of the legal system, the ability of the jury selection system to empanel racial minorities in the final jury, and the creation of racially equitable and diverse tribunals to render fair and legitimate jury verdicts in most criminal trials (Fagan and Davies 2000; Tyler 2001).

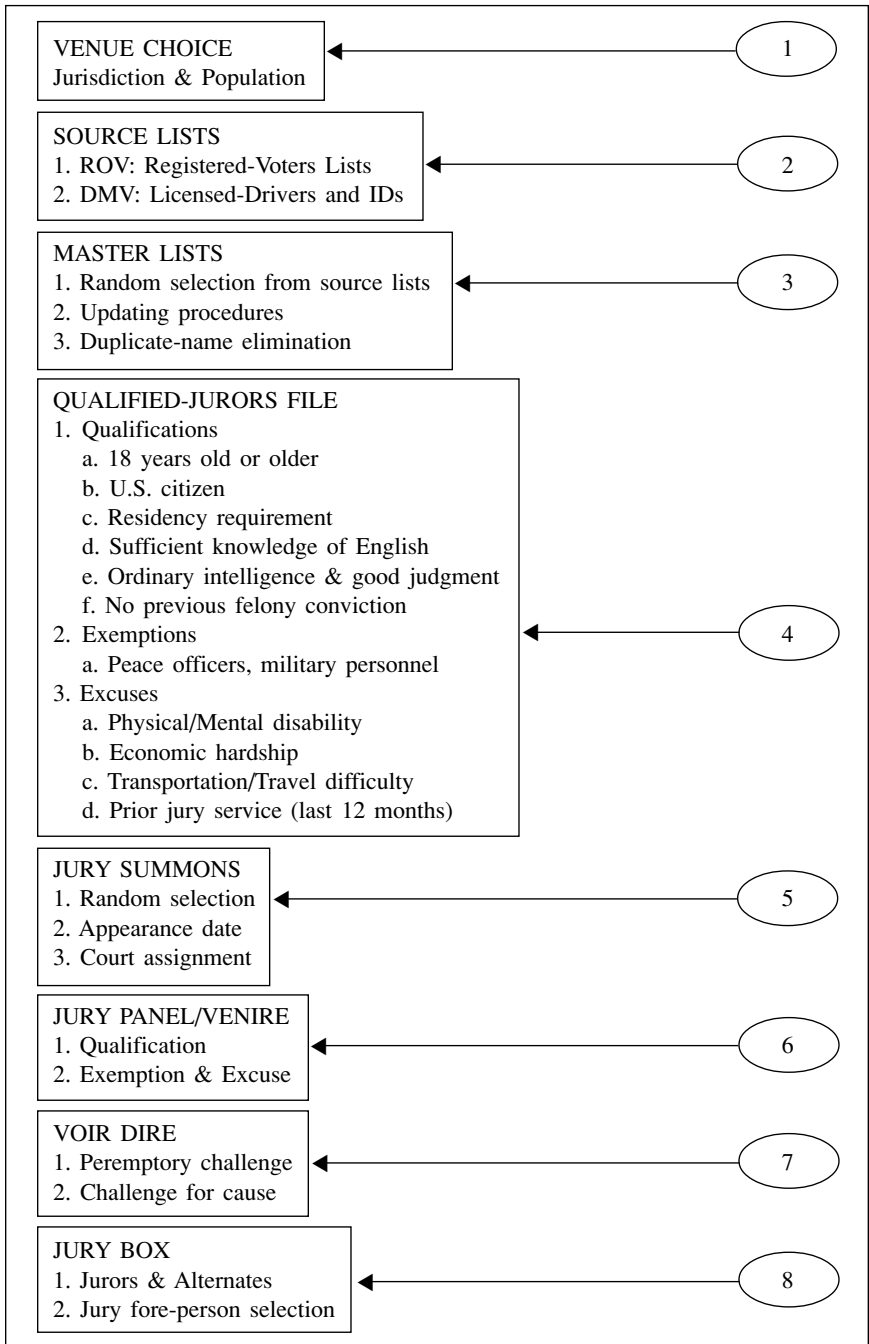


Figure 1.1 Eight Stages of Jury Selection Procedures

Indeed, the problems and biases of racialized justice administration have been well-documented. These include racial profiling in arrest, interrogation, and identification; race-based decisions in filing criminal charges; inequitable pretrial and plea bargaining decisions; insufficient resources for defense representation; sentencing disparities, including erroneous and discriminatory impositions of the death penalty against minority defendants; and racially biased correctional programs and their operations. While such racially discriminatory practices in police and criminal court proceedings raise serious questions about the nation's commitment to democratic principles in the administration of justice, the need for public confidence is extraordinarily high in racially charged jury trials. This is because jury decisions carry important social meanings; they send racialized messages to the marginalized segment of minority communities.

