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A QUOTA JURY: AFFIRMATIVE ACTION IN JURY SELECTION

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ABSTRACT

It is not too naive to believe that the use of affirmative action policies in the jury selection for the Rodney King beating trial of White police officers would have prevented the uprisings that followed their acquittal. The public outrage and riots that followed the verdict demonstrated the need for affirmative inclusion of racial minorities on jury trials to preserve and restore the public's confidence and legitimacy of verdicts in racially motivated cases. While racially mixed juries offer many benefits, current jury selection procedures fail to provide much protection to members of racial minorities in criminal trials. From the source list to the discriminatory use of peremptory challenges, the current selection procedures provide almost no protection to racial minorities. The issue of preferential treatments of racial minorities in education, employment, and business has divided the nation and even some minority communities themselves. Affirmative action in jury proceedings and trials, however, has yet to receive much deserved attention and critical scrutiny. This article empirically examines public perceptions of possible applications of affirmative action mechanisms in criminal jury proceedings, focusing on the uses of mandatory racial quotas to engineer racially integrated juries in criminal trials. Three different types of racially mixed juries—the jury "de medietate linguae," the Hennepin jury model, and the social science model—are examined, and the public's perceptions of affirmative mechanisms ensuring minority participation on juries are analyzed. This article argues that the affirmative mechanism to secure racially mixed juries is essential to both the appearance and substance of fairness in criminal jury proceedings, and both the Hennepin model and the social science model are overwhelmingly supported as the ideal types of affirmative jury structures in creating racially heterogeneous juries. © 1997 Elsevier Science Ltd

INTRODUCTION

When the predominantly White suburban jury from Simi Valley, California acquitted the four White police officers who had brutally beaten Rodney King, Los Angeles exploded and the shock wave was felt around the country (Allen, 1992:52; Warren, 1992). The King verdict became a crucible for examining questions of racial bias in the U.S. judicial system and the fairness of jury verdicts in a racially sensitive criminal trial. When a jury that is not racially

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mixed must pass judgment in a case involving minority defendants or victims, the fairness of its judgment is often met with skepticism (Morin, 1992; Whitaker, 1992:116). Having experienced prejudice outside the courts, both minority defendants and victims fear that prejudice may be carried into the jury room, suggesting that minority representation on the jury is crucial to a fair trial outcome. As a result, the failure to secure a racially mixed jury may diminish the credibility and legitimacy of the jury's verdict and shatter the public confidence needed to preserve peace following the verdict (Colbert, 1990:112–15; King, 1994:1177).

In criminal trials involving sensitive and unmistakable elements of racism, there is a widespread consensus that a racially mixed jury offers many benefits. Many scholars, judges, and litigants argue that a racially mixed jury may become a critical lever to overcome racial biases, improve the fairness of trial proceedings, and enhance public respect and acceptance of criminal and civil verdicts (Johnson, 1985: 1695–99; Alschuler, 1995:716–23).[1] Despite the importance of racially mixed juries and minorities' jury participation in criminal trials, research substantiates that a variety of both legal and extralegal factors (i.e., discriminatory jury selection procedures, socioeconomic barriers, and judicial discrimination) exclude a large proportion of racial minority jurors, reducing the possibility for creating racially heterogeneous juries (Hans and Vidmar, 1986:50–51; Fukurai and Butler, 1994:79–87; King, 1993a:719). For instance, at all stages of jury selection—venue choice, source list development, qualified list development, summoned jurors' pools, and jury panel and foreperson selection—traditional methods of jury selection exclude a disproportionate number of minorities (Fukurai, Butler, and Krooth, 1991a, 1991b, 1991c, 1993:39–80).

The result of the court's recent jury selection decisions suggests that current jurisprudence does not provide an affirmative mechanism to guarantee racial minority representation in jury trials. For instance, in highly publicized trials, such as the Rodney King and Reginald Denny beating cases in Los Angeles or Lorenzo and other criminal cases in Miami, in which all-White juries acquitted White police officers in the deaths of three African Americans, procedural mechanisms were not in place to request or ensure racially mixed juries or the inclusion of racially similar members in criminal juries.

The criminal trial of O. J. Simpson had predominantly African American jurors because racial minorities constitute more than 60 percent of the eligible jurors in Los Angles County. Similarly, the jury selection method called a "bulls-eye" program disproportionately increases the number of African Americans at the LA Central Courthouse, the site of the criminal Simpson trial, while causing significant deficits of minority jurors in all other thirty municipal and superior courts in the county (Fukurai, Butler, and Krooth, 1993:56–68).[2] For instance, the civil Simpson trial at the Santa Monica Superior Courthouse in Los Angeles did not have African Americans in its twelve-member jury (Chiang, 1997). Although the Sixth Amendment's fair cross-section requirement forbids systematic discrimination in the creation of the jury venire and panel, it does not guarantee that the jury will, in fact, reflect an accurate cross-section of the community.[3] The Supreme Court has stated that a party is entitled to an impartial jury, not a representative one.[4]

In response, a growing number of courts are beginning to experiment with the race conscious jury selection method to increase minority participation. For instance, an affirmative action jury selection measure proposed in Hennepin County, Minnesota requires that racial representativeness in the jury box reflect respective proportions of both majority and minority groups in the general population. Similar affirmative action measures are also currently under consideration or already established in some jurisdictions. In DeKalb County, Georgia, eligible jurors are divided into thirty-six classified groups, and jury commissioners rely on computer selection to obtain proportional representation of various demographic groups in jury venires (Kull, 1992). Similarly, the Arizona bar committee has proposed juror classifications by race to obtain proportional jury representation (Ide, 1994:8; Barnes, 1995:26). While those race conscious selection procedures are used to ensure proportional jury representation at jury panel or venire stages of jury selection, the Hen-

nepin model of racial quotas remains unique as it sets proportional racial representation on the jury itself.

Historical research on jury structure also shows that the recognition of the importance of racially mixed juries and affirmative action in jury selection does not begin with the Rodney King beating case or even with the civil rights revolution of the 1960s. The emergence of heterogeneous juries even predates the American experience of the jury trial. As early as the twelfth century, English law recognized the danger that inhered in allowing members of a minority community to be tried entirely by English majority jurors and devised the jury system called the jury de medietate linguae in both civil and criminal cases involving minority members such as Jews, Italians, Germans, and other foreigners. This practice of mixed juries of one-half of English natives and one-half of aliens endured throughout almost 700 years until it was finally repealed in 1870 (Ramirez, 1994: 783–96). The makeup quota of the mixed jury remained one-half for natives and the remaining one-half for foreigners, suggesting that the court's color blindness in the jurisprudence of jury selection and jury trials is a relatively recent concept.

Another jury quota for creating racially mixed juries was suggested by social scientists. Jury research indicates that without a minority of at least three jurors, group pressures by the majority may be too overwhelming. The affirmative mechanism that ensures racially heterogeneous juries and the verdicts are to remain viable and legitimate should mandate at least three minority jurors to be included in the jury.

Past jury studies substantiated that racial minorities have been systematically excluded from jury service, creating widespread mistrust and lack of faith in one of America's great institutions (Johnson, 1985:1695–700; King, 1994: 1184–85). This article examines the following substantive issues of affirmative action policies in jury selection and different attempts to secure minority jury participation in criminal courts. Part I examines the three types of jury representative models that have incorporated affirmative action mechanisms and the use of racial quotas to increase minority jury participation. Those

three different structures of racially mixed juries include: (1) the jury *de medietate linguae* in which one-half of the jurors come from the majority and one-half from the minority groups; (2) the Hennepin jury model in which the extent of juries' racial representativeness reflects the respective proportion of both majority and minority groups in the general population; and (3) the social science model of jury representation in which the jury must have at least three minorities to successfully resist the group pressure of the majority in jury decision-making processes. Part II presents empirical analyses of the public's perceptions on the use of affirmative action policies in jury selection. A number of socio-ideological variables are cross-referenced with the attitudes toward three affirmative action jury models. Because the subject of the jury structure may reflect social and political expressions of wider, underlying conflicts by class, race, and gender, empirical analyses based on sociodemographic considerations allow investigators to focus on the perceptions on jury composition and structures that may reflect the struggle to dominate or emancipate, for inequality or equitability, the ongoing conflict leading to alternate ways to structure a body of peers by racial makeup. Part III focuses on the public's perception of fairness and legitimacy of such racially mixed juries in criminal proceedings and jury verdicts, and examines whether affirmative action efforts in jury trials should become a compelling governmental and public issue—demanding a policy of reform in attempting to make jury decisions equitable and just.

THREE STRUCTURES OF AFFIRMATIVE JURIES

The Jury De Medietate Linguae *Model*

The concept of peers has changed for the last 800 years. Historical significance of the concept of peers and the same group membership and representation to a jury of one's peers is the ancient jury *de medietate linguae*. In the jury *de medietate linguae*, the peers, in most cases, are defined in terms of the defendant's social and national identity (Ramirez, 1995:785).

The concept of the jury *de medietate linguae* originated in the treatment of Jews in twelfth century England (Constable, 1994:18–21). The term literally means "jury of the half tongue" in Latin because the jury selection method applied to people who were considered alien or foreign and spoke different languages. The English viewed the Jews as aliens in race, religion, and culture, and considerable animosity existed against the Jews because they were known as the anti-Christ and Christ-killers (Quinley and Glock, 1972:94–109) and "they were darker-skinned and spoke a mysterious and foreign language" (Ramirez, 1994:783).

