



RACE, SOCIAL CLASS, AND JURY PARTICIPATION: NEW DIMENSIONS FOR EVALUATING DISCRIMINATION IN JURY SERVICE AND JURY SELECTION

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ABSTRACT

The U.S. Supreme Court has recognized the racial background of prospective jurors as an important dimension for evaluating jury participation. Recent Supreme Court decisions, however, have downplayed the importance of other relevant achieved status considerations, such as income and occupational standing, and the Court has yet to give social class "cognizable" status in evaluating the fairness of the jury selection system. The main thrust of this article is to examine whether jurors' social class status is equally as important as jurors' racial and ethnic characteristics in explaining disproportionate representation on jury panels. The research site is Orange County, California. Probit modelings are the analytic methods used. The analysis reveals that jurors' social class backgrounds are important determinants of jury participation, perhaps even more than racial and ethnic considerations of unrepresentative juries. The findings suggest that the analysis of jury representation based on a single criterion, such as race, does not delineate the true extent of discrimination in jury selection. For example, when jurors' social class backgrounds were incorporated into the analysis of jury participation, jurors' social class positions, measured by their occupational prestige, annual income, and managerial authority at the work place, exerted greater influence than race in explaining disproportionate jury representation. Similarly, when both the race and social class of jurors were simultaneously analyzed, African American and Hispanic prospective jurors with higher incomes and jobs of greater prestige were systematically overrepresented on jury panels. Since jurors' race and social class positions together provide a more comprehensive view of disproportionate jury representation by various segments of community populations, future Supreme Court decisions need to take both race and social class factors into consideration in order to evaluate unrepresentative juries and to assess the extent of systematic discrimination in jury selection.

INTRODUCTION

The jury trial has been regarded as an integral part of the criminal justice system since

the establishment of the Republic over two hundred years ago, and the right to a fair and impartial jury is one of the most sacred and important guarantees of the Sixth Amendment

to the U.S. Constitution. In the last several decades, however, many have questioned whether or not impartiality exists in juries, and the relevance of race, gender, and other demographic distinctions to their fair composition.

The law requires that the jury panel be randomly selected from the community in order to achieve a representative sample of citizens. Such a representative jury replaces the notion of the elite "blue ribbon" jury composed of "handpick(ed) jurors of exemplary moderation and wisdom" (Amar, 1984:1287). The contemporary requirement for jury diversity—that the jury represent a fair cross section of the community—comes closer to the concept of a fair-minded, impartial body. A jury, then, is more likely to fit contemporary notions of neutrality if it is made up 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. 410, 1972).

Similarly, the jury drawn from a fair cross section of the community is better suited to fulfill the jury's function of serving as a democratic check on government functionaries who run the criminal justice system. Thus, the fair cross-section doctrine helps "guard against the exercise of arbitrary power" and "make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor" (*Taylor v. Louisiana*, 419 U.S. 530–31, 1975), as well as a "compliant, biased, or eccentric judge" (*Duncan v. Louisiana*, 391 U.S. 156, 1968). The judgment of the community, after debates among its various subgroups and selection of a fair cross section of its members, is less likely to share, or be controlled by, the prejudices of prosecutors or judges.

In 1968, the Congress finally passed the Jury Selection and Service Act (28 U.S.C. Section 1861) to guarantee that "all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community." Current federal law attempts to ensure this goal by specifying two key concepts in forming the jury venire. During panel se-

lection procedures, there must be a random selection of jurors, and selection from an area that includes special geographic districts in which a particular court convenes (Jury Selection and Service Act, 28 U.S.C. 1861). At the state level, a similar standard applies. Recent jury challenge cases and scientific research on jury representativeness, however, throw doubt on the viability of these procedures alone to produce representative juries (*Hernandez v. Texas*, 347 U.S. 475, 1954; *United States v. Fernandez*, 480 F.2d 732–33, 1973; see also Fukurai, Butler, and Krooth, 1991a, 1991b, 1993, 1994).¹

SUPREME COURT DECISIONS TO RECTIFY UNREPRESENTATIVE JURIES

Given significant underrepresentation of African Americans, Hispanics, the poor, and women on jury panels, the U.S. Supreme Court has taken several significant steps to rectify unrepresentative juries. Ever since *Strauder v. West Virginia* (100 U.S. 306, 1880), in which the Court reversed conviction because African Americans were statutorily excluded from jury service, the Court has attempted to deal with the problem of nonrepresentative juries. Between 1880 and 1990, for instance, the Supreme Court had reviewed more than seventy cases involving jury selection (Fukurai, Butler, and Krooth, 1993: 84–85).

In evaluating Supreme Court reviews from social scientific points of view, however, the Court's approach to correcting unrepresentative juries has had the following three major defects. First, the Court has relied solely on a single item criterion of "cognizability" for evaluating unrepresentative juries and has failed to consider simultaneously two or more cognizable dimensions. Thus, past U.S. Supreme Court reviews involving jury selection have placed greater emphasis on ascribed characteristics, such as African Americans (*Strauder v. West Virginia*), Hispanics (*Hernandez v. Texas*), and women (*Taylor v. Louisiana*), giving them cognizable status to be

protected against discrimination in jury selection. More than one element of possible extralegal dimensions of discrimination was never concurrently considered, however. Appeals reviewed by the Supreme Court have never examined the disproportionate representation of women who were members of racial minorities or minority jurors who were in younger age brackets.

Second, the Court has yet to provide social class as a legally required, cognizable protection. With so many socioeconomic variables that could impact on the balance of a jury, it would be logical to develop procedures to ensure fairness along a broad front. In *Thiel v. Southern Pacific Company* (328 U.S. 220, 1946), the Court stated that a "daily wage earner" constituted a cognizable dimension. The Court, however, in *Fay v. New York* (332 U.S. 272, 1947), has rejected the cognizability of occupational categories that might have constituted a daily wage earner including "laborers, operatives, craftsmen, foremen and service employees." From a scientific viewpoint, this is a major defect because other economic and occupational subgroups, such as the unemployed, the underemployed, and those in less stable secondary markets, are excluded from the consideration. Thus, only challengeable ascriptive aspects, such as race and gender, have been recognized *de jure* as cognizable groups for jury selection. Achieved characteristics—those based on various levels and amenable to change, such as the social class positions of prospective jurors—have not been systematically recognized as cognizable dimensions subject to the vicissitudes of exclusion from jury service. In fact, among social scientists, firm ownership, management authority and control at the work place, occupational prestige, and income earnings generally are used as important measurements of wealth accumulation and social class (Domhoff, 1967; Lundberg, 1968; O'Connor, 1973; Harris, 1981; Guilder, 1982; Wright, 1989).