The racial composition of the final jury has thus become one of the most important, if not the most critical, determinants of the public's perception of, and judgment about, legal fairness and verdict legitimacy (Fukurai 1997, 1999b). The lack of minority jurors in racially sensitive trials often leads racial minorities to solidify and express feelings of deep cynicism about the legitimacy of laws, their lack of confidence in the criminal justice system, and the ability of both juries and courts to function fairly in an effective, nondiscriminatory manner (Fukurai 2000). The absence of minority-race jurors in the criminal decision-making process and criminal court system further exacerbates the degree of legal cynicism and the lack of confidence in the system of justice (Farber and Sherry 1997; Sampson and Bartusch 1998).

RACIALLY MIXED JURIES AND JURY VERDICTS

For trials involving blatant racial issues, the degree of jury participation by racial minorities is perceived as an important barometer of equity. Criminal cases tried before all-white juries, with black victims or black defendants, often evoke bitter images of injustice (Fukurai and Davies 1997).

Certainly the Rodney King assault verdict has not been an isolated case. Racial minorities have repeatedly expressed dismay and anger over white juries' verdicts in acquitting white defendants of crimes against racial minorities. For a large number of jury trials have exhibited racial injustices in the jury selection process, inequity of criminal court proceedings, and a lack of racial minorities' participation in jury panels and trial juries themselves. Although there are great variations in the nature of trials, their background and social milieu, as well as legal or statutory factors that influence jury composition and verdicts, clear evidence of the social mechanisms that allow jury verdicts to perpetuate racial inequalities reaffirms the need to empanel mixed juries in racially sensitive trials.

The social dynamics of the times, reflecting racial and social inequalities in the community, often determine the outcome of jury verdicts, especially when

the juries are composed of all-white members. In racially sensitive trials where the evidence of factual guilt has been virtually irresistible—often including either the testimony of eyewitnesses or evidence that the defendant publicly bragged about purposeful violence or killings—the public has sometimes come to demand racially mixed tribunals and shown a willingness to accept their verdicts, either for acquittal or conviction of white defendants.

Taking two tragic but typical cases of racial disenfranchisement in the criminal jury system—in which all-white juries quickly acquitted, or were unable to agree on convicting, white defendants accused of murdering blacks—here we review the facts, evidence, and trial proceedings of Byron de la Beckwith in Mississippi for the murder of Medgar Evers, and the trials in Miami, Florida for the murder of three blacks. The accounts of those two racially explosive cases are important for revealing facts and evidence of racial feelings, for the ways in which the jury system was racially structured, and for the ways the trials themselves were morphed with racial tracings.

The Byron de la Beckwith Trials

On June 12, 1963, Medgar Evers, a highly respected black civil rights activist, was assassinated in the driveway of his home in Jackson, Mississippi. Evers had been working with the Mississippi NAACP. As he was walking into his house with his wife and three children, he was shot in the back by gunmen from a passing pickup truck.

Three days later on June 15, 1963, Byron de la Beckwith,³ a fertilizer salesman and avowed white supremacist, was arrested by federal officers and charged with violating the 1957 Civil Rights Act for “conspiring to injure, oppress and intimidate Medgar Evers in the free exercise of his Constitutional rights” (Vollers 1995, 151). And soon after his arrest, Beckwith was formally indicted for murder by the Hinds County grand jury. District Attorney Bill Waller announced that the state would seek the death penalty.

Jury selection began on January 27, 1964, after the names of two hundred prospective jurors were drawn from voting rolls of Hinds County. All potential jurors were men, as it would be another four years until women were legally awarded the right to serve on state juries in Mississippi (Vollers 1995, 161). Racial discrimination and oppression against blacks in the Deep South also played a prominent role in the selection of Beckwith’s jury. District Attorney Bill Waller began the voir dire, questioning each jury candidate in the pool on their views of lynching blacks in the South. “Do you think it’s a crime to kill a nigger in Mississippi?” the prosecutor asked each juror (Vollers 1995, 161). Though one hundred venire-persons were finally assigned to the trial, the jury pool only included seven blacks. None of them had ever served on a final jury, because either they were never interviewed for jury duty, or they were dismissed due to work conflicts or opposition to the death penalty (Vollers 1995, 161).

After four days of jury selection, an all-white male jury emerged (Vollers 1995, 162–163).

The trial began on January 31, 1964. The prosecution witnesses testified that the cause of Evers' death was hemorrhage due to gunshot wounds and that a rifle with the type of bullet that killed Evers was found near the murder scene. The prosecution also revealed that the markings on the recovered rifle matched the markings on a rifle owned by Beckwith, that the scope on the rifle found by police was recently acquired by Beckwith, and that Beckwith's fingerprints were found on the scope.

