

# Is the O.J. Simpson Verdict an Example of Jury Nullification? Jury Verdicts, Legal Concepts, and Jury Performance in a Racially Sensitive Criminal Case

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In criminal cases involving minority defendants, some minority legal scholars argue that despite the overwhelming evidence of guilt, racial minority jurors should possess the moral obligation to acquit "guilty" defendants as a protest against racial discrimination in the criminal justice and court systems. While the rate of racial acquittals is on the rise in criminal courts in large metropolitan jurisdictions, the present analysis shows that in the O.J. Simpson trial involving a number of racial and ethnic minorities, minority jurors are more likely to adhere to the strict application of criminal legal standards — presumed innocence, burden of proof, and reasonable doubt — in their deliberative process.

Our empirical analysis reveals that while the presence of biases in law enforcement raised the "reasonable doubt" and "proof beyond a reasonable doubt" standards among white jurors, none of the three legal standards had statistically significant relations with their determination of the trial outcome. For racial minorities, however, all three legal concepts and racial biases in the criminal justice system show statistically significant impacts on their determination of the Simpson verdict. While there is the greater scrutiny of both presumed innocence and reasonable doubt among racial minority jurors, the concept of the government's burden of proof negatively affected minorities' views in the Simpson acquittal. This suggests that the government's superior positions and prosecutorial resources may be too much to overcome in order to win an acquittal. Thus the burden of proof standard may measure racial minorities' sense of powerlessness in obtaining a fair trial and securing an acquittal. Similarly our findings show that racial minorities who believe there are racial biases and prejudices held and used by law enforcement authorities also feel that O.J. Simpson would be adjudicated guilty of murder, suggesting that the government which relies on evidence collected by discriminatory law enforcement agencies might still be too powerful to enable Simpson to win an acquittal verdict. While advocates for racially based jury nullification reinforce the image of lawlessness of minority jurors in America's criminal courts, the present analysis show that, at least in a highly publicized criminal trial involving a prominent minority defendant, minority jurors show the opposite, suggesting that racial minority jurors are indeed law abiding participants in the administration of justice.

## INTRODUCTION

On October 5, 1995, echoes of the "not guilty" verdict by the O.J. Simpson jury reverberated through the U.S. and the world (Rich, 1995; Wilgroren, 1995). A debate raged over the jury verdict, its effects on race relations, and the future of America's criminal justice system (Chiang, 1995). Legal observers and courtroom commentators saw the Simpson trial as a prime example of

the deep racial rifts that cleave our race-conscious society and contaminate the integrity of our criminal court systems (Carlsen and Wildermuth, 1995). For some, the Simpson verdict reinforced the image of "jury nullification" in which a predominantly African American jury rejected overwhelming evidence of guilt in favor of their own conception of justice ("O.J. Simpson case: A legal aberration," 1995). One legal analyst even declared that African American "defense lawyer Johnnie Cochran had urged the jurors [towards] ... 'jury nullification,' the basic idea being that jurors have the right to refuse to enforce unjust laws or laws that have been unjustly enforced" (Abramson, 1995). Among the defense "Dream Team," intense debates also had raged over the propriety of making the racial issue an integral part of the defense strategy, thus increasing the possibility for racially based jury nullification by the Simpson jury that included nine African Americans, one Hispanic, and two whites (Hubert, 1995).

Some legal scholars argue that in a criminal trial involving "racially charged" accusations and African American defendants, a predominantly African American jury should have the moral obligation to acquit the defendants by disregarding the evidence, however powerful, as a protest against racial injustice and discrimination in the criminal justice system (Butler, 1995a). George Washington Law Professor Paul Butler, for instance, urges African Americans to acquit African American defendants who may be "technically guilty" of nonviolent *malum prohibitum* offenses such as drug possession, and to consider jury nullification for African American defendants charged with nonviolent *malum in se* crimes such as theft or perjury.<sup>1</sup>

Acquittal verdicts are considered to express the anti-democratic nature of jury nullification because they provide racial minorities the power to determine justice in a way that the majority rule does not (Weinstein, 1993). Thus, the endorsement for the predominantly African American jury to engage in racially based jury nullification has become an explosive and sensitive issue in the criminal court system (Butler, 1995b). However, despite the significance of a racially based acquittal and its effects on the integrity of the criminal justice and court systems, little research has been done to examine whether or not the incidence of "apparent" jury nullification cases is an example as well as an outcome of minority jurors' decisions to refuse and ignore the application of law (Simon, 1992).

In highly publicized criminal trials involving unmistakable elements of race and racism, past jury research has failed to show the opposite scenario—that the acquittal by a predominantly minority jury may have reflected their adherence to the strict application of the legal concepts in evaluating evidence such as a presumption of innocence, burden of proof, and reasonable doubt. In other words, rather than disregarding or nullifying the law, acquittal verdicts may reflect the jury's unanimous consensus that the government failed to prove the defendant's guilt beyond a reasonable doubt.

Prior assumptions of jurors and their power to nullify the law reflect that the jury can impact public policy by acquitting criminal defendants where

they feel a conviction may violate public morality, suggesting that the jury is empowered to act as judges of both fact and law (Schefflin, 1972, pp.181-89; Scott, 1989, pp.419-23).

This contrasts with traditional standards that view jury deliberations as limited to judging facts, not law. According to this traditional view of the jury's role, acquittal verdicts are considered to reflect the jury's genuine determination that the state failed to prove a defendant's guilt beyond a reasonable doubt, suggesting that the jury followed the strict and rational applications of the legal principles delineated and described in the judge's instructions, rather than nullifying the law and finding a defendant not guilty.

The main thrust of this paper is to examine the jury's deliberative performance in racially sensitive criminal trials. Part I presents a brief background on some legal concepts of the criminal process during the guilt determining phase of the jury trial — a presumption of innocence, the burden of proof, and the reasonable doubt — and examines past research findings on jurors' comprehension of these legal principles in criminal trials. Part II then presents empirical analyses of these three basic legal concepts and examines the extent of their application by the Simpson jury when examining evidence and rendering a verdict. Part III discusses the role and deliberative performance of the jury in racially "charged" criminal trials that involved racial discrimination by law enforcement authorities and pervasiveness of public scrutiny of racism in the criminal justice system.

#### **PART I: PRESUMPTION OF INNOCENCE, REASONABLE DOUBT, AND BURDEN OF PROOF**

In criminal proceedings, three critical legal standards turn on the presumption of innocence, reasonable doubt, and the burden of proof. The presumption of innocence squarely places on the government the burden of proving a defendant's guilt beyond a reasonable doubt. In the following section, each legal concept is examined and elaborated.

##### **Presumption of Innocence**

The right to a presumption of innocence is basic to our system of justice, and it carries with it the concomitant right to take reasonable steps to ensure that no matter what crime has allegedly been committed, and how strong the evidence may appear to be, the accused is presumed innocent until he/she is adjudicated guilty of the crime in a court of law (Laufer, 1995, p.332).<sup>2</sup>

The U.S. Supreme Court has also made it clear that the presumption of innocence is the fundamental premise of our legal system, reflecting broad societal concerns of justice and fairness (*Estelle v. Williams*, 425 U.S. 501, 503, 1976). Justice Stewart noted in *Kentucky v. Whorton* (441 U.S. 786, 1979) that: "No principle is more firmly established in our system of criminal justice than the presumption of innocence that is accorded to the defendant in

every criminal trial” (ar 790). The presumption of innocence also provides a normative and legal direction to police and prosecuting officials as to how they are to proceed in the disposition of criminal defendants throughout the criminal proceeding (Packer, 1968, pp. 149-152). Similarly, the presumption of innocence has been called a “general principle of our political morality” (Twining, 1990, p.208), “a cornerstone of Anglo-Saxon justice” (Thayer, 1989, p.553), “a touchstone of American criminal jurisprudence” (People v. Layhew, 548 N.E.2d 25, 27 (Ill. App. 1989)), and a “bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law’ ” (Coffin v. United States, 156 U.S. 432, 453, 1895).

