SOCIOECONOMIC FACTORS INFLUENCING JURY VERDICTS*

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I. INTRODUCTION

The legal and philosophical basis of our jury system requires that the jury be an impartially drawn group of the defendant's peers.[1] No attempt will be made in this discussion to challenge the desirability of such a jury system. Our purpose is simply to focus on our jury system as it presently operates and to examine the implications of this operation for the execution of justice.

The roots of the American jury system can be traced to the Norman customs of the ninth century.[2] Originally a jury was made up of local people selected because they had knowledge of the facts.[3] Until the late seventeenth century an accused who felt he was denied a fair verdict could have the verdict tested by the process of attaint.[4] A second panel of twenty-four would rehear the evidence. If the verdict of the second panel differed from that of the first, members of the previous jury were fined and imprisoned or had to forfeit property on the ground that they had sworn falsely. Such a procedure was meant to serve as an inducement to impartiality.[5]

The United States Constitution established the English practice of trial by jury as a fundamental right for criminal proceedings.[6] The sixth amendment explicitly stipulates that the jury be impartial, but the selection of jurors to that end represents a problem that has been part of the jury system since its inception. The United States Supreme Court has established the principle that a jury ought to be a representative cross-section of the community.

> The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community.... [This means] that prospective jurors shall be selected without systematic and intentional exclusion of ... [economic, racial, political, and geographic] groups.[7]

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1 Magna Charta, par. 39 (McKinney vol. 2, 1969). See Note, Trial by Jury in Criminal Cases, 69 Colum. L. Rev. 419 (1969); Note, Economic Discrimination in Jury Selection, 1970 Law & Soc. Order 474, 474-78; Note, The Jury: Is It Viable?, 6 Suffolk U. L. Rev. 897, 897-904 (1972); Comment, Challenging the Juror Selection System in New York, 36 Albany L. Rev. 305, 305-07 (1972).

2 W. Forsyth, Trial by Jury 4-5 (2d ed. 1878).

3 Id. at 134-35; R. von Moschzisker, Trial by Jury § 59 (2d ed. 1930).

4 W. Forsyth, supra note 2 at 149-55; R. von Moschzisker, supra note 3 at §§ 290, 364.

5 Kean, Quandry in the Law: The Not So Impartial Pennsylvania Juror, 9 Vill. L. Rev. 645, 647 (1964).

6 U.S. Const. amend. VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...."

7 Thiel v. S. Pac. Co., 328 U.S. 217, 220 (1946).

In *Thiel v. Southern Pacific Co.*[8] this principle of representation was extended to cover the status of those on the jury.

> Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, a portion that can not be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged; that we refuse to do.[9]

Many of our present jury selection methods raise serious questions about the extent to which this principle of representation has been put into practice in our courtrooms.[10] But, if we are to argue with any degree of persuasion that this particular failure to implement a policy articulated by the Supreme Court represents an important problem for the administration of justice, it seems crucial that we first establish the extent to which a jury verdict is actually dependent on the representativeness of the jury.

II. PREVIOUS STUDIES

Previous studies of jury composition and jury deliberation have identified some of the factors, other than the specific legal issues in question, which are involved in jury decision-making. Not surprisingly it has been found that the nationality, the race and the religion of the jurors all play a part in the rendering of a verdict. One study found that jurors of German and British backgrounds were more likely to favor a guilty verdict, whereas Negroes and people of Slavic and Italian origin were more likely to favor a not guilty verdict.[11] Another study concluded from mock jury

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[8] 328 U.S. 217 (1946).

[9] Id. at 223-24.