Here and elsewhere, a deeper logic prevailed because the emergence of the already unpopular Jews as money lenders in the twelfth and early thirteenth centuries only added to the animosity toward them. As Christian debtors could not or would not repay their debts, they seized upon the unpopularity of the Jews as a convenient means of extricating themselves from their predicament. A riot or massacre might fortuitously destroy the records of the transaction, precluding the King, as owner of the Jews, from claiming retribution, completely canceling the debtor's obligation (McCall, 1979:281).

Caught between scheming debtors and the King, the Jews relied on the Crown for protection. In the throes of mass riots and violence in 1190 against wealthy and influential Jews who were considered the King's property, King Richard I enacted a charter on April 10, 1201, giving Jews the right to the jury *de medietate linguae*—a one-half Jewish jury (Wishman, 1986: 31).[5] The jury *de medietate linguae* was granted to Jews to protect the Crown's property interest in Jews and their effects (Massaro, 1986:550, n238).[6] Though England subsequently banished all Jews in 1290, foreign merchants from Italy and Germany soon became the King's financial agents replacing the Jews, and they also were given the privilege of a trial *de medietate linguae*—a trial by a jury composed of one-half of their own countrymen and the other one-half with English persons qualified to serve as jurors.[7]

Although the extension of trial by juries *de medietate linguae* to Jews and later alien merchants served to prevent diminution of the King's resources, the jury provided substantive fairness and protection against unfair verdicts derived from prejudice against Jews and other aliens in England. After the expulsion of the Jews, for instance, the mixed jury privilege provided foreign merchants with the perception of substantial fairness and equity in disputes involving foreigners. The heterogeneous nature of the jury was intended to ensure foreign merchants a fair trial without the possibility of local prejudice. Those courts applied law as they perceived it, almost regardless of the source of law, in order to achieve commercial fairness. For example:

> the Chancellor in 1475 said: This suit is brought by an alien merchant who has come to conduct his case here; and he ought not to be held to sue according to the law of the land, to await trial by twelve men and other solemnities of the law of the land, but ought to sue here, and it ought to be determined according to the law of nature in the chancery, and he ought to be able to sue there from hour to hour and day to day for the speed of merchants . . . And he said besides the merchants, etc., shall not be bound by our statutes where statutes introduce new law, unless they are declaratory of ancient law, that is to say nature, etc . . . but that will be according to the law of nature which is called by some the law merchant, which is universal law throughout the world. (Potter, 1958:188).

The jury *de medietate linguae* was not limited to the royal courts. Parliament also articulated the principle of the jury *de medietate linguae* in the 1354 enactment, stating:

> And that in all Manner of Inquests and Proofs which be to be taken or made amongst Aliens and Denizens, be they Merchants or other, as well before the Mayor of the Staple as before any other Justices or Ministers, although the King be Party, the one half of the Inquest or Proof shall be Denizens, and other half of Aliens, if so many Aliens be in the Town or Place where such Inquest or Proof is to be taken. (Statue of 28 Edw. 3, ch. 13 [1354]).[1]

An inquest to the staple court "was to consist wholly of aliens when both parties to the suit were aliens; wholly of denizens when both parties are denizens; and half of aliens and half of denizens when one party was an alien and the other a denizen" (Gross, 1908:xxvii).

The *de medietate* concept, also known as a party-jury, also had wider applications. For instance, when an English university scholar was indicted for treason, felony, or mayhem, the vice-chancellor of the university could claim jurisdiction and the resulting trial was heard before the high steward and a jury formed *de medietate*—one-half from a panel of eighteen freeholders returned by the sheriff and one-half from a panel of eighteen matriculated laymen returned by the beadles of the university (Oldham, 1983:168). Similarly, under a *writ of jure patronatus* concerning church patronage, the dispute could be tried by the bishop or by a specially appointed commission, before a jury of six clergymen and six laymen of the neighborhood (Oldham, 1983:168–69).

The right of juries *de medietate linguae* in England endured until 1870, when Parliament passed the Naturalization Act, which permitted aliens to serve on juries and to acquire, hold, and dispose of property in the same manner as an England-born citizen, thereby eliminating the need for the mixed jury privilege (Ramirez, 1994:789).

American colonies and the courts also experimented with the use of juries *de medietate linguae* after English settlers developed their sense of equity, justice, and laws. At various times between 1674 and 1911, a number of states, including Kentucky, Maryland, Massachusetts, Pennsylvania, New York, Virginia, and South Carolina, each provided for juries *de medietate linguae*. As early as 1674, the courts in the Plymouth colony used mixed juries composed of one-half native Americans and one-half colonists.[8] The mixed jury was used in early colonies as a way to ensure substantive fairness and enhance the legitimacy of jury verdicts. "[The mixed jury] was important to the colonists as the natives' perception of unfairness may have triggered bloody unrest or, at least, social tension," one jury study notes (Ramirez, 1994:790).

Since independence and the passage of the Bill of Rights in 1789, the U.S. Supreme Court has discussed the right to a jury *de medietate linguae* only once, in *United States v. Wood* (299 U.S. 132-33 1936, citing from Crawford v. United States, 212 U.S. 183, 1908), in dictum and without analyses, declaring that: "the an-

cient rule under which an alien might have a trial by jury de medietate linguae, 'one half denizens and the other aliens'—in order to insure impartiality—no longer obtains."

At the state court, potential applications of juries *de medietate linguae* have also been reviewed and discussed. The Massachusetts Supreme Court in 1986, for instance, examined the applicability of the jury *de medietate linguae*.[9] Article 12 of the Massachusetts Declaration of Rights, drawn from Magna Charta, c.39, entitles the defendants to explicit rights, namely:

> No freeman shall be taken or imprisoned, or be *disseized* of his freehold, or liberties, or free customs, or be outlawed or exiled, or otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land.

The defendants argued that Article 12 afforded them the right to a trial by the jury *de medietate linguae* and that the statutory requirements of citizenship and command of English were unconstitutional (396 Mass. 472, 473, 487 N.E.2d 189, 191).

The court, however, held that the right to the jury *de medietate linguae* was not of constitutional magnitude in this case and that the requirement that jurors speak and understand English and be U.S. citizens withstood constitutional challenges raised under the Sixth Amendment and equal protection clause (396 Mass. 472, 475, 479, 480, 487 N.E.2d 189, 191, 194, 195).

Unfortunately, the U.S. Supreme Court and the Massachusetts court did not fully explore the roots of the jury *de medietate linguae* in English common law or statutory history, nor did they discuss the wisdom or practicality of the mixed jury as a jury of peers. Thus, the debate on the jury *de medietate linguae* ceased and the mandatory mixed jury disappeared from application under American law.

The equitability of a mandatory balanced jury must not be ignored, however. The essential feature of the *de medietate linguae* model is that, regardless of the composition of aliens or minority groups in the general population, the composition of the mixed jury is considered to be fixed: one-half of the jury come from the ma-

jority and the one-half from the minority group. Similarly, the fixed quota of the jury composition is derived from the acknowledgment that prejudice existed against the minority group and an ordinary jury composition using the traditional method of selection would not necessarily produce a fair result. The fixed quota is viewed as an essential feature of jury composition to ensure both the appearance and substance of fairness and justice in jury verdicts. Although the mixed jury principle may have originally developed out of the economic concerns of England during the medieval period, its wisdom and practice in both England and the United States had broader implications on the fundamental notion of fairness in jury proceedings and jury verdicts.

The Hennepin County Model

Another model of racially mixed juries is found in the courts of Hennepin County, Minnesota where, according to the 1990 U.S. Census, approximately 9 percent of the adult population is minority (4.59 percent African Americans, 2.22 percent Asian Pacific Islanders, 1.10 percent Native Americans, and 1.12 percent Hispanics). Although the Hennepin County model focuses on the grand jury, this affirmative action principle can be easily extended to the petit jury.

The Hennepin model is different from the jury *de medietate linguae* model in that the racial quota for the minority is derived on the basis of the proportional minority composition in the general population. Thus, the racial distribution of the Hennepin model is not fixed, but remains changeable depending on the volatile racial compositions in the jurisdiction. In Hennepin County, the grand jury consists of twenty-three members; thus, 9 percent of the twenty-three grand jurors is specifically reserved for minority groups, requiring that at least two minority grand jurors sit on every twenty-three-member grand jury. The Hennepin model works as follows:

> After randomly selecting the first 21 grand jurors either only one or no minority persons appear on the panel, selection [shall] continue down the list of 55 randomly selected and qual-

ified persons until there are at least two minority persons out of 23 on the grand jury. If no minorities appear in the list of 55 potential grand jurors, another 55 qualified persons should be selected until the goal of at least two minority jurors is obtained. If random selection of the first 21 grand jurors yields two or more minority persons, the selection should simply proceed to the next two persons on the list (Office of the Hennepin County Attorney, 1992:45).

Besides setting up the proportional allocation of the jury to racial minorities, the task force proposal for the Hennepin model also recommended additional race neutral reforms to increase the representativeness of grand juries, including: (1) integrating lists from the Immigration and Naturalization Service of recently naturalized citizens and tribal membership rolls into source lists; (2) raising the jury fee to $30 per day; and (3) establishing a day care center for jurors' children (Smith, 1993:55–58).