The presumption of innocence earns its rhetorical prominence by deriving its meaning and authority from the right to a fair trial and the right to trial by an impartial jury (Laufer, 1995, p.338). In the landmark case of re Winship (397 U.S. 358, 1971), for instance, the Court ruled that the presumption of innocence guards against extra-legal suspicion and unwarranted inference (at 362). In other words, the right to be judged on evidence presented at trial, and not on mere suspicion and inference, is a basic element of the right to an impartial jury which is guaranteed by the Sixth Amendment and the Fourteenth Amendment’s due process and equal protection clauses.<sup>3</sup>

A number of social science studies have also examined jurors’ comprehension of the concept of presumed innocence in both potential and actual trials, showing that the presumption of innocence is one of the most misunderstood concepts of the criminal justice process. For instance, a 1991 National Jury Project survey of potential jurors in various federal district courts revealed that a substantial number of eligible jurors, including 41.6% of those in the Dallas Division of the Northern District of Texas, believed that when the government brings someone to trial, that person is probably guilty of some crime (Bonora and Krauss, 1993, pp.2-12,15). Another 1991 California survey also showed nearly half of potential jurors (48%) did not know that a defendant is presumed innocent, and that both African American or Hispanic eligible jurors reported a lower level of the knowledge about this presumption than white and Asian jurors (Ellers, 1993, p. 2185). Similarly, the 1978 National Center study and the 1992 Massachusetts study showed that only 57% of English speaking respondents in the California survey knew the correct answer regarding this presumption, and the finding coincided with the 62% results of the Massachusetts study. The finding also revealed that correct factual knowledge on the presumption of innocence was more common among past jurors but not among past litigants, indicating that litigants who are the most personally involved with the courts and have the most at stake are not properly informed about the rules and the mechanics of the court process (Ellers, 1993). So too, the 1992 National Law Journal/Lexis poll found that 28% of criminal jurors did not comprehend the presumption of innocence, feeling that a criminal defendant reaching the trial stage was probably guilty (“Many jurors consider deep pockets and ignore presumption of innocence,” 1993).<sup>4</sup>

Two additional California surveys in 1986 and 1995 also substantiate that those who have actually served on jury trials failed to believe in a fair and just disposition of criminal defendants, suggesting that our criminal justice system had been served by those who held that defendants were assumed guilty when brought to trial (Fukurai, 1996a). Past studies have thus substantiated that even after serving as trial jurors, a substantial proportion of jurors were still unable to correctly understand the principles of the presumption of innocence. Current jury research has also shown that African Americans and Hispanic jury eligibles are less likely to be knowledgeable of the premise of presumed innocence than other racial groups (Fukurai et al., 1993).

### **Burden of Proof**

The presumption of innocence places on the government the burden of proving a defendant's guilt beyond a reasonable doubt. According to the reasoning of U.S. courts, the fact that the government bears a greater burden of proof in criminal trials stemmed partially from the position of the state as the plaintiff in criminal actions and the government's hold of a superior position in power, situation and advantage over the defendant (United States v. Shapleigh, 54 F. 126, 129 (8th Cir. 1893)).<sup>5</sup>

In the Simpson and other criminal trials, the burden of proof is thus placed on the prosecution instead of the defendant. In order for the Simpson jury to issue a verdict to convict, then, it was required to reach unanimous consensus during deliberations that the government had proved the defendant's guilt beyond a reasonable doubt.

With respect to social science studies on jurors' knowledge of the meaning of the burden of proof, jury research reveals that while the government bears the burden of persuasion in criminal cases, a large proportion of both potential and actual jurors have failed to understand the legal concept of the burden of proof. A 1985 Illinois study has suggested that, in examining the comprehension of the judge's Illinois Pattern Instructions (IPI) and juror comprehension of which side shoulders the burden of proof in criminal cases, a large proportion of criminal jurors still failed to comprehend the fundamental principle of the burden of proof in a criminal trials, and African Americans were less likely to be familiar with the concept than white jurors (Tiersma, 1995).<sup>6</sup> Two California surveys also examined the public's understanding of the burden of proof rule. A 1986 Survey in Orange County showed that while 41.4% of the general population felt that the defendant must prove his/her innocence, 30.5% of those who actually served in jury trials also felt so (Fukurai, 1996a). A 1995 California Survey in Santa Cruz County also showed that 44.0% of eligible jurors felt that the defendant shoulders the burden of proof in criminal cases (Fukurai, 1996c).

Similarly the U.S. Supreme Court has acknowledged the lack of knowledge on the burden of proof concept, citing a national survey that 37% of the public believes it is a defendant's responsibility to prove his innocence (Carter v.

Kentucky, 450 U.S. 288, 303 n.21, 1981).<sup>7</sup> Other research also has cast doubt on the public's understanding of the burden of proof, showing that over half of those participating in a nationwide random survey felt that a criminal defendant should be required to take the stand and prove his innocence (Gold, 1984, p.190, fn116).

### Reasonable Doubt

The last critical legal concept in criminal proceedings is the meaning of reasonable doubt. While the standard of reasonable doubt does not appear within the text of the Constitution, the Court has stated that the due process guarantees of the Fifth and Fourteenth Amendments "protect the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."<sup>8</sup> In re Winship's enunciation of the right to proof beyond a reasonable doubt, the Court similarly stated that: "The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation" (In re Winship, 397 U.S. 358, 361, 1971). The Winship Court explained that the reasonable doubt standard "is a prime instrument for reducing the risk of convictions resting on factual error" (at 363). Since criminal convictions besmirch the defendant's good name and impose considerable hardship, courts could not allow a conviction to befall an innocent person. To prevent that from happening, the due process clause requires the state to surmount a high burden of proof to secure a conviction (at 363-64).

The Winship Court recognized two characteristics of the criminal process as supporting the standard of constitutional reasonable doubt. The first is the difficulty of defending against a charge of crime, a "disadvantage" that would amount to a denial of "fundamental fairness, if [the defendant] could be adjudicated guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case" (at 363).<sup>9</sup>

The second aspect of the criminal process on which Winship relied is the difference between Type I and Type II errors — erroneous convictions and erroneous acquittals, respectively. In a concurring opinion, Justice Harlan emphasized the connection between the reasonable doubt standard and "a fundamental value determination of our society that it is far worse to convict an innocent man [Type I error] than to let a guilty man go free [Type II error]" (at 372, Harlan, J., concurring). In explaining the importance of the reasonable doubt rule, the Court also declared that: "It is a prime instrument for reducing the risk of convictions resting on factual error," and that "a society that values the good name and freedom of every individual should not condemn a man for commission of a crime where there is a reasonable doubt about his guilt."<sup>10</sup>

On the jurors' knowledge of the proof beyond a reasonable doubt, two separate studies by the London School of Economics and the Chicago Jury Project documented that jurors take the "beyond a reasonable doubt" stan-

ard seriously only until they find out that the defendant is a criminally-prone individual. Those studies concluded that the presumption of innocence only operates for defendants without prior criminal records (Kalven and Zeisel, 1966). The 1995 Santa Cruz survey in California also found that 58.4% of potential jurors understood the basic premise of the reasonable doubt standard, agreeing that "it is better for society to let some guilty people go free than to risk convicting an innocent person" (Fukurai, 1996b).