[10] See, e.g., Kuhn, Jury Discrimination: The Next Phase, 41 S. Cal. L. Rev. 235 (1968); Lindguist, An Analysis of Juror Selection Procedure in the United States District Courts, 41 Temp. L. Q. 32 (1967); Note, The Jury: A Reflection of the Prejudices of the Community, 20 Hastings L. J. 1417 (1969); Note, Economic Discrimination in Jury Selection, 1970 Law & Soc. Order 474; Voter Registration Lists — Do They Yield, 5 U. Mich. J. L. Ref. 385 (1972); Note, Jury Selection: The Need for Statutory Reform in Minnesota, 53 Minn. L. Rev. 977 (1969); Note, Jury Composition — The Purposeful Inclusion of American Indians, 16 S.D. L. Rev. 214 (1971); Note, Jury Selection Procedures, A Reform, 6 Suffolk U. L. Rev. 865 (1972); Comment, Challenging the Juror Selection System in New York, 36 Albany L. Rev. 305 (1972).

[11] Broeder, The University of Chicago Jury Project, 38 Neb. L. Rev. 744, 748 (1959). The data upon which Broeder's article is based were generated by the University of Chicago Jury Project, a study of the American jury system conducted in the late 1950's [hereinafter Jury Project].

For Jury Project data generally see Kalven, A Report on the Jury Project of the University of Chicago Law School, 24 Ins. Counsel J. 368 (1957). See also Meltzer, A Projected Study of the Jury as a Working Institution, 287 Annals 97 (1953).

As regards Broeder's own published Jury Project work see Broeder, Occupational Expertise and Bias as Affecting Juror Behavior: A Preliminary Look, 40 N.Y.U. L. Rev. 1079 (1965); Broeder, The Jury Project, S.D.B.J., Oct. 1957, at 133. See also Broeder, The Negro in Court, 1965 Duke L.J. 19; Broeder, Plaintiff's Family Status as Affecting Juror Behavior: Some Tentative Insights, 14 J. Pub. L. 131 (1965); Broeder, Previous Jury Trial Service Affecting Juror Behavior, 1965 Ins. L.J. 138; Broeder, Voir Dire Examinations: An Empirical Study, 38 So. Cal. L. Rev. 503 (1965); Broeder, Jury, 13 Encyclopedia Britannica 205 (1963 ed.); Broeder, The Functions of the Jury: Facts or Fictions?, 21 U. Chi. L. Rev. 386 (1954).

experiments with insanity pleas that Negroes are more likely to acquit on grounds of insanity than any other ethnic group.[12] Clarence Darrow, writing on the subject of religion and nationality, stated:

> In criminal cases, I prefer Catholics, Episcopalians, and Presbyterians to Baptists and Methodists, because the tenets held and disciplines practiced by the latter set higher standards of human conduct and make them less tolerant of human frailty.
>
> The Irishman and the Jew, because of their national background, will put a greater burden on the prosecution and prove more sympathetic and lenient to a defendant, than an Englishman or a Scandinavian whose passion for the enforcement of the law and order is stronger.[13]

The education and the sex of the jurors are also factors which enter into jury decision-making. Grade school educated jurors have been found to put more emphasis on testimony, personal life experiences and opinions based on the trial, whereas persons with higher education emphasize procedure and instruction.[14] Men tend to *act* more and women to *react* more to the contributions of others.[15] It has been suggested that the verdict which a male juror reaches often is based not on his assessment of whether the facts justify a verdict of guilty or innocent but on whether or not he wants to see the accused punished.[16] In certain types of cases (e.g., those involving mechanical problems) women are prone to leave it "entirely up to the men" because "men know more about such things than women do."[17]

Previous jury experience has been shown to have effects on the attitudes of those recalled. The Jury Project concluded that jurors with previous jury experience tend to use past experiences as a basis for premature conclusions about all future trials in which they might be involved.[18] For example, one of the jurors in the Project who had served on three prior occasions, stated that she had watched jurors divide into factions according to their socioeconomic backgrounds and was convinced from her past experience that cases were decided primarily according to this background. Believing that her fellow jurors would be *for* the defendant and *against* the plaintiff on account of their high socioeconomic level, she stopped listening during the trial.[19] Another juror had recently served three times and was too emotionally exhausted to fight for what she believed was right.[20] Confirmation of the principle that previous jury experience influences the decision-making process was found in the fact that previous jury experience was often the sole reason for the exercise of pre-emptory challenges.[21]

