

1993) (finding that the prosecutor's explanation for a challenge based on a black female's employment was, in reality, based on a stereotypical perception that the juror would be sympathetic to minorities); People v. Duncan, 582 N.Y.S.2d 848 (App. Div. 1992) (finding the prosecutor's explanation for excusing a black prospective juror insufficient to rebut an inference of purposeful racial discrimination).

11. The term, "jurymandering" was coined by Jeffrey Rosen. See Rosen (1992).

12. For further discussions of intertwined relations between the right of defendants and the right of the excluded jurors, see Underwood, 1992.

13. See Act of 1786, no. 1326, 4 Stat. S.C. 746 (conferring right to a mixed jury); Respublica v. Mesca, 1 U.S. (1 Dall.) 73 (1783) (upholding a Pennsylvania defendant's right to a mixed jury); Wendling v. Commonwealth, 143 Ky. 587 (1911) (recognizing discretionary judicial authority to award a jury de medietate linguae); People v. McLean, 2 Johns. 380 (N.Y. Sup. Ct. 1807) (upholding a New York defendant's request for a trial de medietate linguae); Richards v. Commonwealth, 38 Va. (11 Leigh) 690 (1841) (holding that while a person has the right to a mixed jury, the court has complete discretionary authority to grant or deny the request).

14. 299 U.S. at 132-33 (citing Crawford v. United States, 212 U.S. 183 1908).

15. Commonwealth v. Richard Acen, Jr and Commonwealth v. Alberto Penabriel (396 MASS. 472, 487 N.E.2D 189 1986). In separate trials, defendants were tried and convicted in the Suffolk county Superior Court. Appeals were consolidated for purposes of briefing and oral argument in the appeals court. One defendant's application for direct appellate review was granted, and second case was transferred to the Supreme Judicial Court on Court's own motion.

16. Id at 396 MASS. 472, 473, 487 N.E.2D 189, 191.

17. Id at 396 MASS. 472, 475, 479, 480, 487 N.E.2D 189, 191, 194, 195.

18. In California, Penal Code Section 888 covers the formation of the grand jury, and Section 903.4 requires that each jurisdiction or county appoint jury commissioners who are responsible for compiling lists of those qualified to serve as grand jurors. Section 903.3 also specifies that

superior court judges shall examine the jury list submitted by jury commissioners, and may select "such persons, as in their opinion, should be selected for grand jury duty." However, Section 903.4 also allows judges to disregard these lists and select anyone from the county they find suitable and competent to serve as grand jurors. Section 903.4 specifically states:

The judges are not required to select any names from the list returned by the jury commissioner, but may, if in their judgment the due administration of justice requires, make all or any selections from among the body of persons in the county suitable and competent to serve as grand jurors regardless of the list returned by the jury commissioner (emphasis added).

19. See Ballew v. Georgia, at 231-39, reviewing articles and studies critical of the six-person jury and refusing to uphold a five-person jury.
20. For the effect of the "three strikes and you're out" law, see Craig Haney (1998).
21. Through numerous legal maneuvers by both defense and prosecution, the new trial was finally set to begin in January, 1999 (Wilson, 1998). Meanwhile, the political climate began to change in Mendocino, California. District Attorney Susan Massini was upset in the 1998 November election by Norman Vroman, who indicated that unless there is something in the case files he does not know about, "it would be a waste of county money to continue the case." In response, Massini said that before she leaves office, she indicated that she planned to ask the state attorney general to review the case for possible prosecution at that level (Geniella, 1998).

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Table 1

Indian Service Populations and Jury Representation in the Master List

Reservation	Population ¹	Total Eligible ²	No. Included	No. Excluded
Coyote Valley	302	48	27	21
Guidiville	125	--	--	--
Hopland	353	338	64	274
Laytonville	504	87	48	39
Manchester/Point Valley	253	188	107	81
Pinoleville	259	93	48	45
Potter Valley	341	--	--	--
Redwood Valley	135	44	29	15
Round Valley	3,013	368	215	153
Sherwood Valley	292	125	60	65
Total	5,577	1,291	598	693 (53.7%)

Note: Some tribes, such as Hopland, provided lists in 1989 for the Whitlock case (People v. Whitlock), but would not provide lists to the defense at this time, fearing county involvement in their business. Hopland, for example, would only give us their list with names only. Both were provided. Similarly, the Guidiville and Potter Valley refused to provide any information on their tribal enrollments in any governmental matter including the Lincoln case.