While it is impossible to estimate how widespread race balancing of juries is, such as proposed in the model of Hennepin County, five states including California do not require that grand juror names be drawn randomly from the grand jury venire and instead allow judges or jury commissioners the discretion to select who will actually serve as final jurors (Fukurai, 1994, 1996).[10]

While the *de medietate linguae* model requires the fixed, equal division of jury box seats for both majority and minority groups, the Hennepin model assumes that the mixed jury is created to reflect the minority composition in the general population, thus requiring that different numbers of fixed minority jurors be selected for the jury box.

Social Science Models

Besides the two models of mixed juries and racial quota experiments in the Anglo-Saxon tradition of law, social science research also offers a different version of the racially mixed juries. The important question about the previous two jury models is the number of racially similar jurors to which a defendant should be enti-

tled. The jury *de medietate linguae* entitles the defendant to six jurors of twelve, or one-half of the total number of jurors in jurisdictions using smaller juries.[11] The possible disadvantage of the *de medietate* model is that six jurors of the defendant's race might be difficult to obtain in some areas. Further, a split jury system may offer an incentive for the state to elect the use of smaller size juries, a change generally deemed undesirable (Kaye, 1980:1004). The naive response to practical difficulties is to limit the defendant's right to one juror similar to the defendant's race. Jury research, however, demonstrates that, in case of a split vote during deliberation, a single dissenting juror rarely succeeds in hanging a jury or reversing its predisposition (Kalven and Zeisel, 1966:463).

More recent psychological studies show that without a minimum of three minority jurors, they may not withstand the group pressure, suggesting that one or two dissenting jurors eventually accede to the majority's opinion (Saks, 1977; Hastie, Penrod, and Pennington, 1983; Kerr and MacCoun, 1985; Hastie, 1993; Fukurai, H. Should maximizing the appearance of legitimacy and fairness of jury trials be a compelling governmental interest? Affirmative action and racial classification in jury selection. Manuscript submitted for publication; see also *Ballew v. Georgia*, 435 U.S. 223, 231–39, 1978).[12] Behavioral studies suggest that a reasonable compromise between the jury *de medietate linguae* and the Hennepin model, especially applied in a jurisdiction with small minority populations, is to assure three minority jurors in order to preserve, not only the appearance of fairness, but the legitimate viability of deliberations and verdicts in jury trials as well. Jury research shows that a minimum of three members of a racial minority are necessary to offset the group pressures of the dominant majority jurors during jury deliberation (Johnson, 1985;1698). Moreover, one or even two jurors are unlikely to maintain their own not guilty verdict in the face of opposition by the remaining jurors, much less change the others' opinions—contrary to the Hollywood version that a single juror was able to convince his fellow jurors to reverse their original guilty verdicts, as Henry Fonda did in *Twelve Angry Men*.[13]

It seems likely that, were this proposal to operate as planned by including three racially similar jurors, the incidence of hung juries may increase in those cases where an all-White jury would have acquitted a White defendant (Fukurai, 1996; Fukurai, Butler, and Krooth, 1993). Based on social scientific findings, the jury requires at least ten racially similar jurors to make acquittal the predicted jury verdict. The difficulties in obtaining a unanimous verdict place greater burdens on both majority and minority groups to work out their differences, possibly preventing wrongful convictions. In most criminal cases involving minority defendants, the strength or weakness of the evidence will result in a unanimous verdict just as it does in most cases involving White defendants (Black, 1989: 30, 32). It is only in marginal evidence cases that the jury would expect to find some different verdicts than would be obtained under the current color blind system.

Thus, if representativeness is the key to impartiality, a race neutral verdict may be achieved when at least three minority jurors are selected to judge a criminal case that involves the rights of the same racial defendant, comprising at least 25 percent of trial jurors. One legal commentator argues that the court could create for minority defendants, accused of interracial capital crimes a right to a jury that includes jurors of the defendant's race (Johnson, 1985). If at least three jurors were of the same race as the defendant, one of the group could "hang" a jury otherwise prone to imposing a racially motivated death sentence (Fukurai, H. Should maximizing the appearance of legitimacy and fairness of jury trials be a compelling governmental interest? Affirmative action and racial classification in jury selection. Manuscript submitted for publication). This approach allows the race at risk to fight against the majority's group pressure. Proponents of this remedy argue that such guaranteed racial quotas would: (1) appease society's dissatisfaction with racially discriminatory peremptory challenges; (2) lead to more equitable and fair decisions, on the assumption that jurors are more able to correctly judge the character of a racially similar defendant; and (3) increase societal acceptance of jury verdicts and enhance society's faith in the fairness of

the jury system (Johnson, 1985:1706–707; King, 1993:707–709).

Existing research confirms that the product of affirmative action in jury selection for racially mixed juries can enhance perceptions of jury fairness (Johnson, 1985; Colbert, 1990; Ramirez, 1994, 1995). One legal analyst stated that affirmative measures such as race conscious jury selection practices currently in use are justified when narrowly tailored to meet the state's interest in advancing the appearance of fairness in jury proceedings, provided that: (1) color blind measures are not feasible; (2) the race conscious method selected is temporary, subject to periodic review, and minimizes any resulting stigma to minority jurors; and (3) it increases rather than decreases the opportunity of minority groups to participate on jury trials and the chance for creating racially integrated juries (King, 1994:1179–80).

Past research, however, has failed to examine reactions to this race conscious affirmative measure. Little information is available to show whether or not potential jurors or criminal defendants would react negatively to racial quota methods of obtaining racial minority representation, or whether potential negative reactions to mandated racial quotas would cancel out or overshadow the positive reactions that racially mixed juries may produce. Similarly, little research has been done to examine whether mathematically formulated quotas are perceived to impose the ceiling effect for minority applicants by setting a minimum or, for racial majority, by setting a maximum.

The following section examines whether or not an affirmative action mechanism to secure racially integrated juries is essential to the appearance and substance of fairness in jury proceedings. Specifically, the article examines three different types of affirmative action mechanisms for creating racially integrated juries—Hennepin, *de medietate linguae*, and social science models of affirmative jury structures. Empirical analyses also focus on race and class differences relative to the perception of affirmative action measures in jury selection, the legitimacy of jury verdicts rendered by racially integrated juries, and the acceptance of mandated racial quotas as affirmative action mechanisms in jury selection.

METHODOLOGIES

Sample

In the fall of 1995, a representative group of college students at the University of California, Santa Cruz (UCSC) was contacted to provide their responses to various questions involving racial quotas, racially mixed juries, and affirmative action in jury selection. The intent of the survey was to understand their knowledge on the current controversy and the debate surrounding the issue of affirmative action, their comprehension of the importance of racially integrated juries, and their opinions on the present and future status of affirmative action and race conscious remedies in rectifying racial discrimination in jury selection and criminal trials.[14]

The representative sample of UCSC students is considered to be important to the examination of affirmative action programs because of the following reasons. First, the University of California became the first-ever major, higher educational institution in the United States to ban affirmative action programs. Presently, no other major educational institution of higher learning in America has moved to eliminate affirmative action programs. Thus, because of UCSC students' constant exposure to the controversial issue and debate, their perceptions on race conscious remedies will provide important information on the success or failure of future affirmative action policies and programs.[15]

Similarly, although the 1996 passage of Proposition 209 has not affected the general population of California because of the court's injection that blocked the enforcement of the anti-affirmative action measure, the 1995 University of California Regents' decision to ban affirmative action has already taken effect, including the elimination of students' affirmative action offices on campus and race- or gender-based preference in the admission of future graduate students in 1997 and first-year undergraduate admissions in 1998. Thus, a representative group of UCSC students who already had been exposed to legal and extralegal constraints of affirmative action is more likely to provide important insights into the possible application of affirmative action programs in other areas. Second, because the

survey was conducted in the fall quarter of 1995 and the students had only a couple of months of college experience, their views are less likely than the views of other students to be affected by their exposure to liberal college environments. As the students are representative of first-year college students, their views are more likely than those of other students to reflect those of their parents and larger communities and social milieu from which they came. Last, in order to enhance the external validity of empirical findings, a number of so called *blocking factors* are incorporated in the analysis, such as race, gender, and parental incomes, which serve as a proxy of social class. Because the master file of potential jurors is created by the Department of Motor Vehicles and the Registrar of Voters lists, survey questions also included whether or not they have driver licenses or were registered to vote. Those variables are included in the analyses in order to control for the eligibility and qualification status of prospective jurors and to provide empirical findings that are more likely to be generalized over larger and much broader populations.

The survey differed from at least some other studies in the degree to which it attempted to employ more elaborate questions concerning the use of racial quotas and the fairness of racially mixed juries on jury decisions as well as to solicit responses on potential beneficiaries and losers of affirmative action and their effects on respondents' perceptions on the fairness and viability of three structures of affirmative juries.[16] Thus, within the limitations imposed by survey research methodology, it was sought to have the respondents answer many of the race related sensitive questions in the general social context. A total of 266 respondents were contacted and their responses were carefully coded, computerized, and analyzed.