Past research thus found that even after serving as trial jurors, a substantial proportion of them were unable to correctly understand the principles of the presumption of innocence, the burden of proof, and reasonable doubt. Even after the trial, fifty percent of instructed jurors did not understand that the defendant did not have to present evidence of innocence. Average comprehension levels of trial instructions were 51% among 1,000 serving jurors in attempted murder cases (Strawn and Buchanan, 1977). Thus, prospective jurors enter the courtroom with less familiarity, potentially problematic attitudes and opinions concerning the criminal justice system and their role as jurors. Those attitudes may have significant effects on jurors' abilities to comprehend legal concepts, evaluate evidence, and determine the outcome of criminal trials.

### HYPOTHESES

Although studies provide ample evidence substantiating the relative lack of general knowledge of the legal concepts in criminal proceedings, little empirical research examined the general understanding of the legal standards in criminal trials involving the aspect of pervasive publicity, intense public scrutiny, and the elements of racism. This article attempts to address the relationship between such understanding involving race/ethnicity and the knowledge of legal concepts in the high profile Simpson trial. The general discussion of the relationship between potential verdicts reached by racial groups and their knowledge of legal standards and conception of criminal trials suggest a number of testable propositions.

First, on the basis of the discussion of the legal standards in criminal trials, evidence of racial discrimination by law enforcement authorities might be expected to exert a significant effect on potential jurors' assessments of legal standards, prosecutorial evidence, and the potential outcome of a trial. While past studies have shown that racial minorities are less likely to understand the fundamental principles of the criminal process, evidence of racial biases is more likely to force racial minorities to apply greater scrutiny to the legal concepts of a presumption of innocence, a reasonable doubt, and the burden of proof in assessing prosecutorial evidence and determining the potential outcome of the criminal trial.

Second, since perceived racial biases of the criminal justice system may well influence criminal juries in their evaluation of both reliability and viability of evidence presented in court, the greater scrutiny of these three legal concepts, in fact, significantly influenced potential jurors' perceptions in the

Simpson verdict. Specifically, potential jurors who perceived greater prejudice and discrimination in the criminal system were more likely to adhere to the precepts of a presumption of innocence, the government's burden of proof, and the stricter application of reasonable doubt as distinguished from those who otherwise perceived less inequities and discrimination in law enforcement.

Third, in highly publicized and celebrated trials involving minority defendants and unmistakable elements of race and racism, potential jurors are more likely to adhere to the legal rules impacting the criminal process than to ignore applications of legal standards in acquitting racial minority defendants. In other words, the jury's role as a fact-finder is enhanced, and the incidence of jury nullification is actually reduced in highly publicized and "racially charged" criminal trials involving racial minority defendants.

The last proposition is related to the previous hypothesis in that (the present authors argue) in a highly publicized criminal case involving a minority defendant, minority jurors are more likely to show greater sensitivities to their perception of the societal consequence of their verdict. Specifically, the jury's fact-finding role may be re-enforced by racial minority jurors, suggesting that the popular and widely accepted perception of jury nullification and racial acquittals by minority jurors may be an anomaly in a criminal case that draw high levels of media attention and public scrutiny. The high visibility of a trial, despite evidence of racism on the part of the government, may even heighten minority jurors' effort to "stick" to legal doctrine and concepts of the criminal process in their evaluation of evidence in the deliberative process, so that the popular image of minorities' engagement in jury nullification in criminal trials is questionable.

The analytic model of the Simpson verdict is summarized in a schematic diagram shown in Figure 1. Four basic components of exogenous factors in the criminal justice and court process are illustrated: (1) criminal justice biases, (2) a presumption of innocence, (3) burden of proof, and (4) reasonable doubt. The last three factors constitute the basic legal concepts in the criminal process and they are influenced by individual perceptions of racial biases by law enforcement authorities. This article contends that these four structural factors significantly influenced potential jurors' determination of the possible outcome of the Simpson trial.

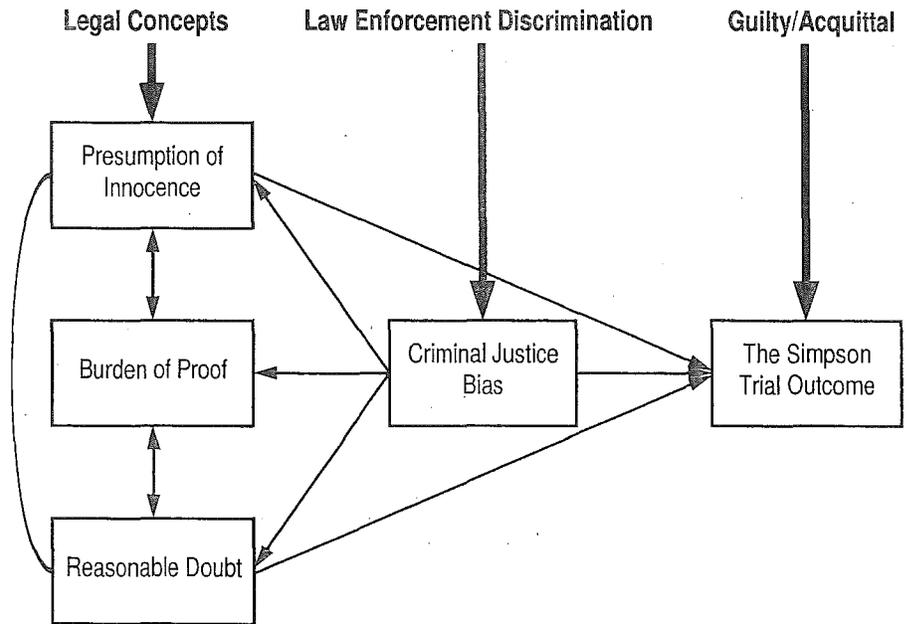
## PART II: RESEARCH METHODS

### Sample:

In the spring of 1995, a telephone survey was conducted to examine the public's perception of the criminal justice system and criminal jury proceedings. The research site was Santa Cruz County, California.<sup>11</sup> Modern sampling techniques (random digit dialing, or RDD) were employed to maximize the representativeness of the sample of adult respondents. The community survey included a number of questions and attitudinal measures concerning the

criminal justice system, qualifications for jury participation, and the probable outcome of the Simpson trial.<sup>12</sup>

**FIGURE 1: THE EMPIRICAL MODEL OF LEGAL CONCEPTS AND LAW ENFORCEMENT DISCRIMINATION ON THE SIMPSON TRIAL OUTCOME**



The survey differed from others in the degree to which we attempted to employ more elaborate questions concerning the fairness and legitimacy of jury proceedings, jury trials, and jury verdicts, as well as to explain to respondents the overall significance of the controversy over the Simpson trial and its effects on people's perceptions on the issue of crime and justice. Thus, within the limitations imposed by survey research methodology, we sought to have our respondents answer many of the race-related questions in the general legal context that they might be posed as jurors in court. A total of 327 respondents were contacted and their responses were carefully coded, computerized, and analyzed.