1: The tribal populations were supplied by Ray Frei at Bureau of Indian Affairs office in Sacramento on December 27, 1996. The information shows the population figure (latest available, 1995) by reservation of federally recognized tribes in Mendocino County. Two other reservations, Noyo River and Yokayo, are not federally recognized and thus eliminated from the analysis.

2: Because a large number of tribal members live around the county boundary, total eligible jurors were identified by only tribal members whose residential addresses are within the boundary of Mendocino County.

TABLE 2
MENDOCINO COUNTY PETIT JURY COMPOSITIONS OF NATIVE AMERICANS:
APRIL 30, TO DECEMBER 16, 1996¹

Date	Total		Disparities		Z			
	Jurors ²	%	Absolute	Comparative Score				
	Jurors	%	Disparities	Score				
1	4-30-96	62	0.00%	3.61%	-3.61%	-100.00%	-1.523	
2	5-21-96	53	1.88	3.61	-1.72	-47.73	-0.672	
3.	5-28-96	99	2.02	3.61	-1.58	-44.03	-0.847	
4	6-18-96	64	4.68	3.61	1.07	29.84	0.462	
5	7-8-96	40	2.50	3.61	-1.11	-30.74	-0.376	
6	7-9-96	48	2.08	3.61	-1.52	-42.29	-0.567	
7	7-22-96	52	5.76	3.61	2.15	59.81	0.834	
8	7-29-96	80	3.75	3.61	0.14	3.87	0.067	
9	8-12-96	85	1.17	3.61	-2.43	-67.41	-1.202	
10	8-14-96	45	2.22	3.61	-1.38	-38.44	-0.499	
11	8-26-96	70	1.42	3.61	-2.18	-60.42	-0.978	
12	9-9-96	55	1.81	3.61	-1.79	-49.63	-0.712	
13	9-16-96	46	4.34	3.61	0.73	20.43	0.268	
14	9-23-96	47	2.12	3.61	-1.48	-41.06	-0.544	
15	9-30-96	243	2.88	3.61	-0.72	-20.20	-0.609	
16	10-2-96	249	3.21	3.61	-0.39	-11.00	-0.335	
17	10-7-96	105	1.90	3.61	-1.70	-47.23	-0.936	
18	10-8-96	79	5.06	3.61	1.45	40.25	0.692	
19	10-15-96	107	1.86	3.61	-1.74	-48.22	-0.965	
20	10-21-96	62	0.00	3.61	-3.61	-100.00	-1.523	
21	10-28-96	44	4.54	3.61	0.93	25.91	0.332	
22	11-12-96	38	0.00	3.61	-3.61	-100.00	-1.192	
23	11-13-96	38	0.00	3.61	-3.61	-100.00	-1.192	
24	11-18-96	51	1.96	3.61	-1.64	-45.68	-0.631	
25	11-19-96	68	0.00	3.61	-3.61	-100.00	-1.595	
26	12-9-96	67	1.49	3.61	-2.11	-58.65	-0.929	
27	12-16-96	45	4.44	3.61	0.83	23.11	0.300	
Total		2042	50	2.44	3.61	-1.16	-32.17	-2.813*

1: Figures are based on the 1990 U.S. Census.
 2: Prospective jurors who refused to identify race and/or who identified more than one categories were excluded from analyses.
 3: Percent-Native American adults were computed for individuals who are 18 or over in Mendocino County.
 *: Statistically significant at 0.002 probability level (i.e., the likelihood exhibited disparity would occur by chance was two in one thousand, i.e., one in five hundred).

Table 3

Mendocino County Community Survey on the Bear Lincoln Case:
Likely Trial Outcomes and Criminal Justice Attitudes