Measurements

The following three observations were used to obtain the reactions to mixed juries and the fairness and legitimacy of jury verdicts: (1) "The racial quota of the jury should reflect the racial makeup of the community"; (2) "If racially mixed juries are called for, they should

have one-half majority and one-half minority jurors"; and (3) "Some research says that without at least three minority jurors, group pressure may simply be too overwhelming, and, thus, if racially mixed juries are called for, juries should have at least three minority members." The first statement is designed to examine the applicability of the Hennepin model and the public's perception of racially representative juries and statistically engineered racial heterogeneity based on population compositions in the community. The second statement focuses on the jury *de medietate linguae* and the use of racial quotas to select juries with or without regard to racial compositions in the general population. The third statement measures the respondents' perceptions on the jury structure based on social scientific studies requiring that at least 25 percent of jury seats be reserved for racial minorities.

A number of statements also examine individual perceptions on affirmative action mechanisms in jury selection, their judicial effectiveness and usefulness in different types of trials, and the legitimacy of jury verdicts. Specifically, those statements included: (1) "It is important to create affirmative mechanisms to ensure racially mixed juries"; (2) "Racial quotas to create racially mixed juries are discriminatory"; (3) "Racial quotas should be mandated to increase minority participation on juries"; (4) "Decisions reached by racially diverse juries are more fair than decisions reached by single race juries"; and (5) "Affirmative action is another form of discrimination." Those statements examine the public's perception on the use of mandated racial quotas, the legitimacy of racially mixed juries, as well as whether racially heterogeneous juries are able to generate fairer and more legitimate verdicts than racially homogeneous juries. With respect to the use of mixed juries in racially sensitive trials, the following two statements examine the perceptions on the utility of racially heterogeneous juries: (1) "Racially mixed juries are necessary only in racially sensitive trials like the Rodney King beating trial" and (2) "Trials should include African American jurors when the defendant is African American." Given the controversial verdict by the King jury and other criminal juries in highly sensitive and

publicized trials, those two statements provide additional reference points concerning how respondents currently view the legitimacy of the jury trial and the fairness of jury verdicts.

All statements are measured in a five-point Likert, ordinal scale with the following attributes: (1) "strongly agree," (2) "somewhat agree," (3) "uncertain," (4) "somewhat disagree," and (5) "strongly disagree." The respondents' perceptions and opinions on the different jury structures, uses of racial quotas, and the fairness of racially mixed juries are examined in relation to the respondents' race, gender, and social class backgrounds. Table 1 shows the basic descriptive statistics for the sociodemographic variations on the use of affirmative action in jury selection.

In more elaborate analyses of the relationship between socio-ideological backgrounds and the acceptability of three different structures of jury compositions, two additional statistical indices are reported. For example, skewness and kurtosis are measures of asymmetry and long-tailedness of the distribution curve.[17] The positive skewness index shows the frequency distribution to the right and the negative value for a skewed distribution to the left. Similarly, a negative kurtosis value shows a shorter tail than a normal distribution and a positive kurtosis value shows a longer tail than a normal distribution. Because of the use of a five-point Likert scale that is a near-continuous, ordinal measure, those two indices provide important information about the shape of the variables' frequency distributions. With respect to interpreting the mean scores of five-point Likert measurements, a score of less than 3.0 suggests that, on average, respondents are more likely to agree with the question. If the score exceeds the value of 3.0, it suggests that respondents are more likely to disagree with the statement. The information on means, standard deviations, skewness, and kurtosis is reported in Table 2.

The present analysis also relied on ordinary least square regression analyses to examine the public's perceptions on the difference between race conscious affirmative jury selection procedures and traditional color blind random jury selection methods. Some individuals may endorse the fact that the makeup of the jury should reflect the racial makeup of the community without favoring race conscious affirmative methods suggested by the Hennepin model. Similarly, it is probable that the supporters of color blind random selection may also favor racially representative juries and endorse jury decisions reached by racially mixed juries. Thus, the article examines individual perceptions on race conscious or race neutral preferences by simultaneously incorporating the questions concerning three affirmative jury structures, representative juries, jury decisions reached by racially integrated juries, and the use of mandated racial quotas.

RESULTS

Three Structures of Jury Models

Table 1 shows the respondents' views on three structures of affirmative juries and the legitimacy of jury verdicts reached by racially mixed juries. With respect to the three different jury models, a large proportion of the respondents favor the Hennepin (75.6 percent) and social science models (81.0 percent). The support for the jury *de medietate linguae* (46.9 percent) is lower than other jury structures.

Empirical analyses also suggest considerable variations in the respondents' perceptions on racially mixed juries by race, gender, and social class. Asians (61.9 percent) are less likely than Whites (76.4 percent), African Americans (72.7 percent), or Hispanics (81.8 percent) to favor Hennepin jury models. There also are differences in support for the jury *de medietate linguae* based on race, gender, and parental earnings, with Whites (39.3 percent), males (36.3 percent), and those with parental incomes $100,000 or more (36.3 percent) being less likely to favor the equal allocation of jury seats for both majority and minority jurors than Hispanics (69.2 percent), females (53.2 percent), and those with parental income less than $15,000 (47.0 percent). With respect to the social science jury model, Hispanics (68 percent) are much less likely to favor the jury model of the mandated three minority seats in jury trials than Whites (84.6 percent), African Americans (77.7 percent), or Asians (85.7 percent).

TABLE 1

MEASURES OF VARIABLES AND DESCRIPTIVE STATISTICS[a]

Race						Sex		Parents' Income			
	Total Population	Whites	Blacks	Hispanics	Asians[b]	Male	Female	<$15,000	$15,000–49,999	$50,000–99,999	$100,000 or more
Jury structures											
Hennepin models	75.6	76.4	72.7	81.8	61.9	74.3	76.7	86.9	67.8	82.8	77.7
Juries de medietate linguae	46.9	39.3	44.4	69.2	46.6	36.2	53.2	47.0	45.3	45.0	36.3
Social science models	81.0	84.6	77.7	68.0	85.7	69.3	87.0	81.2	84.2	82.7	66.6
Affirmative action mechanisms											
Affirmative mechanisms are important[c]	92.9	93.0	100.0	94.1	95.4	90.1	94.2	85.0	92.2	94.9	92.8
Racial quotas are discriminatory[d]	17.2	22.1	9.0	7.4	5.8	22.0	15.1	17.6	10.1	21.3	33.3
Racial quotas should be mandated[e]	77.3	77.6	72.3	85.7	75.0	69.2	81.2	81.2	85.5	67.8	68.1
Racially mixed juries' descisions are fairer[f]	63.5	62.2	63.6	72.7	60.0	58.5	67.1	63.1	67.9	64.0	56.0
Affirmative action is discriminatory[g]	28.9	36.3	0.0	8.1	38.1	33.1	26.1	34.7	24.7	28.7	34.4
Trial types and affirmative action											
Racially mixed juries in racially sensitive trials[h]	11.4	7.1	8.3	21.6	20.8	13.0	10.0	34.7	9.6	7.3	6.2
Mixed juries for African American defendant[i]	84.1	89.6	83.3	81.5	63.6	83.5	84.1	100.0	83.1	81.5	85.7

[a] Figures show percent of respondents who either strongly or somewhat agreed with the statements.
[b] Asians also include Pacific Islanders
[c] "It is important to create affirmative mechanisms to ensure racially mixed juries."
[d] "Racial quotas to create racially mixed juries are discriminatory."
[e] "Racial quotas should be mandated to increase minority participation on juries."
[f] "Decisions reached by racially diverse juries are more *fair* than decisions reached by single race juries."
[g] "Affirmative action is another form of discrimination."
[h] "Racially mixed juries are necessary only in racially sensitive trials like the Rodney King beating trial."
[i] "Trials should include African American jurors when the defendant is African American."

TABLE 2

PERCEPTIONS ON THREE DIFFERENT STRUCTURES OF RACIALLY MIXED JURIES[a]