The defense then presented eyewitnesses who testified that Evers might have been murdered by three men, arguing that Beckwith was ninety miles away from the murder scene when the crime was committed. The trial received extensive media attention and coverage, and Mississippi Governor Ross Barnett made frequent appearances at the defense table. More than once Barnett shook Beckwith's hand and clapped him on the back in full view of the jurors (Vollers 1995, 164). After five days of testimony, both sides rested. The all-white jury deliberated for eleven hours and took twenty ballots before announcing that they were hopelessly deadlocked; the court ordered a mistrial (Vollers 1995, 201).

Jury selection for a second trial began on April 6, 1964, nearly ten months after Evers was murdered. A jury pool of three hundred men were assembled at the Jackson Courthouse. The prosecution accepted the first twelve jurors, one of them a cousin of a key defense witness for Beckwith (Vollers 1995, 204). The jury also included a bookkeeper, a food broker, an IRS employee, and several businessmen and executives. Seven held college degrees and two were born in the North. As in the first trial, all were male and all were white (Vollers 1995, 205).

During the trial proceedings, the prosecution presented essentially the same evidence as they did in the first trial. But the defense introduced one new alibi witness, James Hobby, who was the same height and weight as Beckwith. Hobby testified that he had been living in Jackson in June 1963, and that he owned a car that matched the description of Beckwith's car.

Outside the courtroom, meanwhile, the Ku Klux Klan continued to engage in heated demonstrations and militant activities, offering its support to the defendant. For four days after the trial began, ten crosses were burned by the Klan in and around Jackson, igniting fear of retribution to any who might not subscribe to Klan doctrine (Vollers 1995, 205).

In this climate, the defense closed its case, arguing that the whole matter was a witch hunt with Beckwith being framed by the prosecution. The all-white jury then deliberated for two days, before it announced another deadlock, and the judge declared another mistrial. District Attorney Bill Waller indicated that without new evidence, he would not seek yet another retrial for Beckwith. To celebrate his release, on the night of the second jury's verdict, the Ku Klux Klan burned crosses in nearly half of the eighty-two counties in Mississippi (Vollers 1995, 209).

During the course of next twenty-six years, the political and social climate in the South changed sharply. Both state legislatures and cities had witnessed a significant increase of racial minorities in political office. Miscegenation laws were overturned, and many public facilities and housing had been desegregated. Then, in December 1990, Mississippi prosecutors resubmitted the Beckwith case to a grand jury, and the seventy-one-year-old Beckwith was re-indicted for murder (LaFraniere 1990). Following ten months of resistance, Beckwith was extradited from his home in Signal Mountain, Tennessee, to Jackson, Mississippi, and was incarcerated until his release on bail in December 1992 (“Extradition ordered in Evers murder case” 1991; Stevens 1992; Hansen 1993a, 1993b).

Then in 1994, Beckwith was tried for the third time. There were several notable differences from Beckwith’s first two trials. For the jury in the third trial was not composed of only white men, but was a racially mixed—eight blacks and four whites. Four of the black jurors were old enough to remember Medgar Evers and his civil rights activities in Mississippi. The jury also reflected a fair cross section of the blue-collar, working-class community, including factory workers, truck drivers, a cook, a maid, a secretary, a white co-manager of Wendy’s restaurant, and a black minister (“Jury chosen in 3d Evers trial” 1994).

The prosecution was now able to locate four new witnesses to testify that they heard Beckwith brag, or indirectly admit to, killing Medgar Evers. Dan Prince, who rented an apartment from Beckwith in 1986, testified that while he and Beckwith were talking about Evers’ murder, Beckwith said that he had been tried twice for “killing that nigger” (Vollers 1995, 356-357). He also stated that Beckwith then said, “I had a job to do and I did it and I didn’t suffer any more than your wife if she was going to have a baby” (307). Peggy Morgan, who once rode in a car with Beckwith on the way to visit a mutual friend in the penitentiary, testified that Beckwith said “he killed Evers, a nigger, and he wasn’t scared to kill again” (358). Delmar Dennis, an FBI informant on Ku Klux Klan activities, testified that Beckwith said, “Killing that nigger did me no more physical harm than your wives have to have when they’re having a baby for you” (Vollers 1995, 359). Mark Reiley, a prison guard who met Beckwith while working as a prison guard in Louisiana, also testified that Beckwith once shouted at a black nurse, “If I could get rid of an uppity nigger like Medgar Evers, I would have no problem with a no-account nigger like you” (Vollers 1995, 362).

The defense also suffered a huge procedural setback, when the court ruled that James Hobby could not take the stand in Beckwith’s defense. The defense then decided not to call Beckwith to testify, because they feared his unpredictability on the stand and the negative impression of his testimony on the members of the racially mixed jury (Smothers 1994a).