Third, because of the Court's single-mindedness and its reluctance to recognize social class as a cognizable dimension, there has not been a systematic analysis of the possible link of race—a legally cognized dimension—to social

class factors, such as company ownership, management authority at the work place, occupation, and income. Social class inextricably locks racial heritage to the opportunities of, or barriers to, job attainment, upward mobility, income status, and property acquisition. Thus, race and social class are systematically intertwined; ascribed characteristics, such as race and gender, are directly related to achieved dimensions of both individual and social classes (Cox, 1976; Rose, 1986).² Further, social class cuts across different racial and ethnic boundaries, thereby providing broader economic and societal profiles of community populations. It is possible, therefore, to argue that Caucasian prospective jurors in the lower echelon of the social stratum are as equally discriminated against in jury selection and underrepresented on jury panels as are other minority jurors, while Caucasians are not recognized as cognizable groups by the Supreme Court.

One of the reasons that the past Supreme Court cases failed to account for disproportionate jury participation by social class and to consider its link to cognizable dimensions of race and gender is due to notable differences and definitional discrepancies between the legal and scientific approaches to race, ethnicity, and class. Since conceptual definitions may help clarify the approach the Supreme Court has followed in evaluating jury representation, it is of great importance to provide coherent conceptual definitions of race and social class from both legal and sociological perspectives. Much confusion, for example, surrounds the use of the terms class and group.

DEFINING RACE AND CLASS FROM LEGAL PERSPECTIVES

For legal purposes, class is synonymous with group (Fukurai, Butler, and Krooth, 1993). As a sociological category, however, social class is synonymous with, or may be included in, the definition of class. The Supreme Court, however, has appeared to limit its sights, concentrating on race as a factor in defining legal class. What the Court really means is that race is a "classified group" that may not

be systematically excluded from the jury venire or jury box.

First, the definition given to racial groups by the Supreme Court will be considered. Ever since *Strauder v. West Virginia* declared unconstitutional a West Virginia statute that explicitly limited jury service to "all-white male persons" and, thus, overtly discriminated against all women, African Americans, and other non-Caucasian jurors, past litigated cases overwhelmingly have revealed an implicit view of African Americans as inferior, reaffirmed by the limitations imposed, or tokenism used, to influence the jury selection process involving African American jurors (*Smith v. Texas*, 311 U.S. 128, 1940; *Cassell v. Texas*, 339 U.S. 282, 1950; *Atkins v. Texas*, 325 U.S. 398, 1954; see also Fukurai, Butler, and Krooth, 1993:86–104).

Over the last one hundred years, the Supreme Court used its elevated place to legally define the African American race as the explicit "other." For example, Negroes were seen by the Court as property (*Scott v. Sanford*, 60 U.S. 393, 1856), or as an emancipated race (*Strauder v. West Virginia* in 1880). They have been called the inferior race, as opposed to a superior race (*Strauder v. West Virginia* in 1880). Their black color has been seen as their distinctive mark of inhumanity (*Ex Parte Virginia*, 100 U.S. 339, 1880; *Carter v. Texas*, 177 U.S. 442, 1900). They have been named a citizen of African race (*Neal v. Delaware*, 103 U.S. 370, 1881; *Bush v. Kentucky*, 107 U.S. 110, 1883), and of African descent (*Wood v. Brush*, 140 U.S. 278, 1891).

Similarly, the Supreme Court has defined Mexican Americans as "strangers" — "a separate class, distinct from whites" as a group, "those persons of Mexican descent," and "a person with a Mexican or Latin American name" (*Hernandez v. Texas*, 475, in 1954; *Castaneda v. Partida*, 430 U.S. 482, 1977).

The legal edicts offered by the Court have contended that the definition of race is the basis of the following three concepts: (1) property (owners v. slaves); (2) power (inferiority v. superiority); and (3) ethno-social attributes, such as the place of origin of one's forebears or their surnames designating another race. The

Court tends to combine both race and social class in defining African Americans and Mexican Americans — the only two racial groups recognized by the Court and given protection against discrimination in jury selection. Social scientists, on the other hand, tend to draw clear demarcations between the categories race, ethnicity, and class. Such demarcation is of great significance because discrimination in jury selection takes place in all three categories.

SOCIAL SCIENTIFIC DEFINITIONS OF RACE, ETHNICITY, AND CLASS

In the social sciences, race is generally defined in terms of the following sociocultural and geopolitical dimensions: (1) a different site, locale, or continent from which groups stem (Bonacich, 1972); and (2) groups that are socially differentiated in terms of recognizable physical characteristics (Geschwender, 1979; Miles, 1980; Jackson, 1982; Fukurai, Butler, and Krooth, 1993).

Ethnic groups have unique characteristics, such as: (1) socially sharing a common ancestry in which members inherit or are given a place, whether or not members exhibit physical or culturally distinctive traits (Bonacich, 1972:548); (2) a belief in a connection to a presumed common past (Jackson, 1982:5); and (3) cultural attributes that differentiate them from other social groups (Geschwender, 1979). These can be elaborated further as: (4) a presumed common geocultural origin (Greeley, 1974); (5) common descent (McKay, 1982); (6) European origin (Weed, 1973); (7) ethnic heritage (McKay, 1982); (8) cultural heritage (Jackson, 1982); (9) common ascriptive traits (Barth, 1969; Despres, 1975; Burkey, 1978); (10) a sense of belonging and pride (Glazer and Moynihan, 1975); (11) a felt consciousness of similarity (Enloe, 1973); (12) a sense of a common origin as a people (Gorton, 1964); (13) a similar self-identification and sense of history (Reynolds, 1980); and (14) perceived similarity of one's self and others because of a common ancestry — real or imaginary (Shibutani and Kwan, 1965).

With respect to the concept of social class, the sociological definition of class focuses on the following dimensions: (1) ownership or nonownership of the means of production; (2) superior and subordinate social relations (i.e., authority relations); or (3) income, status, and occupational distribution (Lundberg, 1968; Wright, 1979; Feagin, 1984). Those three concepts provide the important definition of social class that reflects one's economic resources and attitudes, and impacts jurors' abilities to take time off to serve on a jury (Fukurai, 1985). Class position, thus, includes location in the firm's structure of power and ownership (Wright, 1989). Each of the social class dimensions generates inequality among individuals as well as constitutes factors that influence jury participation.