**Analytic Methods:**

In assessing our analytic model, we take advantage of the recent development of covariance structures and LISREL maximum-likelihood estimations to examine the overall goodness-of-fit test of the jury deliberation model

(Joreskog and Sorbom, 1985). The likelihood-ratio, chi-square statistic, and the likelihood-ratio indices, delta and rho, are employed in comparing fits in order to control for sample size (Bentler and Bonett, 1980; Bollen, 1989: 271-276). While failure to reject the null hypothesis may be taken as an indication that the model is consistent with the data, it is important to bear in mind that alternative models may also be consistent with the data (Fukurai et al., 1991; Joreskog and Sorbom, 1985). Moreover, because the chi-square test is affected by sample size, it follows that (1) given a sufficiently large sample, an overidentified model may be rejected even when it fits the data well; and (2) when the sample size is small, one may fail to reject the null hypothesis even when the model fits the data poorly (Bollen, 1989). Therefore, a general null model based on modified independence among variables is also proposed to provide an additional reference point for the evaluation of covariance structure models.[13]

### **Measurements:**

A total of ten measurements are analyzed to examine the relationship among criminal justice biases, three criminal justice assumptions, and the final outcome of the Simpson trial. All variables are measured in a four point Likert scale, ranging from "strongly agree" to "strongly disagree."<sup>14</sup> The following three questions were then used to obtain the public's perceptions on the fairness of the law enforcement agency. Those questions included: (1) "people living in poor neighborhoods are more likely to receive bad treatment by police officers than people living in well-off neighborhoods;" (2) "people of color are more likely to be harassed by police officers than white people;" and (3) "police officers sometimes break the law." The first question is designed to address questions on the potential bias of the law enforcement agency on the basis of social class. The second question focuses on racial biases, especially selective law enforcement based on racial backgrounds of criminal suspects or defendants. The third question measures the public's perception on whether or not police officers are strict enforcers of the law, examining possible biases and discrimination by law enforcement authorities.

A total of four questions are designed to obtain information on the public's perceptions on the three basic assumptions of our criminal justice process — a presumption of innocence, a burden of proof, and a reasonable doubt. The measurements of the presumption of innocence include the following two questions: (1) "if the prosecution goes through the trouble of bringing someone to trial, the person is probably guilty," and (2) "a person who has criminal record and is accused of a serious crime is probably guilty." The first question examines potential jurors' understanding of whether the presentation of criminal charges automatically leads to the presupposition of defendant's guilt. The second question is designed to measure potential effects of the accused's prior criminal records on the presumption of innocence.

The burden of proof is measured by the question: "regardless of what the law says, a defendant in a criminal trial should be required to prove his/her innocence." In our criminal justice system, the burden of proof rests on the prosecution or the state, not on the defendant. Thus, this question is designed to measure respondents' knowledge and awareness of who shoulders the burden of proof in our criminal justice proceedings.

The reasonable doubt standard is also measured by the question: "it is better for society to let some guilty people go free than to risk convicting an innocent person." In order to deliberate a guilty verdict in a criminal trial, the jury must consider whether the defendant was proven guilty beyond a reasonable doubt, suggesting that a verdict of conviction is legally and intrinsically separated from jurors' belief on whether the defendant actually perpetrated alleged crimes. In the Simpson case, the jury's belief or presupposition on whether Simpson murdered his ex-wife and her friend has little bearing on their legal commitment to decide whether his guilt was proven beyond the reasonable doubt. If the government or the prosecution fails to convince the jury of Simpson's guilt beyond the reasonable doubt, the jury is legally mandated to issue the acquittal verdict. The last question, "O.J. Simpson is guilty of murder," then analyzes people's perceptions on the potential outcome of the Simpson trial. The descriptive statistics of all structural variables and measurements in the empirical model are shown in Table 1.

## RESULTS

The present analysis used covariance structural methods to examine the relationship among structural determinants of the Simpson verdict. Table 2 shows the empirical result of our findings. The first three columns in the table show the impact of criminal justice biases on both criminal legal concepts and the Simpson verdict for three different groups: (1) a total population; (2) white potential jurors; and (3) racial and ethnic minority jurors (i.e., African Americans and Hispanics). The fourth through ninth columns indicate the impact of the three legal concepts on the Simpson verdict for three different groups.

### *Criminal Justice Biases and Three Legal Concepts*

The analyses of the general population show that the belief of discriminatory criminal law enforcement leads to stricter applications of the three basic assumptions of our criminal justice process (-.143, -.010, and .319 for a presumption of innocence, a burden of proof, and a reasonable doubt, respectively). Empirical analyses also show racially different patterns of adherence to criminal justice assumptions. For instance, for racial minority jurors, the perception of racial discrimination by law enforcement authorities leads to higher scrutiny of a presumption of innocence standard (-.228 and -.512 for whites and minorities), suggesting that in criminal cases involving racial biases by law enforcement authorities, racial minority jurors are less likely to

TABLE 1. MEASURES OF VARIABLES<sup>1</sup> AND DESCRIPTIVE STATISTICS

Variable	TOTAL SAMPLE <sup>2</sup>				WHITE RESPONDENTS <sup>3</sup>				MINORITY (Black/Hispanic) <sup>4</sup>			
	Mean	SD <sup>5</sup>	Skewness	Kurtosis	Mean	SD	Skewness	Kurtosis	Mean	SD	Skewness	Kurtosis
<b>LEGAL CONCEPTS</b>												
<u>Presumption of Innocence</u>												
If the prosecution goes through <sup>6</sup>	3.16	0.89	-0.80	-0.26	3.22	0.86	-0.89	-0.03	2.72	1.07	-0.28	-1.14
A person who has a criminal record <sup>7</sup>	3.14	0.83	-0.73	-0.08	3.23	0.80	-0.84	-0.16	2.88	0.91	-0.51	-0.37
<u>Burden of Proof</u>												
Regardless of what the law says <sup>8</sup>	2.72	1.20	-0.25	-1.51	2.84	1.19	-0.41	-1.40	2.02	1.13	0.69	-0.95
<u>Reasonable Doubt</u>												
It is better for society <sup>9</sup>	2.35	1.09	0.23	-1.24	2.31	1.07	0.27	-1.17	2.60	1.16	-0.11	-1.44
<b>LAW ENFORCEMENT DISCRIMINATION</b>												
People in poor neighborhoods <sup>10</sup>	1.83	0.87	0.99	0.44	1.87	0.86	0.93	0.40	1.68	0.96	1.32	0.77
People of color are more likely <sup>11</sup>	1.92	0.92	0.84	-0.06	1.92	0.90	0.86	0.10	1.81	0.89	0.67	-0.67
Police officers sometimes <sup>12</sup>	1.39	0.59	1.68	3.79	1.39	0.57	1.50	3.26	1.47	0.82	1.88	3.06
<b>TRIAL OUTCOME</b>												
O.J. Simpson is guilty of murder	1.99	1.13	0.76	-0.86	1.92	1.09	0.91	-0.52	2.08	1.21	0.62	-1.22

1: All variables are measured in a four-item likert scale: (1) strongly agree; (2) somewhat agree; (3) somewhat disagree; (4) strongly disagree.