On February 5, 1994, after three trials and the passage of thirty-one years since the killing of the legendary Mississippi civil rights leader, Beckwith was found guilty of murdering Medgar Evers. Beckwith, who wore a Confederate

flag pin on his lapel throughout his third trial, was sentenced to life in prison for the killing (Booth 1994; Smothers 1994b).

As a result of the successful prosecution of Beckwith for the murder of Evers, there have been successful calls to press on with other cases of hung all-white juries, including the 1966 firebombing death of Vernon Dahmer who was active in voting rights in Hattiesburg, Mississippi (Harrison 1995; “Mississippi may reopen Klan killing” 1995). Dahmer, a wealthy black businessman and civil rights leader in Hattiesburg, was killed when a gang of Ku Klux Klan White Knights firebombed his home on January 10, 1966. Two all-white juries were deadlocked in the trial of the alleged mastermind of the plot, Klan’s Imperial Wizard Samuel Bowers.

Perhaps the worst aspect of comparable race-related crimes is the fact that assailants have rarely been brought to justice. Mississippi authorities prosecuted no one for the murder of the three civil rights workers, Michael Schwerner, Andrew Goodman, and James Chaney, all of whom were found buried under an earthen dam in Neshoba County, Mississippi. Schwerner and Goodman, both white, came from New York City to support civil rights activities in Mississippi; Chaney, black, was a native of Mississippi (Herbert 1994).⁴

In Mississippi, even when bombers confessed, they have escaped appropriate punishment. One Pike County judge gave bombers only suspended sentences and probation. Between 1960 and 1965, just a single man went to a southern state prison for a civil rights killing, and his sentence was a mere ten years. The federal government has had so little faith in the local Mississippi courts that the crimes have been pursued under the United States Code. As murder was not a federal charge unless it took place on government property, the accused killers were charged with conspiracy to deprive the victims of their civil rights, a federal crime. The maximum sentence, however, was ten years in prison (Vollers 1995, 221). This was despite the fact that between early 1961 and the middle of 1964, Mississippi alone was the scene of one hundred fifty incidents of serious racial violence, including at least twenty-six civil rights related murders.⁵

In the first and second Beckwith trials, all-white male juries and their verdicts challenged the democratic and cherished ideal of the jury system—that the cases being tried by an impartial jury of peers and not being predisposed to favor a particular racialized verdict. Even if the first two Mississippi juries might very well have been impartial, the fact that the defense was twice able to manage to secure an all-white jury in a jurisdiction that included a large proportion of black populations raises serious questions about the fairness of the jury selection process in Mississippi, the racial equitability of the jury trial, and the integrity of the judicial decision-making process.

Only the third, racially mixed jury was able to convict the defendant. Supporters of the jury system might protest that the first two trials were excep-

tions—not representative of jury trials elsewhere in the country. Indeed, the Deep South has had a long history of racial injustice and discrimination against blacks, though, even there, the sensitivity to civil rights issues has increased in recent years. And, yet, as the next Miami cases suggest, these and the Beckwith trials are not an anomaly.

The Miami Trials in 1980s

Miami in Dade County, Florida was in turmoil prior to 1980, beset by a number of racial explosions. From August 1968 through July 1979, at least thirteen significant civil disturbances rocked the city, involving violent confrontations between blacks and whites. The predominantly white police were under attack during many of these riotous episodes—a fact not forgotten by these officers or the black community.⁶ In February 1979, police had raided the Miami home of a black school teacher who was mistaken for a cocaine dealer. Officers beat both the teacher and his son and vandalized their home. The police department, however, took no action against the offending officers (Montgomery 1980).

The next year brought a new confrontation, then another two years later, and still a third in 1989. These confrontations were set in motion by all-white juries exonerating all-white police officers, who were accused of killing three African Americans: Arthur McDuffie in 1980, Nevell Johnson in 1982, and Clement Anthony Lloyd in 1989.

The 1980 Miami uprising was fueled by a case in which four white police officers were tried on charges that they had beaten to death a thirty-three-year-old, black insurance executive, Authur McDuffie, who had been arrested for a traffic violation. McDuffie, a divorced father of two small children, was riding a 1973 black and orange Kawasaki 900 motorcycle that he had borrowed from his cousin (Porter and Dunn 1985, 33).

Within three minutes of his apprehension, McDuffie had been set upon by as many as six to twelve police officers who used eighteen-inch Kelite police flashlights to crush his skull, splitting his head wide open. Officers on the scene then had a marked patrol car run over McDuffie's motorcycle to make it look like as if it had been damaged in an accident, reporting that McDuffie had been injured in a fall from his vehicle. Four days later he died from the massive head injuries (Porter and Dunn 1985, 34–35).