For other Project publications see Kalven, A General Analysis of and Introduction to the Problem of Court Congestion and Delay, 1963 A.B.A. Ins., Neg. & Comp. Section 322; Kalven, The Jury, the Law, and the Personal Injury Damage Award, 19 Ohio St. L.J. 158 (1958); Zeisel, Splitting Liability and Damage Issues Saves 20 Per Cent of the Court's Time, 1963 A.B.A. Ins., Neg. & Comp. Section 328; Zeisel & Callahan, Split Trials and Time Saving: A Statistical Analysis, 76 Harv. L. Rev. 1606 (1963); Zeisel, Kalven & Buchholz, Delay in the Court (1959); Zeisel, Kalven & Buchholz, Is the Trial Bar a Cause of Delay?, 43 J. Am. Jud. Soc'y 17 (1959).

12 R. J. Simon, The Jury and the Defense of Insanity 111 (1967).

13 Id. at 104, quoting F. Busch, Law and Tactics in Jury Trials 198 (1958).

14 James, Status and Competence of Jurors, 64 Am. J. of Soc. 565 (1959).

15 Strodtbeck & Mann, Sex Role Differentiation in Jury Deliberations, 19 Sociometry 9 (1956).

16 Devons, Serving as a Juryman in Britain, 28 Modern L. Rev. 561, 564 (1965).

17 Broeder, Occupational Expertise and Bias as Affecting Juror Behavior: A Preliminary Look, 40 N.Y.U. L. Rev. 1079, 1082 (1965).

18 Broeder, Previous Jury Trial Service Affecting Juror Behavior, 1965 Ins. L.J. 138.

19 Id. at 140.

20 Id. at 142.

21 Id. at 139.

The influence of pre-trial publicity on jurors has for many years been the subject of much debate.[22] Even though jurors are asked whether their opinions will yield to evidence, it is suggested that either unconscious mechanisms come into play or that jurors simply do not reveal they will be influenced.[23] Evidence indicates that publicity causes partiality because of the strong resistance to change.[24]

Metacommunication holds a place in any discussion of extra-legal factors which influence jurors. Metacommunication is the conveyance of messages which cannot be understood simply in terms of the words used, through which we judge and understand people in a dimension which cannot be conveyed by the court stenographer's record alone. For example, the jurors respond not only to what is said but the manner in which it is said and the gestures which accompany it, and they interpret these in the context of the emotional impact of the speaker. There is much juror anecdotal material relating to sincerity and courtesy of lawyers, dress of people involved, how "objections" are voiced and the like.[25]

Finally we turn our attention to that bias which appears to be the most important single extra-legal factor associated with jury deliberations: the bias related to socioeconomic levels. In our stratification system individuals are perceived by each other as occupying a position in a power-prestige hierarchy.[26] Furthermore, this stratification generally coincides in our modern industrial society with the division of labor.[27] Even in a society with a fluid class system, values are not homogeneous; the position a person occupies influences his values and has a profound influence on his understanding of, and judgment toward, people of other ranks.[28]

In 1946 a representative sample of the national population was asked: "Suppose you had been acting as a referee in labor-management disputes during the past three months, do you think your decisions would probably have been more often in favor of labor's side, or more often in favor of management's side?" Preferences tended strongly to follow occupational lines, with workers favoring labor and executives siding with management.[29] These general predispositions exert themselves when members of the public are called to jury duty.

The importance of such a socioeconomic bias becomes apparent when we look at the composition of juries in the United States. A statistical analysis of the occupations of the jurors sitting in the United States District Court of the District of Maryland from 1958 to 1961 placed 1515 jurors into their occupational categories as defined by the Bureau of the Census.[30] In comparing the jurors with the population from which they were chosen (Baltimore Standard Metropolitan Area), it was found that professional, managerial and sales occupations were overrepresented whereas craftsmen, operatives, service workers and laborers were underrepresented. Professionals, technicians, managers, officials and proprietors equaled less than 20 per cent of the eligible labor force but over 50 per cent of the classified jurors while craftsmen, foremen, operatives, service workers, farm workers and laborers constituted 59 per cent of the eligible labor