Since the definitions established by the Supreme Court have relied on both race and class interchangeably as well as combining the concepts of both race and class into a single unified concept of *class* or *group*, its view of discrimination in jury representation is considerably limited. Although social class characteristics show strong correlations with the racial and ethnic dimensions of prospective jurors in American society, it has, for instance, failed to consider possible discrimination against African American jurors without independent means, Hispanic jurors burdened by economic and social problems, minority jurors lacking adequate support resources, and those with lower incomes working in less stable secondary labor markets in which employment is less secure and lacks work related benefits.³

From an analytical view of class, the interchangeable use of race and class has failed to provide critical analyses needed to examine possible discrimination in jury selection. While social scientific categories appear to provide greater coherence, especially as they bear on discrimination in jury selection, the Supreme Court's consistent pattern of evaluating jury participation indicates that current judicial inequality could eventually be rectified only by recognizing racial and ethnic minorities' needs for legal protections—due process and equal protection (Haney, 1991).

HYPOTHESIS

This article addresses the relationship between the race/ethnicity and social class backgrounds of prospective jurors and their ability to participate in jury service. The general discussion of equitable jury participation and the Court's approaches to rectify unrepresentative juries suggests a number of testable propositions.

First, on the basis of the discussion of the importance of social class positions for jury participation, attributes of social class, including firm ownership, managerial authority in the work place, annual income, and occupational standings, are expected to have a significant effect on jury participation. Specifically, prospective jurors with job security and greater control over the work place are positioned more favorably to take time off from work to serve on juries. Since jury pay remains minimal and will not make up for the loss of income during jury service, prospective jurors' occupational and work related resources and benefits become important determinants of jury participation.

Second, it is necessary to examine the intertwined relationship of the racial heritage and social class of potential jurors. In view of different structural effects on jury service, one would expect that the attributes of social class positions should be related to jurors' abilities to serve on juries, perhaps more closely than jurors' racial and/or gender backgrounds. Prospective jurors with greater organizational and economic resources are more likely to serve on juries than those with fewer economic resources, regardless of the jurors' racial or gender backgrounds. In other words, racial minority jurors with greater economic security and organizational resources may be overrepresented on jury panels.

Third, additional factors act as controls for extraneous variables that influence jury representation, such as qualification, exemptions, and various excuses. The law requires screening of prospective jurors on the basis of citizenship status, age and residency requirements, and prior jury services. Some potential jurors automatically are exempted from

jury duty. Thus, statutorily recognized factors that directly impact jury participation are included in the analysis in order to account for extraneous elements that influence jury representation.

Finally, this article argues that it is equally important to show the extent to which previous Supreme Court decisions involving race have downplayed the importance of other relevant, achieved status considerations, such as the social class positions of prospective jurors, so that the resulting assessment of fair jury representation is questionable.

The analytic model is summarized in a schematic diagram shown in figure 1. Three basic components of jury participation on jury panels are illustrated: (1) ascriptive dimensions, (2) achieved status, and (3) extraneous factors. The social class determinants of jury participation include firm ownership, position in the labor force, income earnings, and the authority positions of prospective jurors. Ascriptive variables, such as gender and race, and legal

factors, such as qualifications, exemptions, and excuses, also are included in the statistical model in order to control for their effects on the determination of jury participation. This article contends that these three structural positions and characteristics of individual jurors significantly influence jury participation and lead to disproportionate, unrepresentative juries.

RESEARCH DESIGN

Sample

A 1986 community research survey was used to examine the effect of race and social class on jury representation. In 1986, survey questionnaires were sent to potential jurors who were randomly selected from a California County master key list. The data identified the socioeconomic and demographic profiles of those who were placed on the master list. The

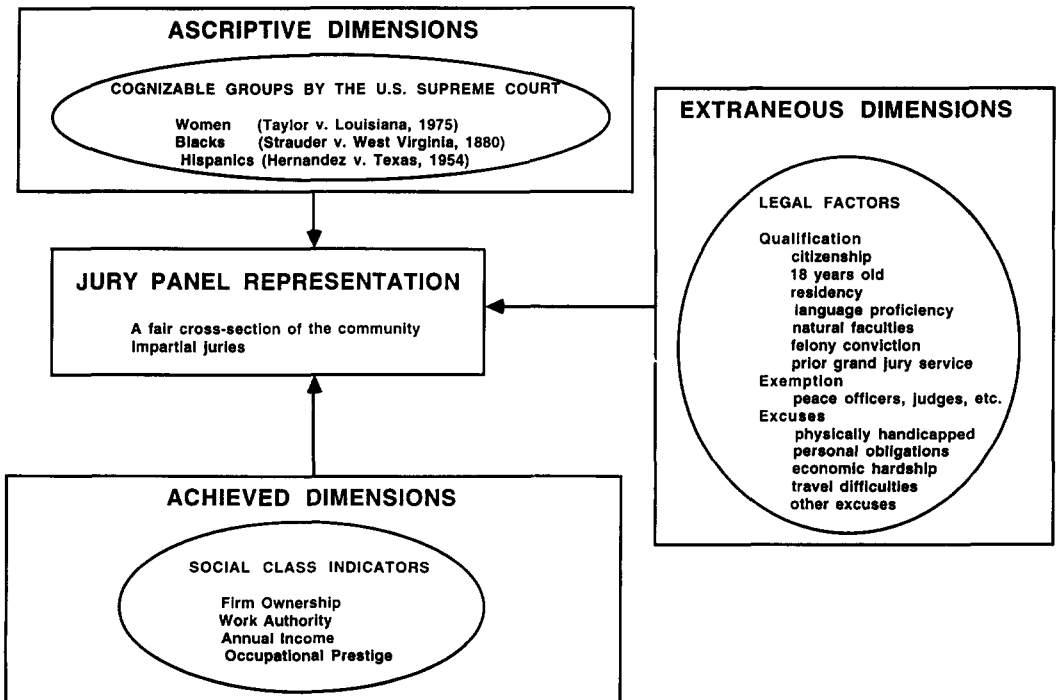


Figure 1. Cognizable Groups, Social Class, and Legal Factors on Jury Panel Representation.

community survey was conducted jointly by social scientists at the University of California, Riverside, and the University of California, Los Angeles.⁴

The purpose of the community survey was twofold: (1) to obtain accurate estimates of ethnic and racial compositions of eligible prospective jurors in Orange County, and (2) to understand the pattern of jury participation by various racial/ethnic and class segments of the community. Potential jurors were selected from the master list by a systematic, random selection method. More than 1,000 community residents were contacted to gather information on their racial/ethnic backgrounds, social class, perceptions on criminal justice and court processes, prior jury service, and eligibility to serve on juries. Their step-by-step progress through the jury selection procedure was carefully monitored, computerized, and analyzed.