As a result of Dade County medical examiner Don Wright's skepticism about the story and, eventually, as some police officers, who had been on the scene began talking with the district attorney, the police coverup began to unravel (Porter and Dunn 1985, 34–36). Investigations by the office of then State Attorney Janet Reno led to her announcement that four of the officers—Ira Diggs, Michael Watts, William Hanlon, and Alex Marrero—had been charged with manslaughter and tampering with evidence, while a fifth, Sergeant Evans, was charged with tampering with evidence and leading the coverup (Porter and Dunn 1985, 36).

Black communities had closely followed each and every step of the trial proceedings. Jury selection began in March 1980. Defense counsel moved carefully, using their thirty-four peremptory challenges to remove all black jurors from the pool, resulting in an all-white six-person jury. As the trial did not involve a first degree murder case, instead of the traditional twelve-member jury, a six-member jury was called into chambers. During the trial proceedings, a police officer, who had been on the scene and was given immunity from prosecution in return for his testimony, stated that Alex Marrero, one of four charged officers, had struck McDuffie as if he was chopping wood with an ax, and that Marrero had ordered other officers who were beating McDuffie, “Easy. One at a time” (Porter and Dunn 1985, 38–39).

“I heard Sergeant Evans say . . . ‘The bike needs more damage . . . [G]o get in your car and ride up on it.’ . . . [Then] I saw a . . . police unit sitting on top of the motorcycle,” the officer testified (Porter and Dunn 1985, 39). The chief medical officer also testified that McDuffie’s head injuries were the worst he had seen in thirty-six hundred autopsies (Crewdson 1980), stating that the amount of force necessary to cause the fracture was “equivalent of falling from a four story building and landing head first . . . on concrete” (Porter and Dunn 1985, 38).

Yet, after four weeks of trial, on May 17, 1980, the all-white jury deliberated for less than three hours before finding all police officers not guilty on all charges. To minority communities, the verdicts were political and racialized statements, reaffirming intolerable racial injustice. “We despise the verdict. We hate it and it hurts us to our hearts. I feel like my people are nobody,” McDuffie’s sister choked with emotion (Blum 1980). “They’re guilty, . . . they’re guilty in God’s sight and they have to live with this,” McDuffie’s mother, Eula, cried out (“Rage at verdict” 1980).

Immediately after the verdict was announced, eruptions shook neighborhoods throughout the county—lasting three days—leaving eighteen people dead, including whites who were beaten or burned to death in their cars. A dead Guyanan immigrant had been taken for white; blacks were shot by police officers, killed by a security guard, and by roving white motorists driving through black residential neighborhoods; and a police officer died of a heart attack (Porter and Dunn 1985, 71–73). Even in the aftermath, tempers flared, the riot resulting in \$800 million in property damage, with 372 total arrests, of which 233 were caught for looting (Pite 1980; “Miami still shows scars of rioting 1980; *Barry v. Garcia*, 573 So.2d 932 933, 1991). A community survey immediately after the riot indicated that 26 percent of black residents participated in the melee (Ladner, 1981).

Two years had passed to December 1982, when another civil disturbance was sparked by Miami police officer Luis Alvarez. Charged with manslaughter in the death of twenty-year-old black motorist, Nevell Johnson, Alvarez had shot and killed Johnson while on patrol (Stuart 1984b). Headed by Janet Reno, the

office of the Dade State Attorney prosecuted the police officer. Yet, again, during jury selection, the defense attorney's peremptory challenges produced an all-white, six-member jury of three men and three women. Bill Perry, one of several prominent blacks, called for prosecution of the officer by a racially mixed jury, arguing for an immediate change in state laws to allow the use of affirmative jury selection mechanisms to register racially mixed juries in racially sensitive trials (Stuart 1984a).

The court contest was less than sharply defined on the underlying racial issues. During the trial, defense counsel argued that the defendant deliberately shot Johnson in self-defense, while the prosecution sought to prove that the defendant shot Johnson after committing a series of procedural errors. After a fifty-seven day trial, the all-white jury deliberated less than two hours over the evidence presented, finding that the twenty-four-year-old officer was not guilty in the shooting death of Johnson. "It's a tragic day for the total community," outspoken black activist and radio commentator Les Brown exclaimed. Bill Perry, president of the Miami chapter of Operation PUSH, declared that the acquittal was a "travesty" (Stuart 1984a).

The announcement of the acquittal quickly spread throughout the Miami area, loosing another racial conflagration in Miami. In the predominantly black Liberty City area, two police officers were shot, and the police arrested more than two hundred rioters, mostly young black males (Stuart 1984b).

Seven years later, after the fatal shooting of a motorcycle rider, Clement Anthony Lloyd, by police officer William Lozano, riots erupted at the scene, spreading to other parts of Dade County. The death of Allan Blanchard, a black passenger on the motorcycle, fueled three nights of large scale civil disturbances, leaving one man dead, seven others shot, and 136 buildings burned and looted (*Lozano v. Florida*, 584 So.2d 19 20 21, 1991). Extensively covered and reported by both national and international media on the scene, overlapping Martin Luther King's birthday and the Super Bowl week in Miami, the riots were a powerful testimony of unremitting racial discord.