2: n=327.

3: n=263.

4: n=38.

5: Standard deviation.

6: "If the prosecution goes through the trouble of bringing someone to trial, the person is probably guilty."

7: "A person who has a criminal record and is accused of a serious crime is probably guilty."

8: "Regardless of what the law says, a defendant in a criminal trial should be required to prove his/her innocence."

9: "It is better for society to let some guilty people go free than to risk convicting an innocent person."

10: "People living in poor neighborhoods are more likely to receive bad treatment by police officers than people living in well-off neighborhoods."

11: "People of color are more likely to be harassed by police officers than white people."

12: "Police officers sometimes break the law."

assume defendants' guilt regardless of the defendants' possible prior records or the severity of charges filed against the accused.

White respondents also show that racial discrimination tends to elevate their scrutiny of two criminal justice standards — the presumption of innocence (-.228) and the reasonable doubt rule (.417). While the effect of law enforcement discrimination on the presumption of innocence is not as strong as the one among racial minorities, the finding suggests that white jurors are more likely to believe that the defendant is presumed innocent in criminal proceedings and that the jury should not convict a defendant where there is a reasonable doubt about his or her guilt. Thus, based on the racial makeup of potential jurors, empirical analyses define racially different patterns of perceptions of biases in law enforcement and the three basic assumptions about criminal justice. Specifically, perceived discriminatory law enforcement tends to raise and strengthen the belief in the presumption of innocence among racial minority jurors, while racial biases by law enforcement authorities lead white jurors to apply stricter scrutiny of the standards of presumed innocence and reasonable doubt in criminal trials.

### *The Simpson Verdict*

With respect to the effect of discriminatory law enforcement and criminal justice assumptions on the potential outcome of the Simpson trial, the responses of white jurors and racial minorities show very different results. For racial minorities, given their strong negative perceptions of biases and discrimination in law enforcement, all three criminal justice assumptions show statistically significant effects on the assessment of the Simpson verdict (.489, -.435, and -.422 for the presumption of innocence, the burden of proof, and the reasonable doubt, respectively). This finding also suggests that in criminal trials involving racial biases by law enforcement authorities, racial minority jurors are more likely to raise all three criminal process legal standards in assessing and determining the outcome of the Simpson trial.

For white jurors, on the other hand, none of the same factors indicate a statistically significant impact on the Simpson verdict, suggesting that white jurors' understandings of three criminal process standards as well as their awareness of racial biases in the criminal justice system fail to explain their determination of a jury verdict. It may be possible that some extraneous factors may have been left out from the proposed empirical model because white jurors' views of the Simpson verdict have not depended upon racially biased criminal prosecution and/or their understandings of the legal concepts impacting the criminal process.

For racial minority jurors, the analyses suggest some unexpected findings. For instance, racial minority members with accurate knowledge concerning the government's burden of proof in the criminal process are more likely to feel that Simpson would be found guilty as charged (-.435).[15] Conversely, this finding also suggests that minority jurors, who believe that individual criminal

TABLE 2: COVARIANCE STRUCTURE — STRUCTURAL MODELS:  
EXOGENOUS EFFECTS ON ENDOGENOUS FACTORS

Variables	CRIMINAL JUSTICE BIAS			PRESUMPTION OF INNOCENCE			BURDEN OF PROOF			REASONABLE DOUBT		
	Coeff <sup>1</sup>	Standard error	Critical <sup>2</sup> ratio	Coeff.	Standard error	Critical ratio	Coeff.	Standard error	Critical ratio	Coeff.	Standard error	Critical ratio
<b>TOTAL POPULATION<sup>3</sup></b>												
Presumption of Innocence	-.143	.087	-1.642	--	--	--	--	--	--	--	--	--
Burden of Proof	-.010	.065	-.152	--	--	--	--	--	--	--	--	--
Reasonable Doubt	.319	.069	4.609****	--	--	--	--	--	--	--	--	--
Simpson's Guilt	.027	.072	.373	-.059	.070	-.840	-.015	.061	-.236	-.119	.062	-1.905*
<b>WHITES<sup>4</sup></b>												
Presumption of Innocence	-.228	.118	-1.923*	--	--	--	--	--	--	--	--	--
Burden of Proof	-.031	.072	-.427	--	--	--	--	--	--	--	--	--
Reasonable Doubt	.417	.079	5.255****	--	--	--	--	--	--	--	--	--
Simpson's Guilt	-.092	.085	-1.070	.036	.082	.434	.033	.071	.460	-.048	.073	-.657
<b>RACIAL MINORITIES<sup>5</sup></b>												
Presumption of Innocence	-.489	.201	-2.431**	--	--	--	--	--	--	--	--	--
Burden of Proof	.042	.193	.217	--	--	--	--	--	--	--	--	--
Reasonable Doubt	-.089	.190	-.467	--	--	--	--	--	--	--	--	--
Simpson's Guilt	.593	.249	2.379**	.422	.223	1.894*	-.435	.182	-2.379**	-.422	.180	-2.344**

1: Standardized coefficients.

2: Significance levels are based on a two tailed test.

3:  $\Delta = .895$ ,  $\rho = .851$ ,  $\chi^2 = 32.660$  for 13 degrees of freedom.

4:  $\Delta = .878$ ,  $\rho = .827$ ,  $\chi^2 = 31.281$  for 13 degrees of freedom.

5:  $\Delta = .833$ ,  $\rho = .691$ ,  $\chi^2 = 15.298$  for 9 degrees of freedom (4 residual corrections are freed).

\*  $p < .10$  \*\*  $p < .05$  \*\*\*  $p < .01$  \*\*\*\*  $p < .001$

defendants have to prove their innocence in a court of law, tend to agree that Simpson would not be found guilty.

The analysis shows that racial minorities are more likely than white jurors to feel that, under normative criminal justice proceedings where the government shoulders the burden of proof, minority defendants are likely to be found guilty. At the same time, racial minorities also believe that if Simpson bore the burden of proving his innocence, he may have succeeded in obtaining a "not guilty" verdict.

Empirical analyses also show that racial minorities who hold that the criminal justice system discriminates against racial minorities are more likely to feel that Simpson would be found guilty than those who hold to less racial biases in the criminal justice system (.593 for a coefficient,  $p < .0001$ ). This finding may suggest that racial minorities tend to feel that the government's superior position in criminal prosecution and its reliance on evidence collected by racially biased law enforcement authorities may all lead towards "proving" Simpson's archetypal guilt, and that minority jurors are more likely to share the perception of structural disadvantages in criminal justice proceedings and criminal court systems.

### PART III: DISCUSSIONS

Present analyses show that when the model of the Simpson verdict incorporates the jurors' perceptions on criminal justice biases, minority jurors who feel discriminatory law enforcement tend to adhere to the presumption of innocence much stronger than whites, showing that any discriminatory and racist element of criminal justice enforcement greatly affects minorities' presumption of innocence standard in determining the outcome of criminal trials.