Method

Probit analyses were used to explore the statistical relationship of the determinants of jury participation. The probit analysis treats a dichotomous categorical indicator as a dependent variable and a set of both dichotomous and continuous variables as predictors. Appearance on jury panels was measured in a dichotomous fashion: those who appeared (panel = 0) and those who failed to appear on jury panels (panel = 1). In examining a general, multicategory, discrete dependent variable, logit regression may be the most widely used statistical model. For the present study, however, the probit analysis was considered to be a more appropriate statistical method because the probit distribution approaches extreme values more slowly than the logit regression (Press, 1982:287; Bohrnstedt and Knoke, 1994:354).⁵ While both probit and logit distribution curves are very similar in the middle range, they are different in their extreme tails, and their estimates of probabilities also become distinctly different by approximately 0.02 or less.

In evaluating the appropriateness of the probit analysis for the present study, the dis-

tribution of continuous independent variables is examined carefully. For example, skewness and kurtosis are measures of the asymmetry and long-tailedness of the distribution curve.⁶ The skewness of two continuous independent variables, annual income and occupational prestige, shows $-.41$ and $-.18$, respectively (see Table 1). None of the skewness indices show statistically significant results, indicating that their distributions are more likely to be symmetric and clustered around the means of respective variables ($p < .05$). Similarly, none of the kurtosis indices are statistically significant, showing insignificant deviations from the normal distribution.⁷ Since the continuous exogenous predictor variables are more clustered in the middle of their distributions and less in the extremes, the probit analysis is considered to be an appropriate method, and its cumulative normal distribution is more likely to capture the curves of distributions of continuous independent variables than the logit distribution.

This dichotomous endogenous variable (panel) is then regressed against a set of independent variables that are believed to be the determinant of jury participation. In the model, the exogenous independent variables include the following: (1) race/ethnicity; (2) social class indicators, such as jurors' firm ownership, managerial control of work places, annual family incomes, and job prestige; (3) juror qualifications; (4) exemption status; and (5) requests for excuses. Gender also was included in the model because the Supreme Court has provided women legal protection against discrimination in jury selection.

Measurement

Cognizable groups. Two dummy variables are created for two race/ethnic groups: African Americans and Hispanics. The variable BLACK is coded as 1 when jurors are African American (black = 1) and 0 when they are not African American (black = 0). Similarly, the variable HISP is coded as 1 for Hispanic jurors (hisp = 1) and 0 for non-Hispanic jurors (hisp = 0). Gender also is included in the model (gender = 0 for male and 1 for female).

TABLE 1
MEASURES OF VARIABLES AND DESCRIPTIVE STATISTICS

Variable	Total Sample ^a				Minority Jurors (African American/Hispanic) ^b			
	Mean	Std Dev ^c	Skewness	Kurtosis	Mean	Std Dev	Skewness	Kurtosis
Cognizable groups								
Women (0 = male; 1 = female)	0.55	0.49	-0.23	-1.94	0.59	0.49	-0.36	-1.87
Blacks (0 = non-Black; 1 = Black)	0.02	0.08	11.78	137.21	—	—	—	—
Hispanics (0 = non-Hisp.; 1 = Hisp.)	0.08	0.26	3.26	8.68	—	—	—	—
Social class positions								
Firm ownership (0 = yes; 1 = no)	0.86	0.33	-2.18	2.77	0.90	0.30	-2.73	5.58
Supervisory resp. (0 = yes; 1 = no)	0.52	0.49	-0.08	-1.99	0.73	0.44	-1.09	-0.82
Annual family income ^d	6.44	2.60	-0.41	-0.97	5.64	2.72	-0.06	-1.17
Occupational prestige ^e	50.20	21.64	-0.18	-0.84	42.30	23.90	0.33	-0.99
Legal variables								
Qualifications (0 = qualified; 1 = disqualified)								
Citizen	0.89	0.30	-2.61	4.87	0.74	0.43	-1.10	-0.79
18 years old	0.94	0.23	-3.81	12.58	0.92	0.25	-3.37	9.49
Resident	0.87	0.33	-2.22	2.93	0.82	0.38	-1.71	0.93
English language proficiency	0.90	0.29	-2.75	5.58	0.74	0.43	-1.10	-0.79
Natural faculties	0.92	0.25	-3.33	9.12	0.90	0.29	-2.83	6.07
Felony conviction	0.93	0.24	-3.55	10.66	0.91	0.28	-2.92	6.61
Served on grand juries	0.94	0.23	-3.78	12.34	0.92	0.26	-3.25	8.64
Exemption (0 = exempted; 1 = not exempted)								
Peace officer	0.93	0.24	-3.61	11.05	0.92	0.26	-3.25	8.64
Excuses (0 = asked to be excused; 1 = did not ask to be excused)								
Physically handicapped	0.80	0.39	-1.50	0.27	0.79	0.40	-1.48	0.22
Personal obligations	0.83	0.37	-1.80	1.27	0.82	0.38	-1.70	0.91
Economic hardship	0.75	0.42	-1.20	-0.53	0.83	0.37	-1.83	1.38
Travel and transportation diffic.	0.87	0.32	-2.30	3.33	0.85	0.35	-1.97	1.92
Previous jury service (12 months)	0.82	0.38	-1.67	0.81	0.88	0.32	-2.36	3.61
Other excuses	0.86	0.34	-2.09	2.37	0.85	0.34	-2.07	2.33
Jury service								
Jury panel (0 = yes; 1 = no)	0.61	0.48	-0.46	-1.78	0.77	0.41	-1.35	-0.15
Jury box (0 = yes; 1 = no)	0.73	0.44	-1.04	-0.91	0.84	0.35	-1.96	1.88

^aN = 1,273.

^bN = 215.

^cStandard deviation.

^dAnnual family income is coded as 1 = <\$5,000; 2 = \$5,000-9,999; 3 = \$10,000-14,999; 4 = \$15,000-19,999; 5 = \$20,000-24,999; 6 = \$25,000-29,999; 7 = \$30,000-39,999; 8 = \$40,000-49,999; 9 = \$50,000-74,999; 10 = \$75,000 or more.

^eIt is a socioeconomic index (SEI), ranging occupations from 1 (lowest prestige) to 96 (highest prestige).

Social class. Four variables are included in the analysis to measure the social class positions of prospective jurors. First, respondents were asked if they owned their business (own = 0). Second, a managerial position is more closely related to having authority status, and jurors' supervisory responsibilities were used to indicate the extent of managerial control within a firm and job related responsibility in work places (supervisor = 0). The measurement of social class also includes the two continuous variables: annual family income and occupational status and prestige. A socioeconomic index (SEI) is a continuous variable and measures the level of prestige associated with various occupational categories. The SEI index ranges from 1, designating the least prestigious occupation, to 96 as the most prestigious job category. Annual family income reflects the economic well-being of potential jurors and further determines their chances to be on jury panels.