Similar to the previous two Miami trials, local newspapers described the defendant by name as a police officer, though few reports mentioned his Colombian origins. At least one press report described him as white, none described him as Latino, and the media's message seemed clear: Lozano was a "white knight," a protector of the people (Truyol 1994). Meanwhile, evoking negative stereotypes, the media consistently painted the victims darkly: "black men riding motorcycles. . . . The implicit message was that the bad guys were up to no good" (Truyol 1994, 422).

In the wake of the verdict in the Rodney King beating case in Los Angeles, in an effort to reduce the chance of empaneling another all-white jury, the venue was changed to Tallahassee, which had a 24 percent black population (Booth 1993). But then the venue was changed yet again—back to Orlando, a

conservative, overwhelming white community, with an only 10 percent black population (Clary 1993). This was because Lozano was found guilty of manslaughter in his initial trial in Miami, but that decision was overturned by a court of appeals, which decided that the defendant had not received a fair trial due to the Miami jurors' fears of more rioting. On remand, the trial was simply transferred from Dade County back to predominantly white Orlando in Orange County.

On March 10, 1993, a six-person jury was finally picked: one black juror, along with three white jurors and two Hispanics (Gilbert 1993, 181). An acquittal was the likely outcome, a close observer of the trial nonetheless suggested, largely because the defense had more practice and experience from the previous mistrial case, and witnesses' memories of the shooting had begun to fade after four years, no longer being perceived as credible or reliable (Rohter 1993). The important divergence of the Lozano jury from previous juries of racially sensitive trials was that the six-member jury was racially mixed, or at least included a juror who shared the same racial background with the victims. There was also greater expectation of trial fairness and verdict legitimacy in the community (Gilbert 1993; Rohter 1993).

Nevertheless, the police and law enforcement officers were apprehensive. In order to prepare for possible riotings in black sections of Miami neighborhoods, National Guard units were called out prior to the verdict. Reaching a decision after less than seven hours of deliberation, on May 28, 1993, an acquittal verdict was announced—followed only by minor and sporadic disturbances in the streets. This time, there were no ensuing racial riots or disturbances after the acquittal verdict (Rohter, 1993).

THE SIGNIFICANCE OF MINORITY JURORS IN THE JURY BOX

The Beckwith and Miami cases illustrate initial jury trials in which the crimes may well have been racially motivated; yet the juries that tried the defendants failed to include any members who shared the race, ethnic, or ideological characteristics of the victims. With changing times and perceptions, the third Beckwith trial in 1994, and the third Miami trial in 1993, provided the exceptions. In both instances, a white defendant was accused of killing a black victim. As there was no widespread racial violence following the trials, the verdicts were largely perceived to be fair and widely accepted by both white and black communities. Though the verdicts were very different in each case—the conviction in the former and the acquittal in the latter—the public's perception of the fairness of the trial and the willingness to accept the jury verdict were apparently much greater for racially mixed tribunals than for all-white juries.

More recently, the verdict of the Amadou Diallo trial in January 2000 provides another example in which a racially diverse jury acquitted four white, unpopular police officers accused of killing a black immigrant; but the public's reaction to the verdict failed to lead to major racial riots. The jury was composed

of four black women, a white woman, and seven white men. Street demonstrations and condemnations of both police and their actions preceded the trial and continued during and after the verdict. Minority communities reacted with furor—yet neither burned the Bronx, the site of the killing, nor the site of the trial in Albany.

African-American Reverend Al Sharpton had organized and led the early protests. After the verdict, however, he appealed cautiously to his followers: “We do not want to tarnish his [Amadou’s] name with any violence,” Sharpton admonished, “not one brick be thrown, not one bottle be thrown. We are fighting violence” (Goldman 2000). The solution appeared different than in years past: the concerted efforts by various minority groups and civil rights organizations were now being directed toward the political and legal arena to pressure the federal government to prosecute the four white police officers under civil rights laws (Knutson 2000).

What common threads can we weave by stepping back to examine the ways in which these major cases reflect the intertwined relationship of race, jury composition, verdicts, and the public’s reactions to, and perception of, the integrity of the jury system? Have racially diverse tribunals offered legitimacy to the fairness of the final jury verdict? Does the race of victims, defendants, and accused together play a crucial role in influencing public perceptions, respect, and acceptance of final jury verdicts?