While criminal justice biases also forced white jurors to raise a defendant's presumed innocence and to require proof beyond reasonable doubt, none of the three basic precepts impacting criminal processes shows a statistically significant effect on the determination of the Simpson verdict among white jurors. For racial minorities, on the other hand, all four factors — racial discrimination in law enforcement as well as the three legal concepts — show statistically significant influence on the Simpson verdict. This suggests that in a criminally sensitive, highly scrutinized trial, racial minorities are more likely than white jurors to elevate their understanding of the standards of these legal concepts in determining the trial outcome.

There are some mixed and unexpected findings, however. For instance, racial minorities who believe that the government shoulders the burden of proof are more likely to assume that Simpson would be found guilty. Although racial discrimination by law enforcement authorities fuels minorities' greater scrutiny of the presumption of innocence, a correct understanding of the burden of proof only points to Simpson's guilt. The correct comprehension of the government's burden of proof and the presumption of Simpson's

guilt may be explained by racial minorities' views on racial biases and discrimination in the criminal justice system, and that racial minorities are more likely to be found guilty under the normative criminal justice proceedings.

Another important finding is that racial minorities who hold that there is racial bias in the criminal justice system are more likely to believe that Simpson would be found guilty. Because of the government's superior position and prosecutorial advantages in criminal cases and the state's reliance on evidence supplied by law enforcement authorities that may be racially biased, racial minorities who hold that racial discrimination exists in the criminal justice system are more likely to believe that Simpson would be adjudicated guilty.

Indeed, the perception of African Americans that the criminal justice discriminates against them is pervasive and deep (Fukurai et al., 1993). Factors such as the disproportionate number of African American males on death row for murdering white victims supports this perception. Since 1977, for instance, sixty-three African Americans have been executed for murdering white victims, while only one white person has been executed for murdering an African American (Fukurai et al., 1993).

Additionally, the appearance of justice which is more likely to prevail when the victim is white further exacerbates the minorities' distrust and lack of faith in the criminal justice and criminal court systems. For instance, in Los Angeles where the Simpson trial took place, the Los Angeles Police Department (LAPD) and the District Attorney's office have been accused of racial discrimination, such as excessive use of force in arresting racial minority members, discriminatory uses of police dogs against minority suspects, and incompetency of court-appointed defense counsel (Riordan, 1994, p.708).[16] In the aftermath of the Rodney King incident, moreover, the Christopher Commission in 1991 documented evidence of brutality, racism, and mismanagement inside the LAPD (*Report of the Independent Commission*, 1991). The LAPD has been also accused of Ku Klux Klan activities against minority police officers within the department (Zinzun, 1992). This is the basis of such negative perceptions that have been widely shared and accepted by the minority communities in Los Angeles (Chow, 1992).[17] In assessing the potential outcome of the Simpson trial in Los Angeles, then, minority jurors tended to feel that normative criminal justice processes were likely to find minority defendants guilty (-.435,  $p < .05$ ). Evidence of possible biases and discrimination by the law enforcement agency might also lead racial minority jurors to elevate their understanding of the standards of presumed innocence (-.422,  $p < .05$ ) and reasonable doubt in their hypothetical deliberation of the Simpson verdict (-.435,  $p < .05$ ).

Past research demonstrates that racial prejudice is not limited to jurors alone. Law enforcement officials, prosecutors, judges, and defense lawyers may have racial biases which influence their attitudes towards crimes and those accused, as well as their exercise of discretion in the criminal process (Lipton, 1983; Johnson, 1985; "Presumed innocent," 1992; Butler, 1995a; Mello, 1995). In a typical criminal case, for example, racial minorities are

disproportionately represented by the public defenders. A large proportion of racial minority defendants face a disadvantage in a prosecution by being represented by court-appointed lawyers who often lack the knowledge, skill, resources, sensitivity and inclination to handle the case (Nunn, 1994). Those lawyers also may fail to recognize and challenge discrimination against racial minorities in the composition of jury pools or the role that race plays in jury decision making processes (Klein, 1986; Nunn, 1995). Further, for large proportions of racial minority defendants, the perception of a fair trial and their inferior position relative to the prosecution's is further exacerbated by the inadequacy of the counsel's preparation, the lack of their competency, and continued underfunding of the public defense system (Marcus, 1994, p.219-220).[18]

The sharp distinction of the Simpson trial from other typical criminal cases is that the Simpson trial challenged the widely-shared legal assumption of the government's leverage and supremacy of power in relation to that of criminal defendants. Since Simpson's wealth and fame has enabled him to retain perhaps the best private, criminal justice defense counsel in the country, some legal commentator suggested that the balance of power was shifted from the government to the defense counsel (Deutsch, 1995). Corroborating the views of racial minorities — that the criminal defendant must prove his innocence — were feeling that Simpson's defense counsel might be able to establish his innocence and Simpson would not be found guilty.

For racial minority jurors who believe the presence of racial biases and discrimination in the criminal justice system, the present analyses demonstrate that Simpson's acquittal was technically attainable through the following three methods: (1) raising the jurors' understanding of presumed innocence and the proof beyond a reasonable doubt; (2) mobilizing the defendant's superior resource in assembling competent and skillful defense counsel, which, regardless of the defendant's factual guilt or innocence, could best present the interest of the accused; and (3) raising the possibility for jury nullification by ignoring the law and acquitting the defendant.

Empirical analyses show that one important factor that optimizes the jury's greater scrutiny of presumed innocence and reasonable doubt in the guilt determination phase of criminal trials is the showing of possible racial biases and prejudice by the law enforcement agency in its investigative capacity during the criminal process. The current survey was taken prior to Mark Furman's testimony in the Simpson trial. If the survey had been taken after the Furman testimony, potential jurors would likely have exerted even greater levels of scrutiny of both presumed innocence and reasonable doubt in determining Simpson's acquittal. Our analyses thus demonstrated that Simpson's acquittal was not by the jury's decision to ignore the application of law. Rather, the trial outcome was a byproduct of the jury's greater adherence to the rational and greater application of scrutiny on two of three basic precepts of our criminal process — a presumption of innocence and proof beyond a reasonable doubt.

Our findings also suggest that racism in many urban police departments, perhaps together with routine police perjury, will lead those who experience such treatment firsthand to readily develop the greater understanding of the reasonable doubt and presumption of innocence. Indeed, the prosecutors in this case linked themselves publicly to two very doubtful, and in the end harmful, police witnesses, ultimately tainting the entire prosecution in the eyes of a predominantly minority jury composed mainly of those scorned by their own police (Silvergate, 1995).

Jury nullification thus was not what the jury decided when it voted to acquit Simpson. Advocates for racially based jury nullification argue that racial minorities should hold the moral obligation to acquit minority defendants by disregarding evidence and that such racial acquittals represent an important public protest against racial inequality in the criminal justice and court systems. Our empirical findings suggest, however, that racial minorities are more likely to be aware of discriminatory structures of law enforcement and criminal justice mechanism. That awareness then strengthens their belief in the defendants' presumed innocence regardless of the accused's criminal records or the severity of criminal charges.

Moreover, our empirical analyses suggest that out of three legal concepts impacting the criminal process, the traditional interpretation of the burden of proof rule may not apply to racial minority jurors. The government's burden of proof is seen as part of oppressive and discriminatory structures of criminal justice and court systems that racial and ethnic minorities feel that they have to overcome. While racial biases in the criminal justice system lead to a greater scrutiny of both presumed innocence and proof beyond a reasonable doubt in determining trial outcomes, the government's burden of proof leads racial minorities to feel that a minority defendant may not receive a fair trial because of racial biases in the criminal justice system, and that the minority defendant must prove his or her innocence in order to be adjudicated not guilty in a court of law.