Legal variables. There are a variety of legal variables to be considered as impacting the selectivity in jury participation. For instance, there are qualification measures (U.S. citizen, residency, age requirement, English proficiency, physical and natural faculty, felony conviction, previous grand jury experience), an exemption (peace officer or judge), and other excuses (physical/mental disability, special personal obligation, travel and transportation difficulties, and prior jury service). They are measured by a set of dummy variables to control for extraneous and legal variables that may affect jury participation other than race/ethnicity, gender, and social class; they are coded as 0 if prospective jurors are disqualified or asked to be excused and 1 if they did not meet the disqualification or request for excuses.

The inclusion of the legal variables is considered to be crucial because there are many factors that impact the pattern of jury participation before jurors ever reach the courtroom. Qualification requirements include such factors as: jurors have to be a U.S. citizen, eighteen years old or more, a resident of the county or jurisdiction, and with a sufficient degree of

knowledge of the English language. Similarly, automatic exemptions are given to certain occupations, such as police officers, attorneys, and judges. Excuses also are granted, though there may be some variations among different jurisdictions, and include physical or mental incapacity to serve as jurors, personal obligations, economic hardship, difficulty in transportation, and other excuse items that the court has granted. The analysis takes into consideration all of those screening and legal questions that may impact jury participation. The descriptive statistics of all the structural variables in the empirical analysis are shown in Table 1.

RESULTS

Probit analysis was used to examine the relationship of the structural determinants of jury participation. Table 2 shows the results of the analysis. The first three columns in the table show the impact of both structural and control variables on jury representation. Estimates of the direct effects of cognizable categories, social class, and legal variables on jury participation (a dichotomous variable) are reported. The fourth through sixth columns indicate the impact of the structural variables only for African American and Hispanic prospective jurors and estimate the effect on the group based work for cognizable racial/ethnic groups: whether they appeared or failed to appear on jury panels. The different analyses for two different samples—the total and subgroups for African American and Hispanic jurors—explore the relationship between jurors' social class positions in society and the impact of the position on jury representation. A number of qualification items, exemption status, and excuse categories are treated as control variables to examine the effect of both social class backgrounds and cognizable groups on jury panel representation.

Cognizable Groups

The Court has given the cognizable status to three ascriptive characteristics, such as women, African Americans, and Hispanics.

TABLE 2

PROBIT ANALYSES: EFFECTS OF STRUCTURAL AND STATUTORY VARIABLES ON JURY PANEL REPRESENTATION

Variables	Total Sample ^a			Minority Jurors (African American/Hispanic) ^b		
	Coefficient	Standard Error	T-Value	Coefficient	Standard Error	T-Value
Cognizable groups						
Women (0 = male; 1 = female)	0.001	0.100	0.000	-0.380	0.348	1.090
Blacks (0 = non-Black; 1 = Black)	0.279	0.694	0.402	—	—	—
Hispanics (0 = non-Hisp.; 1 = Hisp.)	0.172	0.218	0.788	—	—	—
Social class positions						
Firm ownership (0 = yes; 1 = no)	-0.154	0.174	0.881	0.428	0.510	0.839
Supervisory resp. (0 = yes; 1 = no)	-0.052	0.113	0.460	-0.649	0.370	1.753*
Annual family income ^c	-0.071	0.022	3.196***	-0.151	0.073	2.071**
Occupational prestige ^d	-0.006	0.002	2.548**	-0.016	0.008	1.907*
Legal variables						
Qualifications (0 = qualified; 1 = disqualified)						
Citizen	-1.305	0.396	3.291***	-1.431	0.581	2.460**
18 years old	0.000	1.899	0.000	0.000	1.015	0.000
Resident	-0.732	0.197	3.700***	-0.000	2.124	0.000
English language proficiency	-1.295	0.497	2.703**	-0.870	0.586	1.484
Natural faculties	-0.000	7.662	0.000	-0.000	4.253	0.000
Felony conviction	-0.515	0.612	0.840	-0.000	4.671	0.000
Served on grand juries	0.000	1.738	0.000	0.000	7.659	0.000
Exemption (0 = exempted; 1 = not exempted)						
Peace officer	-0.949	0.662	1.432	na	na	na
Excuses (0 = asked to be excused; 1 = did not ask to be excused)						
Physically handicapped	-0.391	0.157	2.490**	-0.437	0.551	0.793
Personal obligations	-1.053	0.175	6.006***	-1.640	0.634	1.009
Economic hardship	-1.158	0.134	8.604***	-1.597	0.633	2.522**
Travel and transportation diffic.	-0.649	0.271	2.392**	0.310	0.788	0.393
Other excuses	-0.720	0.171	4.206***	-1.733	0.649	2.667**
Intercept	0.188	0.656	0.282	-0.414	0.735	0.563

^aN = 927.^bN = 118.^cAnnual family income is coded as 1 = <\$5,000; 2 = \$5,000-9,999; 3 = \$10,000-14,999; 4 = \$15,000-19,999; 5 = \$20,000-24,999; 6 = \$25,000-29,999; 7 = \$30,000-39,999; 8 = \$40,000-49,999; 9 = \$50,000-74,999; 10 = \$75,000 or more.^dIt is a socioeconomic index (SEI), ranging occupations from 1 (lowest prestige) to 96 (highest prestige).

*p < .10; **p < .05; ***p < .001.

When probit analyses simultaneously consider the effects of jurors' social class positions and legal factors, however, the underrepresentation of the three cognizable groups failed to explain disproportionate jury representation at a statistically significant level ($p < .05$). Although there is consistent evidence that cognizable groups, namely women, African Americans, and Hispanics, are still underrepresented on jury panels (.001, .279, and .172, respectively), statistical results show that their underrepresentation on jury panels is not statistically significant and suggest that disproportionate representation on jury panels may be accounted for by extraneous factors other than race or gender.

Social Class Positions

The analysis shows mixed results on the effect of social class positions on jury panel representation. Among four indicators of jurors' social class positions, there is strong evidence that occupational prestige and annual family income influence jury participation. Analytic results suggest that prospective jurors with higher annual incomes holding occupations of greater status and prestige are significantly overrepresented on jury panels ($p < .05$). While the effects were not statistically significant, the analysis also suggests that potential jurors who own a company and hold managerial control within a firm are underrepresented on jury panels (−.154 and −.052 for firm ownership and supervisory responsibility, respectively).

This finding is contrary to the original research hypothesis: non-firmowners and those who lack authority at the work place are more likely to be economically insecure and, thus, less likely to appear on jury panels. This presupposition did not hold, however. A feasible explanation is that the majority of the owners in the sample own small firms and still lack economic security and, thus, are reluctant to take time off for jury service. For instance, 27.8 percent of the self-identified owners said they do not have employees other than their immediate family members; the median number of employees was three. Similarly, for pro-

spective jurors who own their own company and/or hold managerial authority at the work place, many may feel a strong responsibility to remain on the job rather than take time off from work, report to the courthouse, and serve on a jury (Brown, 1994).

