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Mehserle case re-ignites debate over lack of diverse juries - impact on verdicts

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Moments after the verdict was announced this week in a racially charged case involving a white transit cop who fatally shot a black man, the accusations rang out.

Critics said the jury convicted former BART police Officer Johannes Mehserle of the least serious of three homicide charges — involuntary manslaughter — because none of the jurors were black. Three were Hispanic, one was Asian, and eight were white.

Though the verdict prompted protests and looting in Oakland on Thursday, the violence was limited — mostly likely because it is so rare for a jury to find a on-duty police officer guilty of any abuse that the verdict was viewed by some as a small victory.

But the case has rekindled a hotly debated legal issue — the impact of the under-representation of minorities on juries, particularly blacks.

Commenting on the makeup of the jury, Ollis Simmons, executive director of a youth group in Oakland, said: "I think everyone — the family, every young black person who is afraid of the police — is

going to see this as a miscarriage of justice."

Dearth of minorities

In California, no one keeps statistics on the racial makeup of juries. But the Blue Ribbon Commission on Jury System Improvement recognized in 1996 that juries don't reflect the community's growing diversity.

While lack of jury diversity still exists, California has tried to improve it by

raising jury pay from \$5 a day to \$15 a day in 2000 (the first increase since 1957) and reducing the time potential jurors had to wait before serving or being dismissed. The state also made it easier for jury candidates to defer service to a more convenient time, said Santa Clara County Deputy District Attorney Chris Arriola, head of the office's Equal Justice Task Force.

"Minorities are less likely to come to jury service," partly because they tend to work for themselves or for employers that won't hold their jobs or pay them while they're in court, Arriola said.

Moreover, courts get names of potential jurors from DMV records and voter rolls — eliminating low-income minorities who don't own cars and aren't registered to vote, as well as voters who have moved to a new rental but haven't filed a change of address.

Still, some Bay Area attorneys argue that juries without minorities can be fair.

"Though we lack diversity in jury pools, we're fortunate because a lot of people in Silicon Valley are highly educated and tend to follow the law"

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regarding sufficient evidence, defense attorney Jaimie Leanos said.

But former Superior Court Judge LaDoris Cordell said the deep-seated perception that juries with no black members cannot be trusted in racially charged cases endures in the African-American community as a result of decades of discrimination — regardless of whether it's warranted in a particular case. Cordell is African-American and was recently appointed San Jose's police auditor.

"If Mehserle had a jury with only African-Americans on it and no whites at all, how would he and his supporters feel?" Cordell said. "If you flip it, you'd probably get the identical response from a different community."

Widespread practice

Most scholars and legal experts who study juries have found that race and ethnicity — and perceptions about it — often exert a strong influence at every stage of a racially sensitive case, from which jurors lawyers disqualify to what's discussed during jury deliberations and even to verdicts.

In a criminal trial both prosecutors and defense attorneys can dismiss a set number of jurors for a most any reason without having to provide cause. Although the Supreme Court in 1986 ruled that race could no longer be used as a dismissal reason, it's an easy rule to thwart.

"You can hide your racially motivated challenge by simply giving a 'race-neutral' reason judges approve of," said Andrew Sheldon, an Atlanta-based trial consultant renowned for his work in the successful prosecution of defendants in eight major

civil rights cases, including the 1963 Birmingham church bombing by the Ku Klux Klan that killed four children.

A landmark study released in June by the Atlanta-based nonprofit legal group Equal Justice Initiative found that the practice of excluding blacks and other minorities from juries is widespread in eight Southern states. For instance, in Houston County, Alabama, from 2005 to 2009, prosecutors used peremptory strikes to remove 80 percent of the blacks in jury pools. As a result, half of the juries during that period were all white, and the rest had only one black member — in a county that is 27 percent African-American.

But the problem is not limited to the South, said the group's executive director, Bryan A. Stevenson.

"There is perhaps no arena of public life in America or governmental administration where racial discrimination is more widespread, apparent and seemingly tolerated than in the selection of juries," he wrote in the report.

In the Mehserle trial, there were five blacks out of 100 prospective jurors, according to Bay Area News Group. The trial was moved from Oakland, where blacks make up about 35 percent of the city, to downtown Los Angeles because of concerns about pretrial publicity. Violent protests followed the Jan. 1, 2009, event when Mehserle shot Oscar Grant, 22, in the back as he lay prone on a train platform.

Various world views

The Mehserle jurors were drawn from neighborhoods within 20 miles of the Temple Street courthouse, said Allan Parachini, spokesman for Los Angeles County Superior Court. Although that area

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includes parts of Los Angeles' heaviest African-American population — where blacks make up 20 percent to 50 percent of city council districts — it also includes heavily white and Latino areas, including the relatively small cities of San Fernando and Glendale.

"Lawyers come in here all the time expecting an all-black jury in the Criminal Justice Center and are often surprised when that's not at all who shows up," Parachini said.

Two of the black prospective jurors asked to be excused from the Mehserle case for financial reasons, Bay Area News Group reported. The attorneys representing the accused cop used challenges to remove the remaining three. One had relatives who were police officers; another said her husband was a victim of racial profiling by police.

Some experts say omitting black jurors robs the jury of a perspective born of their unique life experience — and without that, great injustices can occur. Many cite the acquittals in the Rodney King beating trial in Simi Valley in 1992. Two of the police officers were subsequently found guilty in a federal trial of civil rights violations.

Hispanic and Asian jurors don't necessarily share the same world view, said radio commentator Earl Ofari Hutchinson, especially in Los Angeles, where there's been ethnic strife and competition for jobs.

But despite the stereotype, not all blacks share a grim view of law enforcement — though many do. A key difference between them and people who aren't black often comes down to how they regard young black men, Stevenson said.

"What you mostly worry about is that over-representation by whites will create a presumption

of guilt, a sense that black men are dangerous and guilty of something, which then justifies the use of force" or more serious charges, Stevenson said.

Referring to the Mehserle case and the killing of Grant, he added, "If jurors can see in that young man their nephew, their child, then their sensitivity to his victimization will be greater. If they see in this young man the unfortunate but common perception of the dangerous young African-American man, it will be harder to get them to render a fair and reliable verdict."

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