Variable	Hennepin Models				De Medietate Linguae				Social Science Models			
	Mean	SD[b]	Skewness	Kurtosis	Mean	SD	Skewness	Kurtosis	Mean	SD	Skewness	Kurtosis
Total population	2.306	1.311	0.743	−0.609	3.068	1.107	−0.017	−0.739	2.420	1.043	0.531	−0.069
Affirmative Action Mechanisms												
Affirmative mechanisms for racially mixed juries[c]												
Important	2.333	1.347	0.717	−0.735	3.004	1.082	−0.030	−0.742	2.334	1.017	0.615	0.057
Unimportant	2.000	1.322	1.101	0.030	3.737	1.360	−0.062	−1.340	2.941	1.248	0.342	−0.407
Racial quotas[d]												
Discriminatory	2.142	1.141	0.963	0.466	3.117	1.225	−0.078	−1.231	2.705	1.225	0.288	0.026
Nondiscriminatory	2.351	1.384	0.634	−0.951	3.041	1.083	0.002	−0.708	2.357	1.070	0.633	−0.039
Racial quotas[e]												
Mandated	2.292	1.437	0.667	−0.963	2.864	1.145	0.124	−0.873	2.131	0.976	0.742	0.263
Not mandated	2.170	1.262	0.992	−0.067	3.345	1.142	−0.392	−0.649	2.926	1.232	0.229	−0.755
Racially mixed juries' decisions[b]												
Fair	2.333	1.416	0.714	−0.853	2.960	1.094	0.078	−0.657	2.307	1.042	0.590	−0.171
Unfair	2.191	1.209	0.830	−0.294	3.222	1.258	−0.259	−0.966	2.600	1.159	0.438	−0.386
Affirmative action[f]												
Discriminatory	2.152	1.182	0.956	0.035	3.056	1.169	0.053	−0.864	2.550	1.105	0.641	0.096
Nondiscriminatory	2.394	1.326	0.624	−0.887	3.052	1.095	−0.077	−0.734	2.335	1.030	0.547	−0.102
Trial types												
Racially mixed juries only in racially sensitive trials[g]												
Yes	2.206	1.372	0.434	−0.355	2.642	1.224	0.491	−0.952	2.296	1.067	0.579	0.056
No	2.315	1.306	0.726	−0.617	3.125	1.091	−0.063	−0.693	2.427	10.51	0.557	−0.051
Racially mixed juries for African American defendants[h]												
Yes	2.268	1.340	0.830	−0.546	3.060	1.139	−0.036	−0.779	2.336	1.064	0.637	−0.044
No	2.342	1.279	0.699	−0.556	3.026	1.102	0.073	−1.012	2.783	1.003	0.635	0.182
Affirmative action jury models												
Hennepin models												
Yes	1.452	0.499	0.190	−1.987	3.065	1.114	−0.025	−0.777	2.343	1.057	0.718	0.251
No	4.454	0.502	0.187	−2.040	2.945	1.161	0.359	−0.849	2.351	1.151	0.646	−0.572
De medietate linguae												
Yes	2.315	1.348	0.700	−0.795	1.761	0.428	−1.252	−0.442	2.148	1.096	0.864	0.093
No	2.263	1.322	0.796	−0.534	4.284	0.453	0.972	−1.077	2.617	1.127	0.391	−0.400
Social science models												
Yes	2.262	1.364	0.811	−0.697	2.868	1.085	0.033	−0.791	2.206	1.143	0.753	0.089
No	2.705	1.487	0.364	−1.352	3.484	1.301	−0.190	−1.463	4.352	1.480	0.644	−1.688
Socio-Demographic Backgrounds												
Sex												
Male	2.378	1.289	0.714	−0.592	3.293	1.153	−0.248	−0.810	2.634	1.120	0.294	−0.510
Female	2.246	1.327	0.809	−0.538	2.951	1.066	0.066	−0.566	2.300	0.982	0.670	0.404
Race												
Whites	2.272	1.290	0.773	−0.532	3.198	1.070	−0.122	−0.611	2.323	1.015	0.574	0.058
African American	2.500	1.400	0.686	−0.537	3.000	1.000	−0.590	−0.618	2.500	1.160	0.517	0.202
Hispanics	2.078	1.343	1.120	0.123	2.736	1.131	0.553	−0.239	2.710	1.112	0.366	−0.311
Asian/Pacific Islander	2.708	1.627	0.384	−1.502	3.000	1.251	−0.145	−0.669	2.434	0.992	0.503	0.703
Annual Income												
Less than $15,000	1.913	1.202	1.725	2.467	3.181	1.220	0.138	−1.129	2.363	1.093	0.624	0.118
$15,000–49,999	2.448	1.429	0.547	−1.107	3.061	1.018	−0.125	−0.575	2.381	0.983	0.707	0.448
$50,000–99,999	2.096	1.205	0.965	0.021	3.132	1.187	−0.038	−0.895	2.350	1.032	0.591	0.016
$100,000 or more	2.424	1.199	0.825	−0.019	3.187	1.202	−0.384	−0.565	2.606	1.344	0.292	−0.882
Jury service												
Eligible	2.286	1.317	0.776	−0.571	3.085	1.114	−0.063	−0.722	2.405	1.040	0.541	−0.042
Not eligible	2.625	1.204	0.319	−0.661	2.812	0.981	0.905	−0.229	2.666	1.112	0.412	0.009

[a]All variables are measured in a five-item Likert scale: (1) strongly agree, (2) somewhat agree, (3) uncertain, (4) somewhat disagree, (5) strongly disagree.
[b]"Racial quotas should be mandated to increase minority participation on juries."
[c]Asians also include Pacific Islanders.
[d]"It is important to create affirmative mechanisms to ensure racially mixed juries."
[e]"Racial quotas to create racially mixed juries are discriminatory."
[f]"Decisions reached by racially diverse juries are more *fair* than decisions reached by single race juries."
[g]"Affirmative action is another form of discrimination."
[h]"Racially mixed juries are necessary only in racially sensitive trials like the Rodney King beating trial."

Affirmative Action and Racially Mixed Juries

Respondents are asked about their views on affirmative action in jury selection and the uses of mandated racial quotas in criminal trials. A large proportion of respondents say that affirmative mechanisms in jury selection are important to ensure racially mixed juries (92.9 percent), racial quotas should be mandated to increase minority jury participation (77.3 percent), and decisions reached by racially integrated juries are fairer than decisions reached by single race juries (63.5 percent). Only a small proportion of respondents say that racial quotas (17.2 percent) and affirmative action (28.9 percent) are discriminatory.

The survey also finds that when respondents' racial and gender backgrounds are incorporated into the analysis, Whites (22.1 percent) and males (22.0 percent) are more likely to feel that racial quotas to create racially mixed juries are discriminatory than African Americans (9.0 percent), Hispanics (7.4 percent), or Asians (5.8 percent). There also are differences in support for racial quotas based on social class, with those with parental earnings of $100,000 or more (33.3 percent) being more likely to oppose the use of racial quotas than those with less parental incomes (17.6 percent for those with less than $15,000, 10.1 percent of those between $15,000 and $49,999 and 21.3 percent of those between $50,000 and $99,999).

There also are differences by respondents' backgrounds in support for using mandated racial quotas to increase minority jury participation. Hispanics (85.7 percent) and women (81.2 percent) are most likely to favor the use of mandated racial quotas to create racially mixed juries, while men (69.2 percent) and those with higher incomes (67.8 percent and 68.1 percent for those with parental earnings of $50,000 and $99,999 and $100,000 or more, respectively) are least likely to favor this.

Respondents are also asked on the issue of the fairness of jury verdicts based on the juries' racial compositions. Overall, 63.7 percent say they feel that decisions reached by racially diverse juries are fairer than decisions reached by single race juries, with Hispanics (72.7 percent) and females (67.1 percent) being more likely to agree with the statement than Whites (62.2 per-

cent), Asians (60.0 percent), or men (58.5 percent). Similarly those with the highest parental earnings are least likely to agree with the statement (56.0 percent).

With respect to the view on affirmative action, differences are also found across race and gender, with Whites (36.3 percent), Asians (38.1 percent), and men (33.1 percent) more likely to feel that affirmative action is discriminatory than African Americans (0.0 percent), Hispanics (8.1 percent), or women (26.1 percent).

Trial Types and Affirmative Action in Jury Selection

The survey examined the respondents' opinions regarding whether racially mixed juries are necessary only in racially sensitive trials such as the Rodney King beating trial. Overall, 11.4 percent say they agree with the statement, with Hispanics (21.6 percent) and Asians (20.8 percent) being more likely than Whites (7.1 percent) or African Americans (8.3 percent) to support the use of racially heterogeneous juries only in racially sensitive trials. There also are differences by parental earnings in support of using racially mixed juries only in racially sensitive trials. Those with incomes less than $15,000 (34.7 percent) are most likely to support the selective use of racially mixed juries, while those with higher income brackets are least likely to favor this.

The overwhelming majority of respondents (84.1 percent) agree that trials should include African American jurors when criminal defendants are African American. Asians (63.6 percent), however, are less likely than Whites (89.6 percent), African Americans (83.3 percent), or Hispanics (81.5 percent) to agree with the race matching equation in criminal trials. Those with the lowest income bracket (100 percent) are most likely to support the inclusion of African American jurors in trials involving African American defendants than those with higher incomes.

Three Jury Models and Views on Affirmative Action in Jury Selection

Table 2 reports the respondents' opinions regarding the three different structures of jury

models, mandated racial quotas, and racially mixed juries. The first column shows the jury models and the questions on affirmative mechanisms and racial quotas. The second through fifth columns suggest the analyses of views on Hennepin jury models cross-referenced by the opinions on affirmative action mechanisms in jury selection. The sixth through ninth columns show the analysis for the jury *de medietate linguae*. The last four columns show the empirical examinations of the social science model. Those columns show the means, standard deviations, and two indices indicating the shape of a frequency distribution such as skewness and kurtosis.

There are some important findings from analyzing the three different jury structures by opinions on racial quotas, racially mixed juries, and affirmative action in jury selection. Those who feel that affirmative mechanisms are important in ensuring racially mixed juries are less likely to support the Hennepin model (2.333 for a mean score), and are more likely to favor the jury *de medietate linguae* (3.004) and social science models (2.334). The analysis also shows that there is a greater variation of scores for those who favor the Hennepin model and who agree with the importance of racially mixed juries. For instance, the standard deviation for the Hennepin model (1.347) is greater than those for the other two models (1.082 and 1.017 for the *de medietate linguae* and social science models, respectively), suggesting that little consensus exists among respondents because of greater variations in the respondents' views on the Hennepin model.

Those who feel that racial quotas are discriminatory are more likely to support the Hennepin model (2.142) than the *de medietate linguae* (3.117) or the social science model (2.705). Similarly, those who support the mandated racial quotas for creating racially heterogeneous juries tend to support both the *de medietate linguae* (2.864) and social science models (2.131). Moreover, those who feel that jury verdicts rendered by racially mixed juries are fairer than those by single race juries are more likely than others to support both the *de medietate linguae* and social science jury models (2.960 and 2.307, respectively).