When the analysis focuses specifically on African American and Hispanic prospective jurors, the findings on social class positions also show mixed results. For example, there is a significant overrepresentation of minority jurors who had greater annual incomes and jobs of higher prestige (−.151 and −.016 for income and occupation, respectively). Similarly, business owners also are underrepresented on jury panels. The results coincide with the findings in the overall sample. More than 90 percent of minority jurors do not own firms. For those who own businesses, the average number of employees, outside of their immediate family members, was 2.3, showing that most minority firms are small and the owners may still lack sufficient economic security to participate in and serve on juries.

The analysis also indicates that there is a statistically significant overrepresentation of minority jurors who lack supervisory responsibilities at their work place (−.649). A feasible explanation is that minority jurors with managerial authority may feel a stronger responsibility to remain on the job rather than report to the courthouse and serve on a jury. For example, for prospective minority jurors with supervisory responsibilities, the average number of employees in their companies is 111.6 as opposed to 395.7 for those without supervisory responsibilities. For Caucasian jurors with and without supervisory responsibilities, the average number of firm employees is 375.9 and 455.3, respectively. Analytical findings show that minority jurors are more likely to be employed in and given supervisory responsibilities and managerial control in smaller firms than their racial counterparts.⁸ With less organizational resources and perhaps less work related benefits, minority jurors with supervisory responsibilities may feel a stronger sense of commitment and responsibility to stay on their jobs rather than take time off to serve on a jury.

Past studies also suggest that minority jurors with higher incomes and greater job prestige move more frequently than jurors with opposite characteristics, and that such high mobility patterns may be related to the scarcity of managerial positions available to racial and ethnic minorities (Fukurai, Butler, and Krooth, 1993:25). Since jury summonses are sent by mail, highly mobile minority jurors are less likely to receive them and are more likely to be classified as "undeliverable" and weeded out of the jury selection process (Fukurai, 1985; Fukurai, Butler, and Krooth, 1993:23-26). For example, the average length of a juror's residence was 102.3 and 103.4 months for minority jurors with and without supervisory tasks and 106.0 and 104.7 for Caucasian jurors with and without supervisory responsibilities, respectively. While residential mobility may be somewhat similar for both groups, minority jurors show greater mobility variations (137.4 and 134.6 months as standard deviations for residential mobility for minority jurors and 85.7 and 91.6 for Caucasian jurors with and without supervisory responsibilities, respectively). The findings suggest that minorities are more likely to be unstable in their residential and geographical mobility patterns and have less chance of receiving jury qualification questionnaires or jury summonses than Caucasian prospective jurors. The problem of minority jurors' failure to receive questionnaires or summonses may be compounded further because the follow-up of the undeliverables is rarely exercised, though it is required by law in most states (Fukurai, Butler, and Krooth, 1993).

Legal Variables

The final explanatory variables in the model were legal variables: jury qualification requirements, exemptions, and the use of excuses. For qualification items, U.S. citizenship, residency requirement, and English proficiency played an important role in explaining jury representation. When the analysis focuses specifically on prospective African American and Hispanic jurors, only three requirements show statistically significant underrepresentation:

non-U.S. citizens and those who requested excuses based on economic hardship and other personal reasons. Given the research site of Orange County and the economic hardship felt by many prospective minority jurors, it is not surprising that underrepresented groups include significant numbers of noncitizens and those who requested economic excuses.

The results show that, besides disqualifications and the exemption status of prospective jurors, economic excuses also are found to be the important determinant of jurors' self-exclusion from the jury selection process. That is, those who request to be excused because of economic hardship are consistently underrepresented on jury panels. Despite the Court's emphasis on jurors' ascriptive characteristics to rectify unrepresentative juries, the analysis suggests that it may be equally important to examine the effect of economic hardship excuses and the significant underrepresentation of economically impoverished groups on jury panels.

DISCUSSION

After controlling for extraneous effects, such as qualification, exemption, and excuse factors, the analyses show that women, African Americans, and Hispanics are still underrepresented on the jury panel. Jury underrepresentation by minority jurors, however, is not found to be as serious or as statistically significant as jurors' social class positions, such as managerial authority at the work place, annual family income, or job status measured in terms of occupational prestige. In accounting for different patterns of jury representation, the analysis suggests that the economic and occupational backgrounds of prospective jurors exert greater influence than jurors' ascriptive measures, such as race/ethnicity and gender. Those with lower occupational status and lower annual incomes are particularly significantly underrepresented, even more severely than African Americans, Hispanics, or women as a whole.

In focusing only on racial minority jurors, African American and Hispanic prospective

jurors with high annual incomes, jobs of high prestige, and those lacking supervisory responsibilities are significantly overrepresented on jury panels. Thus, the dimension of social class, especially measured from labor market segmentation and income inequality perspectives, seems to cut across racial or ethnic lines. The analysis points out the underrepresentation of cognizable groups, such as African Americans, Hispanics, and women in general, and prospective jurors in lower social class positions in particular. Similarly, minority jurors in lower social class positions are found to be the most underrepresented group on jury panels. Furthermore, even when minority prospective jurors appear at the courthouse, are placed on jury panels, and wait to be assigned to actual cases, they are less likely to reflect a fair cross-sectional representation of minority populations in the same community.

There are a number of important policy implications from the present research findings. First, it is important for the Supreme Court to extend cognizable status to social class measurements—work related authority, occupational standing, annual income, and perhaps ownership status. For instance, prospective jurors in less stable secondary labor markets and making a minimum wage cannot afford a sudden and involuntary pay cut for a period of weeks or more. Blue-collar workers in insecure job positions also may face job loss if called for jury service. In fact, many will definitely lose income because the daily fee paid to jurors remains minimal. The extension of the cognizable group protection to low income jurors and those in less secure secondary labor markets, then, may be an important judicial step to rectify underrepresentation on jury panels.

Second, if it is not plausible to give the cognizable protections based on occupational standing and income, it may be of great importance to consider already cognized groups, such as African Americans and Hispanics, and to provide additional, secondary protection to them. For instance, protected categories can take on two dimensions simultaneously, such as African American and Hispanic jurors in less prestigious blue-collar jobs and/or with low

annual incomes. Since minority jurors from lower social classes are less likely to be represented than those from higher social classes, unidimensional racial recognition does not provide important protections to those in lower social classes. Historically, the Supreme Court has not relied on multiple cognizable dimensions in evaluating the fairness of the jury selection system. Consideration of the interrelations between race/ethnicity and social class, however, provides a more comprehensive view of unrepresentative juries and extends greater protection to the most underrepresented prospective jurors.