In criminal trials involving sensitive and unmistakable elements of racism, there is widespread consensus that a racially mixed jury offers many benefits. Scholars, judges, and litigants argue that a racially mixed jury may help to overcome racial bias, improve the fairness of trial proceedings, and enhance public respect and acceptance of criminal and civil verdicts (Johnson 1985; “Developments in the law” 1988; Colbert 1990; Fukurai 1999b).⁷ Those advocating racially diverse juries posit that minority representation on a jury minimizes the distorting influence of race and increases the likelihood of a fairer and more legitimate verdict (Colbert 1990, 112–115).⁸ To the extent that minorities can contribute different viewpoints that may not be readily apparent to majority jurors, the deliberation process may indeed be substantially fairer and wiser (King 1993a; Meyer 1994).

Both the depth of discussion and cogency of exchange are enhanced by racially mixed juries. Racially heterogeneous juries are more likely than single race juries to enhance the quality of deliberations. The quality of the jury’s exchange and deliberation is also improved in larger and more diverse groups than in smaller ones (Tindale et al. 1990; Keele 1991).⁹ Drawing upon varied experiences of its members, the racially diverse jury is less likely to rely upon complacent and uninformed assumptions in its deliberation, suggesting that impartiality is not self-contained in a single “impartial” juror, but achieved through the diverse representation of a range of views and experiences. Empirical studies

of mock and actual juries show that racially mixed juries minimize the distorting risk of bias and prejudice (Johnson 1985; Hans and Vidmar 1986; “Developments in the law” 1988). Racially integrated juries force us to examine, not whether whites, blacks, Hispanics, or Asians exhibit a greater or lesser propensity for impartial decision-making, but whether or not optimum conditions for an impartial deliberative process exist. Participation across racial groups is an important component of the truth-seeking function of the jury system, as the jury is the vehicle through which a fair evaluation of the evidence is consummated.

Racially mixed juries also advance mutual experience and education during jury service, unifying jurors of different racial and ethnic backgrounds to work together as equals (Hastie, Penrod, and Pennington 1983; King 1994). In general, this is one path towards integration, embracing diversity and diverse viewpoints in decision-making bodies.

Besides diverse juries’ effects in enhancing the quality of jury deliberation, the realization of racially diverse tribunals also has significant and important social and political ramifications. The realization that racially diverse jurors are in a position to evaluate the credibility and legitimacy of evidence may provide internal checks to insure fair and proper performance of all criminal justice participants, including prosecutors, defense attorneys, judges, law enforcement officers, the jury, and other key players in the judicial system. The empanelment of racially diverse juries, for example, may restrain prosecutors from engaging in prosecutorial misconduct and racially calculated decision makings. Prosecutors may be forced to make conscious efforts to pursue their prosecutorial work in a racially nondiscriminatory manner, including charges to be filed, plea bargaining decisions, pretrial recommendations of defendants’ dispositions, and trial strategies including evidence determination, witness and testimony preparations, and the manner in which evidence is introduced and presented.

The emergence of racially diverse tribunals also influence the performance of defense attorneys, including defense motions to be filed, voir dire strategies in jury selection, and trial preparations and presentations. The fact that racially diverse jurors carefully weigh their exchange forces them to be aware of the quality of their trial deliberations, actions, and conduct that will be evaluated by other jurors of diverse backgrounds, as well as by judges, prosecutors, the media, and the public. Their concerns about the collective quality of their performance also influence decisions and presentations of defense attorneys in the courtroom.

Racially diverse tribunals also have an equally powerful impact on the quality of performance by judges in making decisions on pretrial detention of defendants, rulings on motions and evidence, jury selection—including peremptory challenges, challenges for cause, and/or stipulations—recommendations for the selection of jury forepersons, and sentencing when defendants are convicted.

As well, racially diverse tribunals may help eliminate the work-group relations in the courtroom, which are often portrayed as “work-units,” harshly criticized by many scholars and legal practitioners. Because of the intimate

relations developed among judges, prosecutors, and defense attorneys or public defenders, all whom likely share the same dominant race, there is no effective checks and balances mechanism in evaluating their work performance in the courtroom. The disregard of the defendants' rights to competent and just legal representation also spills into the jury trial, because many minority defendants are likely represented by public defenders or other court-appointed counsels, who have shown an intimate work relationship with prosecutors, judges, and other officers in the criminal justice system (Flowers 2000).

Thus, the pursuit and realization of racially diverse tribunals in jury trials enhance the possibility of changing the qualitative landscape of the criminal justice system. Racially imposed checks and balances influence the performance of the jury, as well as of defense attorneys, prosecutors, judges, law enforcement officers, and other key players in the criminal justice and criminal court system. From a broader social perspective, then, racially diverse juries enhance the legitimacy of jury verdicts, the quality of work performance by criminal justice participants, and the parties' and public's perception of justice and social peace (King 1993a, 1993b; Ramirez 1994).