The findings suggest that clear divisions of jury preference exist between the Hennepin

model and the other two models. Those who favor the use of mandated racial quotas tend to support the *de medietate linguae* and social science models, which guarantee either 50 percent or 25 percent of jury seats to racial minorities. On the other hand, those who share negative views on the use of mandated racial quotas are more likely to favor the Hennepin model, in which the minority share of jury seats remain flexible depending upon the racial makeup of given jurisdictions.

Three Jury Models, Trial Types, and Affirmative Action

Those who support the use of racially mixed juries only in racially sensitive trials are more likely than others to support all three jury models (2.206, 2.642, and 2.296 for the Hennepin, the *de medietate*, and the social science models, respectively). The survey also finds that those who support African Americans' jury participation on trials involving African Americans are more likely than others to support both the Hennepin and social science models of jury structures (2.268 and 2.336, respectively). With respect to the jury *de medietate linguae*, there are not significant differences between those who favor or oppose the inclusion of African American jurors in trials involving defendants of the same race (3.060 and 3.026, respectively).

Jury Structures and Preferences

Comparisons of jury structures with individual preferences suggest a number of important findings. For instance, while the differences are small, those who do not favor the Hennepin model are more likely to support the *de medietate linguae* jury (2.945) than individuals who favor the Hennepin model (3.065). Similarly, those who support the split-half *de medietate* model are more likely to favor the social science model (2.148) than those who oppose the *de medietate linguae* (2.617). Although both groups still hold similar favoritism on the social science model (i.e., scores less than 3.0), the degree of their support for jury models with mandated fixed racial quotas is stronger for individuals who favor the jury *de medietate linguae*.

As the social science model sets the floor goals of selecting the minimum of three minority jurors with possibilities for even greater minority participation, the finding suggests that those who support the social science model may also be willing to accept six minority jury participants.

The finding also shows that those who support the social science model (2.868) also support the *de medietate linguae* more than those who oppose the social science model (3.484). As negative kurtosis indices indicate (−.791 and −1.463), their frequency distributions are shorter than a normal distribution, suggesting that their opinions on the *de medietate linguae* are more likely to cluster around individual means and, thus, their opinions on the split-half juries are more coherent and unified. The finding also shows that individuals who are willing to accept mathematically formulated numerical goals are more likely to support both the split-half jury (the *de medietate*) as well as the one-fourth minority jury (social science models) as an important race conscious jury selection to increase minority jury participation.

TABLE 3

ORDINARY LEAST SQUARE REGRESSION ANALYSES OF THE HENNEPIN MODEL, THE JURY *DE MEDIETATE LINGUAE*, AND THE SOCIAL SCIENCE MODEL[a]

Variables	Hennepin Models	De Medietate Linguae	Social Science Models
Jury Structures[b]			
Hennepin models	—	−.036 (−.041)	.117 (.143)**
Juries de medietate linguae	−.052 (−.045)	—	.206 (.217)****
Social science models	.211 (.173)**	.255 (.242)****	—
Affirmative action mechanisms			
Affirmative mechanisms are important[c]	−.182 (−.136)*	.079 (.068)	.072 (.066)
Racial quotas are discriminatory[d]	−.081 (−.068)	.039 (.038)	.108 (.111)
Racial quotas should be mandated[e]	−.017 (−.014)	.039 (.036)	.273 (.272)****
Racially mixed juries' decisions are fairer[f]	−.063 (−.067)	.090 (.111)	.023 (.030)
Affirmative action is discriminatory[g]	.129 (.137)*	.032 (.039)	−.081 (−.105)
Trial types and affirmative action			
Racially mixed juries in racially sensitive trials[h]	.122 (.100)	.141 (.133)**	−.057 (−.057)
Mixed juries for African American defendant[i]	.019 (.016)	−.008 (−.008)	.084 (.089)
Socioeconomic backgrounds			
Whites (1 = White, 0 = Non-White)	−.193 (−.074)	.341 (.151)**	−0.35 (−.016)
Minority (1 = Black/Hispanic, 0 = others)	−.582 (−.176)**	−.133 (−.046)	.499 (.185)**
Sex (1 = Male, 2 = Female)	−.016 (−.006)	−.274 (−.117)*	−.130 (−.058)
Age	−.028 (−.050)	−.010 (−.020)	−.011 (−.025)
Parental incomes[j]	−.050 (−.076)	−.010 (−.017)	.029 (.053)
Driver's license (1 = Yes, 2 = No)	−.400 (−.119)*	−.102 (−.035)	.173 (.062)
Registered voters (1 = Yes, 2 = No)	.158 (.047)	.203 (.070)	−.171 (−.062)
Intercept	3.068	1.392	0.657
R²	.091	.160	.246

[a]Figures in parenthesis show standardized regression coefficients.
[b]The questions are measured in a five-point Likert scale (1) strongly agree, (2) somewhat agree, (3) uncertain, (4) somewhat disagree, and (5) strongly disagree.
[c]"It is important to create affirmative mechanisms to ensure racially mixed juries."
[d]"Racial quotas to create racially mixed juries are discriminatory."
[e]"Racial quotas should be mandated to increase minority participation on juries."
[f]"Decisions reached by racially diverse juries are more *fair* than decisions reached by single race juries."
[g]"Affirmative action is another form of discrimination."
[h]"Racially mixed juries are necessary only in racially sensitive trials like the Rodney King beating trial."
[i]"Trials should include African American jurors when the defendant is African American."
[j]Parental incomes are measured in a following scale: (1) less than $5,000, (2) $5,000–9,999, (3) $10,000–14,999, (4) $15,000–24,999, (5) $25,000–34,999, (6) $35,000–49,999, (7) $50,000–74,999, (8) $75,000–99,999, (9) $100,000 or more.
*$p < .10$.
**$p < .05$.
***$p < .01$.
****$p < .001$.

Table 3 shows ordinary least regression analyses of the public's perceptions on racially mixed juries, racially mixed juries, racially representative juries, and mandated racial quotas. The first column shows exogenous and criterion variables to explain the public's attitudes toward affirmative action mechanisms in jury selection. The second column shows both unstandardized and standardized ordinary least square regression coefficients for criterion variables in explaining whether or not individual respondents favor the Hennepin model of affirmative juries. The third and fourth columns also show regression coefficients for the *de medietate linguae* and social science models.

Empirical findings suggest that among three models of affirmative juries, the negative regression coefficients involve both the Hennepin and the *de medietate linguae* models (regression coefficients in the first three rows), suggesting that individuals who support the Hennepin model are more likely to oppose the split-half jury model of the jury *de medietate linguae* and vice versa. The Hennepin model and the *de medietate linguae* represent opposite ends of the spectrum of views on the affirmative action jury. The statistics also demonstrate that when the three models of affirmative juries are simultaneously considered, the social science model is more likely to draw support from individuals who favor both the Hennepin and the *de medietate linguae* models).117, $p < .05$ and .206, $p < .001$ unstandardized regression coefficients for the Hennepin and *de medietate models*, respectively). This finding suggests that individuals tend to view the social science model as a middle ground as well as a reasonable compromise between the jury *de medietate linguae* and the Hennepin models.

Regression analyses also show that, in keeping respondents' sociodemographic and ideological backgrounds constant and neutral, individuals who feel that affirmative mechanisms are unimportant to increase minority participation and that affirmative action is another form of discrimination are more likely to favor the Hennepin model (−.182 and .129, respectively). The relationship is statistically significant ($p < .10$ for both questions), suggesting that the Hennepin model is more likely to gain support from those who even oppose affirmative action in jury selection. Unlike the *de medietate linguae* model, the Hennepin model does not rely on the same, universally applied racial quotas across all jurisdictions. Since the Hennepin jury only requires that the racial makeup of the jury reflect the racial compositions of local communities, in jurisdictions with small minority populations, the Hennepin jury can legally exclude racial minorities from serving on juries.

Empirical findings also suggest that when race, sex, and other socioeconomic or sociopolitical backgrounds are held constant, individuals who favor the social science models and endorse racially mixed juries in racially sensitive trials are more likely to support the *de medietate linguae* model (.255 and .141, $p < .001$ and $p < .05$, respectively). Although respondents support the *de medietate linguae* model the least (46.9 percent), the finding suggests that, for those who favor the use of racially integrated juries, the *de medietate linguae* jury represents the ideal mixture of racial combinations in criminal trials involving highly sensitive elements of race and racism.

Although racial quotas for the Hennepin model may vary depending upon the jurisdiction, all three models of affirmative juries require the use of mandated racial quotas to create racially integrated juries. The ordinary least square regression analysis demonstrates that the *de medietate linguae* model is likely to gain greater support from advocates of affirmative action policies in jury selection and individuals who favor the use of mandated racial quotas by guaranteeing the fixed percentage of jury seats to racial and ethnic minorities. On the other hand, the Hennepin model is more likely to gain support from individuals who even oppose affirmative action mechanisms because the Hennepin model does not rely on the same, universally applied racial quotas across all jurisdictions. In communities with small minority communities, thus, the Hennepin model can be effectively used to exclude racial minorities from serving on juries.