Questions	Responses		N	Percentage	Valid	
					Percentage	Percentage
HAVE YOU READ, SEEN, OR HEARD IT? ¹						
1. the defendant, Bear Lincoln, was at large for four months before turning himself in to the authorities? ²	Yes		315	78.9		81.6
	No		71	17.8		18.4
	Don't Know		13	3.3		--
2. Bear Lincoln had previously been convicted of murdering a two-year-old girl?	Yes		52	12.9		13.2
	No		341	84.6		86.8
	Don't Know		10	2.5		--
3. the victim, Deputy Bob Davis, was a Viet Nam war hero?	Yes		173	42.9		44.6
	No		215	53.3		55.4
	Don't Know		15	3.7		--
4. There was a television story about this case on a program called "America's Most Wanted." Did you see that broadcast?	Yes		87	21.5		21.8
	No		312	77.2		78.2
	Don't Know		5	1.2		--
5. Do you believe there is a history of tension between Indians and non-Indians in Mendocino County?	Yes		333	75.9		84.7
	No		60	13.7		15.3
	Don't Know		46	10.5		--
6. Do you believe there is some prejudice against Indians in Mendocino County?	Yes		302	68.6		77.6
	No		87	19.8		22.4
	Don't Know		51	11.6		--
7. Based on what you have read, heard, or seen about the case, do you believe that the man accused, Bear Lincoln, is definitely guilty, probably guilty, probably not guilty or definitely not guilty of the first degree murder of Deputy Davis.	Definitely Guilty		51	13.0		21.1
	Probably Guilty		129	32.8		53.3
	Probably not Guilty		44	11.2		18.2
	Definitely not Guilty		18	4.6		7.4
Don't Know		51	38.4		--	
CRIMINAL JUSTICE ATTITUDE QUESTIONS						
8. Even the worst criminal should be considered for mercy.	Agree strongly		66	15.1		16.2
	Agree somewhat		104	23.8		25.6
	Disagree somewhat		64	14.6		15.7
	Disagree strongly		173	39.6		42.5
Don't Know		30	6.9		--	

Continued.

Questions	Responses	N	Percentage	Valid Percentage
9. Regardless of what the law says, a defendant in a criminal trial should be required to prove his or her innocence.	Agree strongly	179	40.9	43.3
	Agree somewhat	50	11.4	12.1
	Disagree somewhat	44	10.0	10.7
	Disagree strongly	140	32.0	33.9
	Don't Know	25	17.3	--
10. It is better for society to let some guilty people go free than to risk convicting an innocent person.	Agree strongly	99	22.8	27.6
	Agree somewhat	97	22.4	27.0
	Disagree somewhat	62	14.3	17.3
	Disagree strongly	101	23.3	28.1
	Don't Know	75	17.3	--
11. The plea of insanity is a loophole allowing too many guilty people to go free.	Agree strongly	260	59.6	62.4
	Agree somewhat	64	14.7	15.3
	Disagree somewhat	49	11.2	11.8
	Disagree strongly	44	10.1	10.6
	Don't Know	19	4.4	--

Note: 1996 Mendocino County Community Survey.

- 1: Respondents who refused to provide answers were excluded from the analysis.
- 2: Analysis of questions, 1 through 4 and 7 only included respondents who recognized the case.

Table 4

Mendocino County Community Survey on the Bear Lincoln Case:
Community Perceptions on the Likely Trial Outcome

Trial Outcomes	Pre-Trial Publicity										Race Relations					
	Race	Gender	Hiding ¹		Girl ²		Vietnam ³		TV ⁴		Tension ⁵		Prejudice ⁵			
	White	Indian	Male	Female	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No		
THE MAN ACCUSED, BEAR LINCOLN, IS: ⁷																
Guilty Definitely ⁸	23.0%	5.6%	23.0%	19.0%	18.8%	34.6%	29.7%	18.8%	25.2%	16.2%	34.4%	15.8%	17.9%	41.2%	13.8%	43.9%
Guilty Somewhat	56.4	16.7	53.2	53.4	53.6	50.0	56.8	52.3	52.3	56.4	45.9	56.5	55.8	38.2	52.7	49.0
Not Guilty Somewhat	15.7	50.0	16.7	19.8	19.3	11.5	8.1	20.8	14.4	20.5	13.1	20.3	17.9	20.6	22.8	7.0
Not Guilty Definitely	4.9	27.8	7.1	7.8	8.2	3.8	5.4	8.1	8.1	6.8	6.6	7.3	8.4	0.0	10.8	0.0

Note: 1996 Mendocino County Community Survey.

1. "Have you read, seen, or heard if the defendant, Bear Lincoln, was at large for four months before turning himself in to the authorities?"
2. "Have you read, seen, or heard if Bear Lincoln had previously been convicted of murdering a two-year-old girl?"
3. "Have you read, seen, or heard if the victim, Deputy Bob Davis, was a Viet Nam war hero?"
4. "There was a television story about this case on a program called 'America's Most Wanted.' Did you see that program?"
5. "Do you believe there is a history of tension between Indians and non-Indians in Mendocino County?"
6. "Do you believe there is some prejudice against Indians in Mendocino County?"
7. "The authorities have charged a man named Eugene 'bear' Lincoln with the murder of Sheriff's Deputy Bob Davis. Based on what you have read, heard, or seen about the case, do you believe that Bear Lincoln is definitely guilty, probably guilty, probably not guilty, or definitely not guilty of the first degree murder of Deputy Davis?"
8. Respondents who said "don't know" or refused to answer the question were excluded from the analysis.