Advantage People: West Indian Americans, "Voir Dire", the Jury System and Prosecutorial Bias

Aubrey W. Bonnett
POLITICS & CURRENT AFFAIRS

Advantage “People”: The Misuse of the Peremptory “Voir Dire” Challenges by the Prosecution in New York

An independent judiciary, the supremacy of law and the right to be tried by the jury of one’s peers are some of the basic underpinnings of our vaunted judicial system. These, in addition to our constitutional safeguards in the Bill of Rights, are what resonate among Americans and immigrants to America. It is a cardinal discriminant that distinguishes us from totalitarian and authoritarian societies and polities, and for which we, as Americans, tend to judge whether societies are on their way to a path and trajectory of democracy and freedom.

Such is the message from President Bush, Attorney General Gonzales and Secretary Rice as they transit to different nations, in the “war on terror”, urging them to adopt our democratic institutions. This is what our military is trying to implant and uphold in Iraq, Afghanistan and elsewhere and, indeed, what the critics of our judicial posture at Guantanamo are essentially in opposition to — in that our practices, they argue, undermine these principles.

At a much more localized level we effectuate this paramount principle of democracy when we agree, as citizens, to serve as jurors in both civil and criminal case — but especially the latter — where the stakes for the loss of one’s personal freedom, (liberty), and even one’s life, (death), are at stake. In short a matter of liberty and death.

Both federal and state courts subscribe to established judicial precedents as formulated in case law that give both the defense and the prosecution the right to peremptorily challenge prospective jurors. However, under Batson v Kentucky, 476 U.S.79 (1986) emanating and buttressed by the VI and XIV amendments of the Constitution, counsel are prohibited from excluding prospective jurors based on the use of race, ethnicity or any other status that connotes ‘equal protection concerns’. The ultimate purpose is to ensure integrity and fairness to the system of justice whereby the community is empowered and the defendant is indeed adjudged by his peers.

In practice it is Judges who serve as the watchdogs of this salient principle and who are supposed to ensure that their courts are free from such harmful, egregious and discriminatory practices. Equality under the law does not (or, rather, should not) aim to give the prosecution an undue — or any advantage — in the execution of his/her case. When this does not occur, it sharply calls into question the impartiality of the system under which we live and the (mis)usage of our jury system.
That is why a recent case in Bronx County raises some important judicial issues, where it is alleged that the prosecution in the selection of a jury for a criminal case, used her peremptory right to challenge and excused 100 percent of the West Indian jurors, in a case brought against a defendant of Jamaican origin. The record shows that this occurred even in an instance where a potential juror had a law enforcement background and may have been thought to be more “prosecution “People” prone.

What is also evident is that the same prosecutor allowed the inclusion of ten Black African American jurors, and argued that West Indians are not a protected category under Batson, in that they are simply Blacks from a different region of the world, with no cultural differences, viewpoints, perspective, life experience, social and cultural processes different from African Americans. The trial judge in the case judge, over the objections of defense attorney, initially ruled that “West Indians were not a cognizable group for Batson purposes,” but were merely “black people who happen to be from the West Indies” so the jury sufficiently “articulated” the specific point of view of West Indians because there were Africans-Americans on the jury.

Later the trial judge retracted his ruling, indicating and clarifying now, that it was not “making a finding” whether West Indians were a protected class, but simply ruling that the petitioner, Mark Watson, (a Jamaican), had not made out a “prima facie” case. The Appellate Division Affirmed, holding that the petitioner’s ‘numerical argument was not so [compelling] as to be conclusive.’

Clearly the trial judge went against tremendous sociological data which show the existence of marked cultural and social characteristics, practices and traits which coalesce and resonate among the ethnic group known as West Indians/West Indian Americans. It is these practices which have historically resulted in both competition, conflict and, at times, cohesion among and between this group and African-Americans, historically. It has led also to social distance and rigid endogamy as best characterized by Colin Powell who in his autobiography, My Journey, attributed these statements to his African-American father-in-law as he attempted exogamy with his daughter, Alma, and to integrate the African-American group. “All my life I’ve tried to stay away from those damn West Indians and now my daughter is going to marry one!”

As I have indicated elsewhere West Indian Americans are not a racial group, but an ethnic one, whose derivates are from many and varied racial stock-African, European, Amerindian(Native American) South Asian, Chinese, for example — and focus on the migrant ideology of deferred gratification, hard work and due diligence among such.

Sure, many in both communities have worked to create more harmonious relationships between these groups, but to simply dismiss the ‘pan ethnic ties’ that differentiate these groups — West Indian Americans and African-Americans — and thus to give the prosecution an undue advantage, is ‘justice denied’, and anathema to our system of impartiality, fair play and equal protection, and should be pursued on the merits.

In a strange twist, and given the often conservative nature and pro law and order proclivities of our West Indian forbears and community — what can be best described as a culture of caution and civility, the prosecution may have gotten the same result — a conviction and prolonged incarceration-hard time, if in her zest for winning she had not sought to garner an undue advantage. Justice must not only be done but appear to be done, and, to paraphrase that eloquent orator and beacon of justice, Martin Luther King, “Injustice anywhere is a threat to Justice everywhere”.

Meanwhile, Appellate attorney Michael Taglieri of the Legal Aid Division is reaching out to the Federal courts for prima facie injunctive relief and I, and some other West Indian American social scientists among others, are facilitating the preparation of the
social science section of the brief. It would be salutary, I believe, for an “Amicus Curiae” brief to be filed by members of our community so legally trained, and inclined.

Let Justice prevail.
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Dennis Nelson — C.E.O./Production Manager. Dennis has been working with newspapers companies in his native Guyana since 1962, his last position in Guyana was Production Manager of the Daily Chronicle newspaper. He is responsible for the overall advancement of the Caribbean Impact and also does the graphic layout and design.

Godfrey Wray — Editor-in-Chief. Godfrey has also been working in the newspaper industry since 1962. His last position in Guyana was Sunday Editor of the Guyana Chronicle newspaper. He is responsible for the editorial content and the overall advancement of the Caribbean Impact.

Edgar Henry — Financial Adviser and contributing writer. Edgar is a licensed real estate broker, accountant and businessman. He is currently the President of the Flatbush Business Improvement District and brings a vast knowledge of accounting skills and financial advice, which adds considerably to the enhancement of the Caribbean Impact.