DISCUSSION

Empirical analyses of three jury structures of jury representation show that, overall, there is

more likely to be a greater support for both the Hennepin and the social science models than the *de medietate linguae* model. There are, however, considerable variations by race, gender, and social class. Women are more likely than men to approve all three types of jury structures. Similarly, Hispanics are the only racial and ethnic group with their majority's support of the *de medietate linguae* model of jury representation. Generally, those from higher social class backgrounds are least likely to support all three models of affirmative juries.

With respect to the views on mandated racial quotas, both White and those from the upper social class are most likely to feel that mandated racial quotas are discriminatory. It is, however, equally ironic to find that a large proportion of Whites also feel that racial quotas should be mandated to increase minority jury participation. Their mixed views on racial quotas suggest that, for Whites, the greater benefits of mandated uses of racial quotas for increasing minority jury participation may be seen to cancel out the negative, discriminatory effects that racial quotas produce in creating racially mixed juries. Similarly, Asians are more likely than other racial groups to favor the selective use of racially mixed juries only in cases involving racially sensitive trials. At the same time, they are least likely to approve the race conscious selection of African Americans in trials involving only African American defendants. Thus, although almost all Asians support affirmative race conscious jury selection methods to create racially mixed juries (94.5 percent), they also feel that jury selection should not necessarily rely on the race of defendants as a criterion in creating racially mixed juries. The racial matching equation, according to Asians, does not constitute the important element of creating racially integrated juries.

Empirical analyses show that those who feel that mandated racial mechanisms are discriminatory tend to favor the Hennepin model and are less likely to support the *de medietate linguae* or social science models, the jury structures that mandate 50 percent and 25 percent of jury seats for racial minorities, respectively. The view on the mandated racial quota, thus, tends to divide the respondents with respect to

their support for different affirmative jury models. Although the Hennepin model also relies on the use of racial quotas, its quotas are considered variable and changeable, depending upon the racial makeup of the given jurisdictions. Thus, the Hennepin model may be a viable option for those who opposed the use of universally applied racial quotas across all jurisdictions. The problem of the Hennepin model, however, is that it is possible to not have jury seats guaranteed for racial minority groups in communities with small racial minority populations. While those who support the Hennepin model also view that jury decisions reached by racially mixed juries are fairer than the ones rendered by single race juries, the Hennepin model also has the potential to deny minority jury participation and may not lead to a racially mixed jury.

In order to eliminate the possibility that minority jurors will not serve in criminal trials because of the small minority populations in the community, some jurisdictions proposed the minimum floor goal in an effort to ensure racially mixed juries, just like the ones proposed by social science models. For instance, Pennsylvania's "jury peer representation" bill has been proposed to mandate the minimum representation of minorities in order to prevent racial discrimination in jury deliberations (H.B. 1182, 177th Gen. Assem., 1993 Reg. Sess., 1993). The bill provides that if a defendant or victim is a member of a racially classified group representing 25 percent or more of a judicial district, and there is not a juror from the same racial group, then three jurors of the victim's or defendant's race must be secured in the jury. If the community has less than a 25 percent population for the racial group, then at least one or two seats are reserved for members of the same racial and ethnic minority jurors (H.B. 1182 Section 1 (a)(1)). Similar to the social science jury model, mandated racial quotas in the jury have been recognized by Pennsylvania initiatives in setting the minimum number of minority jurors to maintain the fairness and general acceptance of jury verdicts by the community. The potential shortcoming of Pennsylvania jury initiatives is that when racial minority compositions of the community are small, the proposals fail to require the minimum numbers of minority jurors

considered crucial to offset the group pressure of the dominant White jurors during deliberation.

In Pennsylvania, both state legislatures and community action groups have been active in addressing the issue of minority underrepresentation. For instance, in addition to setting proportional racial representation on the jury itself, the General Assembly has also proposed legislation to require minimum minority compositions of jury pools and venires in trials involving racial minority defendants (see H.R. 1182, 177th Gen. Assem., 1993 Reg. Sess. [1993]). Similarly Citizens Against Racism, a nonprofit organization, is searching for solutions to rectify African American underrepresentation on criminal juries (McKinnery, 1993).

In some jurisdictions, however, judges are more likely to exercise greater powers and discretion in creating racially mixed juries. In Ramsey County, Minnesota, Judge Lawrence Cohen recently held that a Hispanic defendant could not be tried from a jury pool of 113 potential jurors that included only one Hispanic.[18] Because the 1990 U.S. Census showed that 2.2 percent of the country residents were Hispanic, Judge Cohen and the attorneys then agreed to supplement the jury pool with the names of two more Hispanic jurors who were already scheduled to appear at the courthouse the following week, in an effort to increase the chance for a racially mixed jury to try the Hispanic defendant. In Erie County, Pennsylvania, African American church leaders were also requested to submit the names and addresses of their adult congregation for the master list. The submission of names added an additional 178 African American parishioners (73 of the parishioners were registered voters and originally included in the master list). The additional list of minority parishioners, thus, substantially increased African American participation in jury service (Domitrovich, 1994:99).

While a number of proposals have examined the possibility of creating racially more inclusive juries, many of those suggestions and proposals tend to focus on the racially diverse pools at jury venire stages of jury selection, not the final jury itself. Because of discriminatory uses of peremptory challenges and purposeful exclusions of racial and ethnic minority jurors

before reaching the jury box, those proposals may fail to guarantee minority jury participation in criminal trials.

Similarly, the racially integrated jury can become an important mechanism to prevent vengeful conviction of innocent minority defendants. Recent studies on jury nullification show that nullification can take either of two forms: merciful acquittal or vengeful conviction (Finkel, 1995:30–31; see also Abramson, 1994). Although many studies on nullification focused on merciful acquittal, it has also been used in an undisputably unjust manner, such as the well-documented history of all-White Southern juries nullifying the law in cases of violent crimes by Whites against Blacks. The specter of juries maliciously convicting innocent defendants is also so haunting that even the Supreme Court has cited the possibility of such convictions as one reason to avoid explicitly informing federal juries of their de facto power to nullify the law (*Sparf v. United States*, 156 U.S. 51, 101–102, 1895). In addition, a landmark two-year study of capital punishment in the United States identifies "[C]onviction demanded by community outrage" as a "main" cause of wrongful convictions. (Bedau and Radelet, 1987:56–57).[19] Such victimization surges when issues of race and ethnicity are implicated, suggesting that White racism coupled with White control of legal systems produced convictions and death sentences of every innocent Black defendant in the study. Rather than relying on all-white juries to determine the trial outcome and color blind jury selection, the racially heterogeneous jury then becomes an important mechanism to engineer the viable deliberation process by placing greater burdens on both majority and minority groups to work out differences. The racially integrated jury is also more likely to increase the opportunity of the minority group to participate on jury trials and allow the race at risk to fight against the majority's group pressure in the deliberation process.

Past research also suggests that, in evaluating the application of affirmative action programs, the term *quota* generally stirred deep negative emotions among some individuals leading to their rejection of affirmative action programs in jury selection (Barnes, 1995). While fixed percentages are reserved for racial minorities such

as 50 percent in the *de medietate linguae* model and 25 percent in social science models, race conscious mathematical goals may remain an important part of the remedial plan to redress the jury discrimination (Barnes, 1995:865).[20] The present analyses show that both the Hennepin and social science models are overwhelmingly supported by respondents as the ideal types of racially mixed juries. While the endorsement for the jury *de medietate linguae* was less than the other two jury models, the finding suggests that the equal jury participation by both majority and minority members was supported by those who favor the social science model and its use of mandated racial quotas and those who believe that racially mixed juries should be used in racially sensitive trials.

With respect to the racial quota and its use, the court has expressed mixed opinions on its utility, and constitutionality. For instance, the Court in *City of Richmond v. J. A. Croson Co.* (488 U.S. 469, 1989) held that race conscious remedies including goals for achieving racial balance to redress past discrimination are acceptable, and the Court's plurality opinion by Justice O'Connor reaffirmed the use of quotas while it declared the city of Richmond's particular use of the quota to be unconstitutional (*City of Richmond v. J. A. Croson Co.*, 486–87, 491–92).

The problem with the use of quotas as part of remedial plans to rectify past discrimination in jury selection and criminal trials is that the mathematically derived goals may be seen to be treated as the setting of a minimum as a maximum. Hypothetically, for instance, if the number of minority jurors selected reached the fixed quota, it should not prevent the courts from further selecting minority jurors because the quota is a fixed mathematical goal in setting the minimum for racial minorities, not the maximum number of minority jurors. Since the maximum number of minority jurors are imposed on the *de medietate linguae* model and even the Hennepin model once the jurisdiction's racial makeup is established, the social science model may be the only viable option in creating the floor goals of minority jurors and, thus, providing even greater participatory opportunities to minority jurors. In administering the quota systems, it is also important to recognize that the administra-

tion of quotas is temporary and needs to take the time frame to review the plan, as they are similar to most affirmative action programs and policies in other contexts such as admissions, hiring, and contracting (Fukurai, 1996b).