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22 See, e.g., Goggin & Hanover, Fair Trial v. Free Press: The Psychological Effect of Pre-Trial Publicity on the Juror's Ability to be Impartial; A Plea for Reform, 38 S. Cal. L. Rev. 672 (1965); Kaufman, Judges and Jurors: Recent Developments in Selection of Jurors and Fair Trial – Free Press, 41 U. Colo. L. Rev. 179 (1969); Stanga, Judicial Protection of the Criminal Defendant Against Adverse Press Coverage, 13 Wm. & Mary L. Rev. 1 (1971); Note, Criminal Law: Pretrial Publicity – Threat to Trial by Jury, 22 Okla. L. Rev. 165 (1969).

23 Goggin & Hanover, supra note 22, at 675.

24 Id. at 679.

25 See, e.g., M. Bloomstein, Verdict: The Jury System (1968); M. Gleisser, Juries and Justice (1968); S. McCart, Trial By Jury: A Complete Guide to the Jury System (2d ed. 1965); F. Wellman, Gentlemen of the Jury; Reminiscenses of Thirty Years at the Bar (1936).

26 R. Simon, supra note 12, at 99.

27 Id.

28 Id.

29 Robinson, Bias, Probability and Trial by Jury, 15 Amer. Soc. Rev. 78 (1950).

30 Mills, A Statistical Study of Occupations of Jurors in a United States District Court, 22 Md. L. Rev. 205, 208-13 (1962).

force, but only 24 per cent of the classified jurors.[31] In *Fay v. New York*[32] the defendants contended that laborers, craftsmen, operatives, foremen and service workers were unconstitutionally and systematically excluded from a panel of jurors from which the trial jury had been chosen. Proprietors, managers and officials make up 43 per cent of the jurors but only 9.3 per cent of the Manhattan labor force.[33]

The Jury Project presents several cases where a juror's background clearly affected his judgment and influenced his verdict.[34] Cited is a civil case[35] where, in general, the proprietor jurors sided with the defendant (railroad) and the laboring jurors with the plaintiff (railroad worker). The conclusion reached by the study was: "[O]ccupational bias was the central characteristic of the *Thomas* deliberations and of the thinking of the *Thomas* jurors with regard to the case."[36] In the case, out of the eight jurors favoring the plaintiff (a laborer), six belonged to the laboring class.[37] This "identification" process is not limited to the juror's identification with the defendant and/or plaintiff. For example, a particular juror had sold advertising in his youth, knew how hard it was to succeed, and "was not, therefore, going to convict defendant, who had made a success in advertising and particularly when defendant's employer, with whom Tobin [juror] identified, continued defendant in his employment knowing all of the circumstances."[38] Occasionally a juror will judge a case on the basis of identity with one of the witnesses.[39] The type of crime may also be considered by juries e.g., in a crime against property jurors who have accumulated more wealth may feel more threatened by the accused.[40]

In addition to this identification process which individual jurors undergo there are other ways in which socioeconomic standing, and resulting bias, may influence jury decision-making. For example, the foreman of the jury is expected to be a male, preferably a man of higher occupational level.[41] Datum from the mock jury trials indicates that proprietors are strongly overrepresented among those chosen to be foremen.[42] The foreman accounts for about 25 per cent of the total interaction acts.[43]

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31 Id. at 211-12.

32 332 U.S. 261 (1947).

33 Id. at 275 n.15.

34 Broeder, supra note 17; See also Hermann, Occupations of Jurors as an Influence on Their Verdict, 5 Forum 150 (1970).

35 The question in the case was whether defendant railroad had provided plaintiff, a railroad engineer, with a reasonably safe place in which to make emergency repairs on a defective locomotive boiler-check valve claimed to have been negligently packed. The evidence showed that plaintiff had climbed up the side of his locomotive without asking for his foreman's assistance and had slipped on some ice formed from steam emanating from the boiler-check valve. Plaintiff had filed a report some weeks prior to the accident informing defendant of a defect in the engineer's water pump which, according to plaintiff's experts, could have been caused by an improperly packed boiler-check valve. Defendant took no action on this report. Broeder, supra note 17, at 1083.