A number of other local policy decisions—mostly those that respond to the personal economic and job related circumstances of jurors—affect jury representativeness. The Sixth Amendment does not provide an effective regulation of jury selection once a panel is called to the courthouse, beyond the fair cross-sectional doctrine's limitation to procedures that impanel the venire (*Taylor v. Louisiana*, 534). Nevertheless, at several points after the selection of the jury panel, jurisdictions could improve the representativeness of their juries by changes in state statute and local policy that now serve to skew the jury's representativeness.

The analysis points out that racial minority jurors with low incomes and less prestigious occupations are the most underrepresented groups. Similarly, excuses based on economic hardship significantly influence participation on jury panels. Fukurai and Butler (1991) found that the most important determinant of whether jurors sought an excuse was their employer's policy on continuing to pay employees during jury service. For many prospective jurors, the question of whether their salaries will be continued during jury duty becomes of paramount importance. Consequently, prospective jurors with guaranteed salaries are more likely to serve on juries, and those without financial compensation are more likely to request economic excuses and, consequently, are weeded out of jury selection.

The Court's recognition of daily wage earners as the protective cognizable dimension may be a correct decision in evaluating unrepresent-

tative juries because they are less likely to be employed in a firm that may have salary continuation policies. Besides daily wage earners, organizational benefits and resources may not be available to other prospective jurors, such as the unemployed, the underemployed, and those in less stable secondary labor markets. It is important, therefore, for the Court to recognize prospective jurors who are placed in the lower echelon of social class and to incorporate the importance of organizational policies and their benefits in assessing the composition of jury panels.

There are a number of possible responses to the reforms in compensation policies. One response to the economic impact of jury service would be to increase the compensation of jurors. This reform could counterbalance employer policies against compensating workers during jury service, though it may not address the concerns of higher income senior workers, whose motivations to seek excuses may be more for maintaining their responsibilities on the job than for their potential lost incomes. Similarly, significant underrepresentation of minority jurors with managerial authority at the work place may be accounted for by the stronger sense of jurors' commitment to carry out their work related responsibilities. A more limited response would be to increase juror compensation only during particularly long trials, which impose the greatest hardship on jurors.¹⁰

An alternative response would be to shift the economic cost onto the private sector by requiring employers to continue employee salaries during jury service, as well as prohibiting the firing of employees who are absent solely due to jury service. Such a statute, however, might not withstand constitutional scrutiny. In the past, attempts have been made to equalize the economic burden of jury duty by securing mandatory company compensation. For instance, Hawaii, in 1966 and 1970, passed a statute requiring employers to continue an employee's salary during jury service. This law required every employer with more than twenty-five workers to continue the salary of any employee who served on a jury or participated on any public board. The law was

later declared unconstitutional by the Hawaii Supreme Court as a violation of the equal protection clause and the taking of private property clause of both the U.S. and the Hawaiian Constitutions (*Hasegawa v. Maui Pineapple Co.*, 475 P.2d 679, 1970).

The statute that required company participation in jury service simply made mandatory a practice already common among large businesses and organizations. It also left out many potential jurors, such as hourly and daily wage earners, the underemployed, and the unemployed (Fukurai, Butler, and Krooth, 1993). Potential jurors in the less stable secondary labor market are less likely to be supported by their employers and are provided fewer incentives to participate in jury trials.

The analysis suggests that those with less income and lower occupational standings are the most underrepresented groups on jury panels, even more so than the cognizable groups, such as African Americans, Hispanics, and women. While change in state statutes and local policies may provide limited solutions to unrepresentative juries, the judicial pronouncement by the Supreme Court — extending the cognizable status to social class and simultaneous protection to minority jurors in a lower social class — may provide the most underrepresented groups much needed protection against discrimination in jury selection. State statutes and local policies, such as increased jury pay and mandatory company compensation, also may help encourage participation by the most underrepresented groups. Such reforms may not be as effective as the Court's judicial recognition because they may fail to withstand constitutional scrutiny or may be an unlikely option in the underfunded public sector.

CONCLUSIONS

The law of juries requires that jury panels be selected randomly from the community in order to achieve a representative sampling of citizens. Randomly selected jury panels, however, are not always fully or regularly representative of all segments of the relevant community. More specifically, racial and ethnic

minorities and prospective jurors in lower social classes are consistently underrepresented in most federal and state court jury pools and venires.

This article examined the two major characteristics of prospective jurors, race and social class. Although the Supreme Court has recognized the racial backgrounds of prospective jurors as an important dimension of evaluating jury participation, the Court has yet to give social class a cognizable status in evaluating the fairness of the jury selection system. The analysis reveals that jurors' social class backgrounds are important determinants of jury participation, even more so than the racial and ethnic backgrounds of potential jurors.¹¹

The findings also suggest that the analysis of jury representation based on a single criterion, such as race, does not delineate the true extent of discrimination in jury selection. For example, when jurors' social class backgrounds are incorporated into the analysis of jury participation, African American and Hispanic prospective jurors with higher incomes and jobs of greater prestige are systematically overrepresented on jury panels. Similarly, when both the race and social class of jurors are simultaneously analyzed, jurors' social class positions measured by their occupational prestige, income, and managerial authority at the work place exert greater influence than race on explaining disproportionality in jury underrepresentation.

This article argues that the Court's failure to recognize social class as a cognizable dimension is due to the conceptual discrepancies in defining race, ethnicity, and class.¹² The Court, for instance, defines race relations in terms of property ownership, power relations, and socioethnic attributes, thereby combining both race/ethnicity and social class into a single, unified, conceptual category. Sociological definitions, on the other hand, give more coherence and show clear demarcations between the three distinct concepts; in fact, jury discrimination occurs on all three levels.

The Supreme Court has held that the fair cross section requirement applies to all stages of the jury selection process up through the

jury panel or venire, and that it does not apply to the petit jury itself.¹³ This article argues that, after the jury panel stage of the jury selection process, specific remedies and changes in state statutes and/or local policies also can lead to representative juries. Possible changes may include mandatory company compensation policies, increased jury pay for longer jury trials, and restricting excuses based on economic hardship. While some of those policy changes may not withstand constitutional and legal scrutiny, they may, nevertheless, represent important steps to encourage jury participation by prospective jurors from lower social classes.

Those strategies to improve the representativeness of jury panels also may be an important alternative procedure to a system of quotas or demographic balancing, whether through local, voluntary reform or through litigation under the Sixth Amendment (King, 1993, 1994). Since the jury drawn from a fair cross section is more representative of the community and, consequently, more democratic, representative juries preserve public confidence in the fairness of the criminal justice system and their verdicts can be perceived to be more legitimate in the eyes of citizens.