CONCLUSIONS

Racial and ethnic minorities continue to be substantially underrepresented on the vast majority of both state and federal courts. The social costs of unrepresentative juries have prompted lawmakers and the courts to consider race conscious methods to ensure minority representation, and a growing number of courts are beginning to experiment with the use of race conscious methods to select jurors. The race-based selection procedures the courts use and the legislatures proposed are unlike efforts in the past that deliberately limited the participatory opportunity of racial minorities to serve on juries. Instead, the courts and governmental proposals that consider race in selecting juries often pursue a different goal of increasing the minority jury participation on actual juries or in jury pools to levels that duplicate or surpass their percentages in local communities. One problem of the race conscious method to ensure minority representation on juries is that clearly defined formulas do not exist to determine the extent of minority participation. Similarly, little information is available about reactions to this race conscious affirmative measure. Past jury research failed to show whether potential jurors would react negatively to racial quota methods of obtaining racial representation, or whether potential negative reactions to racial quotas would cancel out the positive reactions that racially mixed juries may generate. Similarly, little research has been done to examine whether mathematically formulated quotas are perceived to impose the ceiling effect for minority applicants by setting a minimum, or for racial majority applicants by setting a maximum.

After reviewing the history of Anglo-Saxon traditions of laws as well as more social science research on jury representativeness, this article examined three different structures of affirma-

tive juries and uses of racial quotas to create racially heterogeneous juries—the Hennepin model, the jury *de medietate linguae*, and the social science model. Empirical analyses showed that individuals are overwhelmingly in favor of the Hennepin model, which requires that the jury's racial makeup reflects that of the community, and the social science model, which requires at least three minority jurors to form racially mixed juries.

While the *de medietate linguae* model was not viewed as favorably as the other two affirmative juries, those who favored the social science model also supported 50 percent guaranteed minority jury seats. The findings also showed that Whites and those from upper social classes are most likely to feel that mandated racial quotas are discriminatory. At the same time, the analysis suggested that a large proportion of Whites also feel that racial quotas should be mandated to increase minority jury participation. Their mixed views on racial quotas suggest that, for Whites, the greater benefits of mandated uses of racial quotas for increasing minority jury participation may be seen to cancel out the negative, discriminatory effects that racial quotas produce in creating racially mixed juries.

Given the strong endorsement for the Hennepin and social science models of affirmative juries, both legislative and court initiated actions may be needed to energize the public debate concerning the importance of racially representative juries, the size of mandated racial quotas, and implications regarding applications of affirmative action in jury proceedings. Moreover, affirmative action policies and benefits of racially mixed juries should be carefully considered and debated in order to increase minority jury participation and improve the public's respect and confidence in the jury system and jury verdicts.

NOTES

1. Colbert (1990) discusses the racial makeup of juries and its influence on jury verdicts. Johnson (1985) discusses racial prejudice and its influence on the decision-making process.

2. Racial minorities' overrepresentation in the Los Angeles Superior courthouse does not reflect the reality

of racial makeups in other superior and municipal courtrooms in Los Angeles County. The "bulls-eye" selection is both tortured and inequitable. Los Angeles Central Superior Court first draws available, potential jurors who live closest to the courthouse, and then draws on residents from the concentric circles moving outward from it. Because the central courthouse is located in the heart of downtown where Blacks and other ethnic minorities are predominant residents, racial minorities have dominated the jury pools. The deficiencies of the bulls-eye method is that this distance-based selection system leaves a very small number of racial minority jurors available to all the other remaining superior and municipal courts in Los Angeles, creating significant deficits in the representation of racial minorities. See chapters two and three of Fukurai, Butler, and Krooth (1993) for more discussions on the jury selection methods in Los Angeles County.

3. *Duren v. Missouri* (439 U.S. 357, 360, 1979) holds that the systematic exclusion of women from jury service violates the Constitution's fair cross-section requirement.

4. *Georgia v. McCollum* (112 S.Ct. 2348, 2357, 1992) also recognizes that a defendant has a right to an impartial jury, but cannot disqualify a person as impartial based on race.

5. For greater discussions of European legal treatments of the Jews, see Herman (1992).

6. Although Jews played active roles in financing church activities, King Edward I hanged up to 300 Jews, confiscated the assets of all other English Jews, and expelled them from England (Johnson, 1987:212–13).

7. The history of the Jews in Christian Europe is one of insecurity, persecution, and expulsion. For instance, Jews were also expelled from France in 1306 and from Spain in 1492. For a greater description of Jews in Europe, see Davis (1993). After the expulsion in England, from 1290 to 1656, no indigenous Jews and virtually no foreign Jews lived in England (Bush, 1993).

8. 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.

9. *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 the second case was transferred to the Supreme Judicial Court on the court's own motion.

10. 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." Section 903.4, however, 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].

11. The Court has approved juries as small as six in *Williams v. Florida* (399 U.S. 78, 1970).

12. See also *Ballew v. Georgia*, 231–39, reviewing articles and studies critical of the six-person jury and refusing to uphold a five-person jury.

13. Sidney Lumet, the film's director, recently revealed that he "always felt *Twelve Angry Men* was romantic, and in a sense, unrealistic. I had no illusions even then. It's hard enough to find a jury with even a single unprejudiced person" (Margolick, 1989). For greater discussions of proposals and other methods to improve racial representation, see Domitrovich (1994).

14. The desired sample size was estimated in the following fashion. In this survey, the goal was to to estimate the similar proportion of minorities to be represented in the sample. The 1995 UCSC registrar's information showed that the percentage of minority students in the student body was 32.8 percent. With a 95 percent confidence interval with error margins of plus or minus 5 percent, the following parameters were inserted into the equation to estimate the sample size, *n*, necessary to achieve the desired confidence interval (see Ott et al., 1992).

$$n = \frac{(1.96)^2 \, p \times q}{E^2}$$

where $p = .328$ and $q = 1 - p = .672$

$E = .05$ (error margins).

The estimate sample size was 338. After trying to contact a representative sample of 338 students, a total of 266 completed questionnaires were obtained, with a response rate of 78.6 percent.

15. Students in the minority-dominant Oaks College of UCSC who are enrolled in required core programs are contacted in order to oversample minority respondents. The UCSC official reports provide the following racial breakdown of UCSC students: 67.2 percent Euro-Americans, 3.6 percent African Americans, 11.2 percent Asians, 0.2 percent Native Americans, 8.4 percent Chicano, 4.4 percent Latino, 1.1 percent Filipino, and 3.4 percent other minority groups. The sample breakdown is

the following: 58.0 percent Whites, 5.6 percent African Americans, 15.2 percent Asians and Pacific Islanders, 0.8 percent Native Americans, 15.2 percent Hispanics, and 10.8 percent other racial groups, showing greater participation by all racial and ethnic minority groups in the survey.

16. The profiles of college students are similar to those of the sample: 63.3 percent of the students were female, while the almost identical figure of 63.8 percent are female in the sample (168 out of 266 students). Similarly, the measures of the central tendency—mode, median, and mean age in the sample—were similar to those in the population of the students. With respect to racial profiles, White respondents constitute 58 percent in the sample as opposed to 67.2 percent in the pool of the 1995 student body.

17. 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 represents 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).

18. Transcript of proceedings, *Minnesota v. Charles* (No. K0-92-1621) (Minn. 2d Jud. Dist. August 10, 1992). See also Domitrovich (1994).

19. Similar arguments can be made against "reverse racism" by predominantly non-White juries. Affirmative action in jury selection and quota juries can be used to prevent all-minority juries in large urban courts and eliminate the evils of skewed juries across the color line. For example, some legal scholars have defended jury nullification as a means of improving the administration of justice and empowering women and racial minorities (see, e.g., Butler, 1995).

20. The term *quota* also has attained the popular notoriety, and "much of the attack [on quotas] has been an urgent appeal to alleviate the injustice worked upon the majority group which suffers the impact of the remedy" (Barnes, 1995:865).

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EMERGING TRENDS IN CORRECTIONAL CIVIL LIABILITY CASES: A CONTENT ANALYSIS OF FEDERAL COURT DECISIONS OF TITLE 42 UNITED STATES CODE SECTION 1983: 1970–1994

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ABSTRACT

This research analyzes the decisions of correctional civil liability cases litigated under Section 1983 for the years 1970 through 1994. The analysis provides an examination of 3,205 published United States federal court correctional liability cases brought against correctional personnel in penal and local jail facilities. Longitudinal trends, patterns, prevailing parties, common types of lawsuits filed, and damages and attorney fees awarded are discussed based on the content analysis classification scheme. The analysis revealed sixteen major correctional topic areas where prisoner litigation is likely. High liability issues in corrections are addressed and recommendations are presented. © 1997 Elsevier Science Ltd

INTRODUCTION

Operating a correctional facility within the increasingly complex milieu of late twentieth century constitutional law can be a formidable task for correctional personnel. Among the many job functions correction officers must perform, proper decision making concerning the safety and welfare of the confined is paramount. Correctional personnel must also exercise a high degree of skill in utilizing their authority and discretion when implementing departmental policy and enforcing various aspects of the law. Legal actions against correctional employees frequently arise out of decisions in which correctional personnel have implemented a specific policy change that has restricted services to a prisoner or that has prohibited/curtailed certain behaviors of the prisoner population. Other prisoner litigation may result from allegations of correctional personnel failing to perform their legally assigned duties, performing the duty in a negligent manner, misusing their authority, use of excessive force, or depriving the prisoner of certain constitutional rights.

Prisoners may file lawsuits in both federal and state courts under the Civil Rights Statute Title 42 U.S.C. Section 1983 for deprivation of