REFORM AND ITS BARRIERS

Despite the importance of race in jury selection and the potential benefits of racially mixed juries in criminal trials, current jurisprudence offers no affirmative mechanism to guarantee minority representation on the jury. The United States Supreme Court has been reluctant to recognize and accept academic research, mock studies, and empirical findings, showing that juries balanced by racial diversity show a greater propensity to render fairer, more just decisions. The Sixth Amendment's provision for a jury to represent a fair cross section of the community forbids systematic discrimination in the creation of the jury venire and panel; but it does not guarantee that the final jury will actually reflect an accurate cross section of the community.¹⁰ Rather, the Supreme Court has summarily rejected a right to a racially mixed jury (*Apodaca v. Oregon*, 406 U.S. 404, 413, 1972), declaring that there is no right of the accused to the inclusion of jurors racially similar to the defendant. Similarly, the Court has refused to recognize any constitutional right to proportional racial representation on the final jury itself (*Holland v. Illinois*, 493 U.S. 474, 1990). Past jury research substantiates that racial minorities have been systematically excluded from jury service in the vast majority of both state and federal courts (Johnson 1985; Fukurai, Butler, and Krooth 1991b; King 1993b, 1994; Fukurai 1996, 2000). Minorities may also remain underrepresented in the venire or jury box, even without invidious discrimination (Fukurai, Butler, and Krooth, 1993). Yet, the Supreme Court has only stated that a party is entitled to an impartial jury, not necessarily a representative or racially diverse one.¹¹

In bringing about reforms in jury diversity, the Supreme Court has been reluctant to recognize the importance of an affirmative action approach to jury selection, though the Court has been willing to reiterate the importance of representative and fair cross sectional ideals for jury composition. The Court once declared that a jury is more likely to fit contemporary notions of unbiased neutrality, if it is composed of representatives of all segments and groups of the community, thereby creating a body that can reflect “the commonsense judgment of a group of laymen” (*Apodaca v. Oregon*, 406 U.S. 404 410, 1972). The Court has also stated that “our democracy itself requires that the jury be a ‘body truly representative of the community,’ and not the organ of any special group or class. . . . It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community” (*Smith v. Texas*, 311 U.S. 128, 85–86, 130–131, 1940). In a frequently quoted passage from *Peter v. Kiff*, Justice Thurgood Marshall reiterated the importance of representative and diverse juries:

When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented (407 U.S. 493, 503–504, 1972).¹²

Resolving the underlying issues of fairness and equity involving race, gender, and social class may well determine how various groups view the legitimacy of the judicial and criminal justice systems. And the Supreme Court has clearly stated that the broader participation by various segments of the community serves to preserve “public confidence in the fairness of the criminal justice system” (*Lockhart v. McCree*, 476 U.S. 162, 174–175, 1986). In order to increase jury participation by minorities and improve the public’s respect and confidence in the jury system, this book takes up the challenge by examining important affirmative strategies to ensure the inclusion of racial minorities in the trial jury, proposing a number of deep-seated reforms to correct representative imbalances.

CONCLUSIONS

The public’s skepticism of trial fairness and verdict legitimacy, as well as community reactions—whether public protest or demonstrations, race riots, or civil disturbances—all point to the need for drastic reforms in the jury system to allow for and empanel racially diverse juries in criminal trials, especially those involving interracial crimes and highly sensitive elements of racism. How to accomplish this can be best understood by acknowledging the collective short-

comings and deficiencies of the jury system and its selection procedures. Among the system's most glaring faultlines are the systemic and systematic exclusionary policies and practices that have been handed down from the past, and discriminatory selection procedures that continue to exclude large segments of racial minorities in various communities.

Our study points to these frailties that help maintain exclusionary procedures and, at the same time, maps a path to overcome such racially exclusionary practices. We believe that, given the growing racial diversity of our nation's communities and the increased public attention to interracial crimes, dramatic jury selection reforms are needed here and now, with all due speed. Affirmative action in jury selection is an important legal and remedial policy that can overcome exclusionary selection practices and ensure the presence of racially diverse jurors in the final jury box.

While the question of affirmative action in education, employment, and business contracting has divided the nation and even some racial minority communities themselves, affirmative action in jury selection has yet to receive much-deserved attention. This book attempts to refocus on the nonrepresentative imbalance by examining the possible applicability of affirmative action in criminal jury proceedings. As such, we define alternative jury structures for racially diverse tribunals, focusing a lens on the racialized distribution of jury seats in criminal trials, as well as on the voir dire selection strategy called "peremptory inclusion," in identifying and selecting racial minority jurors for the final jury.

We demonstrate that an affirmative action mechanism to secure racially diverse juries is essential to the appearance, the substance, and the public's perception of trial fairness and verdict legitimacy in criminal jury proceedings; racially diverse tribunals also represent the mechanism of internal checks to insure fair and proper performance by government agencies; and maximizing the essence of the legitimacy and integrity of the judicial decision-making process and trial verdicts is a compelling social, governmental, and judicial interest.