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NOTES

1. Explaining the racially imbalanced jury has become the focus of contemporary studies by criminologists, psychologists, and sociologists (Robinson, 1950; Summers, 1961; Van Dyke, 1977; Zeigler, 1978; Turk, 1981; Fukurai, Butler, and Dimitrius, 1987; Gastwirth, 1988; Fukurai and Butler, 1995a, 1995b). In the late 1970s and early 1980s, psychologists argued that the microdimensions of individuals influence jury composition. For example, the inher-

ent criminality of some groups and impaired intelligence of some potential jurors mean voluntary self-exclusion or being screened out by the selection processes (Case for Black juries, 1970; Bowles, 1980). Authoritarian personalities among those responsible for jury composition and decisions also contribute to selectivity in jury composition (Benokraitis, 1975; Benokraitis and Griffin-Keene, 1982; Hans and Vidmar, 1986; Wishman, 1986).

2. Another important reason may be the prong test employed by the Court to identify the distinct group in the community that needs special protection against discrimination in jury selection. Under this test, prospective jurors stratified by social class may not meet the required standards to establish the distinctiveness within the community. For example, in *Duren v. Missouri* (439 U.S. 357, 1975), the Court laid out the three-prong test to establish a *prima facie* case of discrimination in jury selection. The Court stated that the claimant must show that: (1) the group alleged to be excluded is a distinctive group within the community; (2) the representation of this group is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury selection process.

With respect to the distinctive group requirement, the Court specified two additional requirements in order to qualify an asserted group as cognizable for purposes of the representative cross section rule. First, its members must share a common perspective arising from their life experience in the group (i.e., a perspective gained precisely because they are members of that group). The claimant also must show that no other members of the community are capable of adequately representing the perspective of the group that asserted to have been excluded.

The problem with the first prong is that it is almost impossible to classify people in a lower social class as the distinct group that needs special protection against discrimination. For example, persons from specific religious and political groups are excluded from jury service; however, they face difficulties in qualifying as distinctive or cognizable (see e.g., *People v. Fields*, 35 Cal.3d 329, 1983).

3. Similarly, social class is hierarchical, best depicted as a vertical mosaic, with parameters that intersect racial and ethnic groups and delineate available social benefits based on the differing economic levels of various sectors of the population (Barrera, 1979; Fukurai, 1985).

4. The participants of the community survey were Dr. Edgar W. Butler, Dr. Hiroshi Fukurai, and Dr. Tonya Schuster from the University of California. Dr. Ray Jansen, the statistician and sampling specialist from the University of California, Los Angeles, also participated in the project. The research was funded by the Superior Court of Orange County. In order to obtain accurate estimates of racial and ethnic compositions in the community, the cluster sampling with probabilities proportionate to size (PPS) was applied with the comprehensive list of all households in Orange County (see Fukurai, Butler, and Krooth, 1991b for more discussion of the sampling method). The entire survey took almost six months, and the results were presented at the Superior Court in Orange County.

5. The probit function is the cumulative normal distribution, and its values can be obtained by integrating

the normal distribution. The probit forms a symmetrical S-shaped curve ranging between 0 and 1 for values between both negative and positive infinity, thus satisfying the 0-1 constraint on a dichotomous dependent variable without putting constraints on values of the predictor variables.

6. The expected value of the skewness is zero for a symmetric distribution. Similarly, the expected value of the kurtosis is zero for a normal distribution. A significant nonzero value of skewness is an indication of asymmetry—a positive value indicates a long right tail, a negative value a long left tail. For kurtosis, a ratio less than -2, for example, indicates shorter tails than a normal distribution; a ratio greater than 2 indicates longer tails than a normal distribution (Dixon, 1992:143-44).

7. See Dixon (1992:Vol. 1, 572) for computations of standard errors for skewness and kurtosis. The *t*-test statistic is then computed by skewness and kurtosis measures divided by standard errors of respective indices.

8. The average firm size for different racial groups is computed by excluding large companies with more than 10,000 employees because extreme values present interpretative biases for measures of central tendency, especially for a mean. The analysis shows that 9.30 percent of African American and Hispanic jurors and 10.85 percent of Caucasian jurors worked in firms that employed more than 10,000 workers; 4.66 percent of minority jurors and 5.43 percent of Caucasian jurors had supervisory responsibilities in the large firms. The finding suggests that in large firms, the prospect of opportunities for supervisory responsibilities is somewhat less for racial and ethnic minorities. Such differences, however, are much smaller in large organizations than in smaller firms that employ 10,000 workers or less.

9. The Supreme Court stated, "The States are free to grant exemptions for jury service to individuals in case of special hardship or incapacity and to those engaged in particular occupations the uninterrupted performance of which is critical to the community's welfare" (*Taylor v. Louisiana*, 534). Similarly the Court stated that "the States provide reasonable exemptions so long as it may be fairly said that the jury lists or panels are representative of the community" (*Taylor v. Louisiana*, 538).

The due process and equal protection clauses provide some regulation of jury selection procedures once the jury panel is selected. See *Batson v. Kentucky* (476 U.S. 89, 1986) in which the equal protection clause governs the use of peremptory strikes.

10. For example, compensation could be doubled for all jurors required to serve longer than one week, and tripled for those serving longer than one month. In 1988, ninety-six federal criminal trials lasted one month or longer. In 1986, 335 federal civil trials lasted more than two weeks (Fukurai, Butler, and Krooth, 1993).

11. Similar discussions on relations between race and class have been presented in the context of death qualified juries for capital punishment cases. For instance, capital punishment is likely to be imposed on the basis of both the race and the economic status of the defendants (*Furman v. Georgia*, 408 U.S. 240, 1972).

12. One important aspect of discussions on race and class is that current debates on affirmative action policies occasionally have suggested a shift from race to class as a criterion for granting preference. For more discussion on potential applications of affirmative action policies in jury selection, see Fukurai and Davies (1995). See also Takagi (1992) for discussions on the shift of considerations from race to class in affirmative action policies in employment and university admissions.

13. There also are a number of factors that determine the ultimate composition of the jury, once a pool of jurors has been selected, including the peremptory challenges by prosecution and defense lawyers in voir dire. Nevertheless, the goal of guaranteeing defendants a trial by a jury of a cross section of the community begins with a randomly selected jury pool. If the initial pool is biased or skewed, the principle on which a jury trial is based is violated at the outset (see *Avery v. Georgia*, 345 U.S. 559, 1953; *Akins v. Texas*; *Carter v. Jury Commission of Greene County*, 396 U.S. 332, 1970).

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