Thus in its extreme form, racial minorities who hold that a minority defendant may not receive a fair trial regardless of the defendant's factual innocence or guilt, are more likely to endorse racially based jury nullification — the outright acquittal of minority defendants by disregarding the law, however powerful, as a racially orchestrated protest against racial discrimination in criminal justice systems.

Indeed, the acquittals by predominantly racial minority juries are on the rise. For instance, in the South Bronx where the jury pool is 80% African American or Hispanic, 47.6% of African American defendants and 37.6% of Hispanic defendants in felony cases were acquitted, compared with the national average of 17% (Velmen, 1996). In other predominantly minority cities, the overall acquittal rates were higher: 28.7% in Washington, D.C., for felony defendants in 1994, and 30% in Wayne County, Michigan which includes Detroit, in 1993 (Weinstein, 1995).

Racial division still permeates the public perception on the Simpson verdict. For instance, a *Los Angeles Times* poll immediately after the verdict found that approximately 3 out of 4 respondents stated that race was the single most important influence in the trial and the jury verdict. Similarly, a *CBS News* poll had 59% of white respondents stating that the acquittal was wrong and 87% of African Americans saying that it was a correct verdict (Cockburn, 1995; Cooper, 1995). The post-verdict analyses of three African American Simpson jurors show that some jurors felt that the defendant might have committed the murder of his ex-wife, Nicole, and Ronald Goldman, thus being guilty of the crime (Carlsen and Wildermuth, 1995). Nevertheless, they felt that the government had failed to prove Simpson's guilt beyond the reasonable doubt necessary to secure a guilty verdict.

### CONCLUSIONS

In criminal cases involving minority defendants, the advocates for jury nullification argue that despite the overwhelming evidence of guilt, racial minority jurors should possess the moral obligation to acquit "guilty" defendants as a protest against racial discrimination in the criminal justice and court systems. While the rate of racial acquittals is on the rise in criminal courts in large metropolitan jurisdictions, the present analysis shows that in a highly publicized criminal trial involving a member of racial and ethnic minorities, minority jurors are more likely to adhere to the strict application of criminal legal standards in their deliberative process.

Empirical findings also suggest that while the presence of biases in the law enforcement raised the "reasonable doubt" and "proof beyond a reasonable doubt" standards among white jurors, none of the three legal standards had statistically significant relations with their determination of the trial outcome. For racial minorities, however, all three legal concepts and racial biases in the criminal justice system show statistically significant impacts on their determination of the Simpson verdict. While there is the greater scrutiny of both presumed innocence and reasonable doubt among racial minority jurors, the concept of the government's burden of proof negatively affected minorities' views in the Simpson acquittal. This suggests that the government's superior positions and prosecutorial resources may be too much to overcome in order to win an acquittal. Thus, the burden of proof standard may measure racial minorities' sense of powerlessness in obtaining a fair trial and securing an acquittal. Similarly our findings show that racial minorities who believe there are racial biases and prejudices held and used by law enforcement authorities also feel that O.J. Simpson would be adjudicated guilty of murder, suggesting that the government which relies on evidence collected by discriminatory law enforcement agencies might still be too powerful to enable Simpson to win an acquittal verdict.

While advocates for racially based jury nullification reinforce the image of lawlessness of minority jurors in America's criminal courts, the present analy-

sis show that, at least in a highly publicized criminal trial involving a prominent minority defendant, minority jurors show the opposite, suggesting that racial minority jurors are indeed law abiding participants in the administration of justice.

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### NOTES

1. Butler (1995a) argues: "Considering the costs of law enforcement to the black community and the failure of white lawmakers to devise significant nonincarcerative responses to black antisocial conduct, it is the moral responsibility of black jurors to emancipate some guilty black outlaws" (p.679). King (1996) also provides interesting elaborations of different views of jury nullification between two of the most prominent legal scholars on this subject, Jeffrey Abramson and Paul Butler.

2. The presumption of innocence is, then, a rule of evidence that allocates the burden of proof to the prosecutor or the government and serves as a foundation for the procedural requirement of proof beyond a reasonable doubt

3. The Sixth Amendment right to an impartial jury was made applicable to the states through the due process clause of the Fourteenth Amendment. Baldwin v. New York (399 U.S. 66, 1970); Duncan v. Louisiana (391 U.S. 145, 1968).

One determining factor which jeopardizes the accused's right to an impartial jury and the right to the presumption of innocence is potential jurors' exposure to pervasive pretrial publicity (Fukurai, 1996b). For instance, the Court in Scott v. Ohio (480 U.S. 923, 1987) stated that "the trial judge plunged ahead and petitioner was tried by a jury exposed to comments that overwhelmed the presumption of innocence" (id, 925). See also Irwin v. Dowd (366 U.S. 717, 1961); Murphy v. Florida (421 U.S. 794, 1975). Similarly, The Court, however, has allowed potential jurors to sit in both capital and non-capital cases after exposure to pretrial publicity that clearly affected the presumption of innocence. For instance, the Court in Patton v. Yount (467 U.S. 1025, 1029, 1984) held that although more than 90% of potential jurors in a jury pool had been exposed to intense media publicity regarding the case and 77% of them were predisposed to a certain opinion about the accused's guilty, a trial court's findings of impartiality would not be overturned unless there are "manifest error." Impartiality thus requires that the jury represents a fair-cross section of the community and that the jury bases its verdict on evidence at trial.

4. Public survey shows that the understanding of presumed innocence may have been influenced by pervasiveness of media scrutiny in the Simpson trial. For instance, the 1994 Time/CNN pre-trial poll indicated that the pervasive media scrutiny of the Simpson case led 69% of African Americans to believe that Simpson would not receive a fair trial because the media's general tone already assumed Simpson's guilt; only 37% of whites felt the same way. Similarly the finding showed that only 24% of African Americans thought that all races were treated in the same way by the criminal justice system, with 50% of whites felt the same way. The Gallup poll commissioned by the American Bar Association in October, 1994 that 80% of survey respondents believe that celebrities receive favorable treatment in the courts (DeBenedictis, 1994). The 1995 January pool conducted by the Associated Press found that 57% of respondents said that the criminal charges

were true or probably true, while only 18% said that they were not true or probably not true (Carlsen, 1995).

After the trial started, the March 1995 NBC-News-Wall Street Journal pool found that approximately half of whites thought Simpson was guilty, compared with 7% of African Americans; 54% of African Americans but only 16% of whites considered Simpson innocent (Blum, 1995). The 1995 May California Survey found that 75% felt that Simpson is guilty; 78% of white respondents believed Simpson's guilt, while 50% of African Americans felt so, up from findings of its previous survey. Another Harris poll found that 61% of white respondents thought that the defendant was guilty, while 68% of African Americans said "not guilty." While results for whites were virtually unchanged from the 1994 Gallup poll, only 8% of African Americans said that the defendant was guilty, down from 16% in the earlier poll (Noble, 1995). Another poll finding also indicated that the pervasive media publicity of the Simpson trial caused the public interest in serving on juries to drop more than 50% since the Simpson trial began (Curriden, 1995). The pervasive public scrutiny and intense media coverage of the trial thus exerted significant influence on potential jurors' perceptions on the possibility for a fair trial and their assessment of the presumption of innocence.