Typical remarks of the businessmen on the panel were: "99 per cent of all industrial accidents are solely caused by employee negligence;" and "[t]hese laboring people here have all got the same idea; the working people on the jury were as bad as ... [plaintiff] ... Soak the rich; make business pay for everything." Id. at 1091. In contrast the typical reaction of the laborers included: "plaintiff was injured 'in the line of duty;'" and "[plaintiff] had given many years of loyal service to defendant prior to the accident." Id. at 1092.

36 Id. at 1090.

37 Id. at 1091.

38 Id. at 1099.

39 Id. at 1085.

40 R. Simon, supra note 12, at 106.

41 Strodtbeck, James & Hawkins, Social Status in Jury Deliberations, 22 Amer. Soc. Rev. 715 (1957).

42 Strodtbeck & Hook, The Social Dimensions of a Twelve-Man Jury Table, 24 Sociometry 401 (1961).

"[I]ndex values relating to frequency of choice by occupation are as follows: Proprietor, 1.95; Clerical, 0.81; Skilled, 0.92; and Labor, 0.63." Id.

43 Id.

In the deliberation period, higher status males tend to rise to prominence.[44] What they have to say is perceived as being more important. This may be realistic or it may be that the status cues – dress, speech, etc. – differentiate the group by expectation rather than real performance.[45] Jurors were also asked who they believed contributed most toward the decision; the votes paralleled the status levels in society.[46]

Thus far an attempt has been made to establish that a bias exists which is related to socioeconomic level and that this bias influences verdicts. Most of the evidence presented in this paper has come from mock jury trials or post-trial interviews with jurors. It remains to be demonstrated empirically that socioeconomic level influences actual jury decision. To this end it is hypothesized that there is a greater socioeconomic discrepancy between a defendant found guilty and his jury than between a defendant found not guilty and his jury.

III. METHOD

To test the aforementioned hypothesis fifty not guilty defendants (for whom a guilty match could be found) were selected from the records of the Montgomery County Criminal Court of Pennsylvania covering the period from January, 1965 through May, 1967. From the same time period a group of guilty defendants was selected who were matched individually with the not guilty group.

The following four variables were drawn into the matching process: age, sex, race, and offense.[47] The defendants were individually matched within the following age groupings: 18-29, 30-49, 50 and over. Offense matching was done by specific

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44 Strodtbeck, James & Hawkins, supra note 41, at 718.

45 Id. at 719.

46 Strodtbeck, Social Process, the Law, and Jury Functioning, in Law and Sociology 144, 154 (W. Evans ed. 1962).

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TABLE I

Breakdown of Offense Categories into Specific Offenses

1. Traffic violations
   - a) Operating a motor vehicle while under the influence of liquor and/or drugs.
   - b) Failure to stop at the scene of a motor vehicle accident.
   - c) Failure to exhibit operator's license and give identification at the scene of a motor vehicle accident.
   - d) Failure to render assistance.
   - e) Operating a motor vehicle after suspension or revocation of operating privilege.
2. Malicious use of telephone
3. Violation of the Pennsylvania Liquor Code
4. Violation of the Uniform Firearms Act
5. Assault and battery
6. Involuntary manslaughter
7. Burglary and larceny
   - a) Burglary
   - b) Larceny
   - c) Receiving stolen goods
   - d) Conspiracy to commit burglary
   - e) Conspiracy to commit larceny
8. Sexual offenses
   - a) Open lewdness
   - b) Rape

offense, not the general class.[48] Ideally the caliber of the lawyer and the nature of the evidence should have been included, but this information either could not be ascertained or could not be compared from case to case.

Each of the 100 defendants was scored according to the NORC Prestige Scale.[49] Individual jurors were scaled for occupation and a mean score was computed for each of the 100 juries. Women were scored by their husbands' occupation, unless they were unmarried. Fifteen occupations were found among the jurors which were not included in the NORC Scale. Three independent researchers were asked to rate these fifteen occupations according to the Scale, and a mean score was taken of the three ratings.