5. One of exceptions for the burden of proof on the part of the government is the case of affirmative defense in which the defendant chose to bear the burden of proof in proving facts. See Dripps (1987) for greater discussions of the burden of proof in affirmative defense cases.

6. In 1990, Zeisel studied whether Illinois' pattern jury instructions for capital cases and the Illinois Death Penalty Act provide Illinois capital jurors with constitutionally adequate guidance in determining whether to sentence a capital defendant to life imprisonment or death by legal injection.

7. The Court referred to a study conducted for the National Center for State Courts.

8. In *re Winship* (397 U.S. 358, 364, 1970). As a reflection of the presumption of innocence, the reasonable doubt rule is assessed and expressed in the guilt determination phase of criminal trials. Because society and the Court seemed to place greater values on freeing the guilty over convicting the blameless, past social scientific studies and constitutional analyses had focused on the jury instruction and the interpretation of the reasonable doubt standard. In California courts, for instance, the reasonable doubt is defined in the California Jury Instruction as follows:

It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, or the truth of the charge (Section 2.90 in *California Jury Instructions: Criminal* (CALJIC) (5th edition), 1988, St. Paul, Minn.: West Publishing)

9. Quoting Samuel W., 24 N.Y.2d at 205, 247 N.E.2d at 259, 299 N.Y.S.2d at 422 (Fuld, C.J., dissenting)).

10. In *re Winship* (397 U.S. 358, 363-64, 1970). For greater discussions of the jury instruction of reasonable doubt and its definitions, see "Note: Reasonable doubt: An argument against definition" (1995) (arguing that the jury instruction on the meaning of the reasonable doubt should not be given by the judge. Rather, the jury is left uninstructed because it is best suited to determine its meaning as a representative body of the community).

Since the issue of jury instructions is not the main focus of this study, it is sufficient to note that the U.S. Supreme Court considered the definition of the concept of "beyond a reasonable doubt," in the consolidated cases of *Victor v. Nebraska* and *Scandoval v. California*, stating that the jury instructions on reasonable doubt constitutional in both cases, but expressed dissatisfaction with ambiguous definitions of the requisite standard of proof. Similar to the presumption of innocence debates, considerable controversies persisted over whether or not courts should or must attempt to define reasonable doubt in their jury instruction.

11. Santa Cruz County is located south of San Clara County and north of Monterey County, California. The 1990 U.S. Census information shows that Santa Cruz County has the adult population of 175,030 (78.0% whites, 0.9% African Americans, 0.6% native Americans, 3.4% Asian and Pacific islanders, 17.0% Hispanics, and 0.1% other racial and ethnic groups).

12. The desired sample size was estimated in the following fashion. In a local poll, we wished to estimate the similar proportion of minorities to be represented in the sample. The 1990 Census information showed that the percentage of white adults in the county was 78%, suggesting that 22% of adult populations in the county were racial minorities. With a 95% confidence interval with error margins of plus or minus 5%, we inserted the following parameters into the equation to estimate the sample size,  $n$ , necessary to achieve the desired confidence interval.

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

where  $p = .22$  and  $q = 1 - p = .78$ ;  $E = .05$  (error margins)

The estimate sample size was 264. After completing standardized procedures to insure interval validity of the survey, we obtained a total of 327 completed interviews, exceeding the required minimum sample size in order to insure the 90% confidence interval and error margins of 5%. For greater discussions on the estimation of sample size, see Ott et al., 1992.

13. Two indices, delta and rho, are calculated in the following equations.

$$\Delta \text{ (Delta)} = \frac{\text{chi-square (null)} - \text{chi-square (model)}}{\text{chi-square (null)}}$$

$$\rho \text{ (Rho)} = \frac{\frac{\text{chi-square (null)}}{\text{df (null)}} - \frac{\text{chi-square (model)}}{\text{df (model)}}}{\frac{\text{chi-square (null)}}{\text{df (null)}} - 1.0}$$

14. The empirical analyses eliminated "Don't know" or "Uncertain" responses because the correlation matrices with and without those responses are almost identical. Additionally, the analytical findings can be generalized over those who had definite opinions about the criminal justice assumptions, law enforcement discrimination, and the Simpson verdict of guilty or innocent.

15. The effect, however, failed to reach statistical significance ( $p < .05$ ).

16. Riordan (1994) argues that racial bias and police brutality were the status quo throughout the LAPD, and that disciplinary actions for police officers have been non-existent (p.709-710).

17. Chow (1992) also argues that although the LAPD's policy against racism disapproves of racially and ethnically oriented remarks, referring to such messages as inappropriate, the policy has not been enforced (p.898).

The Independent Commission led by Warren Christopher also found that in Los Angeles there was a significant number of officers who repetitively misuse force and persistently ignore the written policies and guidelines of the department regarding force. The commission reported:

The problem of excessive force in the LAPD is fundamentally a problem of supervision, management, and leadership. What leaps out from the Department's own statistics — and is confirmed by LAPD officers at the command level and in the rank-and-file — is that a "problem group" of officers use force, and are the subject of complaints alleging excessive or improper force, far more frequently than most other officers. Yet, the evidence obtained by the Commission shows that this group has received inadequate supervisory and management attention (Report of the Independent Commission, 1991, p.32).

For example, in the period between January 1986 and December 1990, there were 8,274 total allegations in complaints by public made against LAPD officers and 24.7% of them were allegations of LAPD officers' excessive force which was the largest public complaint during that time. As a result, there has been a variety of lawsuits alleging improper use of force by LAPD officers. In the review of all 83 cases of alleged excessive or improper force by LAPD officers that

resulted in a settlement or judgment of more than \$15,000 between 1986 and 1990, the majority of the cases appeared to involve clear and often egregious misconduct. The LAPD's investigation of these 83 cases, however, was flawed and the discipline against the officers involved was frequently light or nonexistent. Moreover, the LAPD had never had adequate procedures in place to review or learn from the results of such litigation. Many of those complaints came from the neighborhoods with the largest concentration of racial and ethnic minorities (Report of the Independent Commission, 1991, p.55).

The lack of leadership and failure to discipline the officers thus appeared as a green light for many LAPD officers to continue the use of excessive force to subdue criminal suspects. One of the complaints of the use of excessive force against members of racial and ethnic minorities has been the use of police dogs. The police dogs have been used more frequently today than in the past ("Sheriff Abuse Hearing, 1991," pp.93-95, 136-137; Zinzun, 1992). Besides the abuse and dogs used against racial and ethnic minorities, there also have been many reports of the presence of Ku Klux Klan activities within the LAPD (Contemporary Social Issues in Los Angeles, 1992; Zinzun, 1992). Some black officers were continuously harassed, and they were criticized by both officers and their superiors especially when they attempted to report to their superiors. One officer directly met Chief Daryl Gates and reported such incident but Chief Gates made no investigations of such incident and referred the case to the immediate superior of the officer who made the initial claim. Police investigations into such allegations thus have been almost nonexistent, clearly showing the lack of leadership as well as procedural policies and the structure to investigate such allegations within the department (Report of the Independent Commission, 1991).

18. Marcus (1994) argues that the underfunding of public defender offices results in representation that violates indigent racial minorities' Sixth Amendment right to counsel and their Fourteenth Amendment right to equal protection of the law (p.220).

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