The following comparisons were made:

1. Not guilty defendant *group* with guilty defendant *group*.
2. Not guilty jury *group* with guilty jury *group*.
3. Discrepancy scores between each guilty defendant and his jury with the discrepancy score of his counterpart not guilty defendant and his jury.
4. Direction of discrepancy.

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c) Corrupting morals of children
d) Indecent assault
e) Assault with intent to ravish
f) Fornication
g) Bastardy
h) Incestuous fornication

TABLE II

Breakdown of Entire Defendant Population by Age, Sex, Race and Offense

	1	2	3	4	5	6	7	8
White Male								
18-29	8	2	–	–	–	–	6	10
30-49	28	–	2	–	2	2	6	6
50 and over	10	–	–	–	–	–	–	–
Negro Male								
18-29	–	–	–	2	2	–	–	4
30-49	2	–	–	–	–	–	2	–
50 and over	–	–	–	–	–	–	–	–
White Female								
18-29	–	–	–	–	–	–	2	–
30-49	2	–	–	–	2	–	–	–
50 and over	–	–	–	–	–	–	–	–
Negro Female								
18-29	–	–	–	–	–	–	–	–
30-49	–	–	–	–	–	–	–	–
50 and over	–	–	–	–	–	–	–	–

The numbered categories above correspond to the numbered categories of offenses listed in Table I.

48 For example, failure to stop at scene of an accident paired with like offense rather than one from general traffic offense category.

49 The NORC Prestige Scale is based upon a survey where participants are asked to rank the prestige of a large variety of occupations according to the following ratings: excellent, good, average, below average, poor, don't know. From the percentage of responses in each rating category, a score is computed and a rank assigned to each occupation. For example, in a 1963 survey, the highest scores achieved were, in descending order, U.S. Supreme Court Justice (94), physician (93), nuclear physicist (92) and scientist (92). The bottom four categories were sharecropper (42), garbage collector (39), street sweeper (36), shoe shiner (34). For the original reference to this scale, see Hatt & North, Jobs and Occupations: A Popular Evaluation, Opinion News, Sept. 1947 at 3-13.

IV. RESULTS

1. The Mann-Whitney U test[50] was used to determine whether there was a significant difference between the socioeconomic level of the not guilty defendants and the guilty defendants as groups. The mean score of each group was used for comparison.[51] No significant difference emerged between score values of guilty and not guilty defendants.[52]

2. The Mann-Whitney U test was used to determine whether there was a significant difference between the socioeconomic level of the not guilty juries and the guilty juries as groups. The mean of the individual jury means was used for comparison. Juries who found defendants guilty are significantly higher on the prestige scale than those who found defendants not guilty.[53]

3. The sign test[54] was used to determine whether there was a greater socioeconomic discrepancy between a defendant found guilty and his jury than between a defendant found not guilty and his jury. Comparing the discrepancy score between each guilty defendant and his jury with the discrepancy score of his counterpart or not guilty defendant and his jury, it was found that in 41 of the 50 cases there was a greater discrepancy between a defendant found guilty and his jury

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[50] The Mann-Whitney U Test is a statistical method which can be used to compare two groups (here guilty and not guilty defendants) which have been ranked for prestige by one authority (here by the NORC Prestige Scale). The test begins by making the assumption that the two populations are identical. Then, by a mathematical analysis involving differences between summations of the ranks involved (or in a related process, the means of the ranks), a statistic (U) is arrived at which will indicate whether the original (null) hypothesis of identical populations should be rejected. Whether the numerical size of this statistic is so unusually large or so small as to require rejection of the hypothesis is determined by referring to tables grouped according to a level of significance (here $p = .05$). Here, where there was a large amount of data, we used a normal curve, and the statistic Z to obtain the sampling distribution of U. This applicable significance level is indicative of the particular statistical accuracy attained. For a more detailed mathematical discussion of this method, see H. Blalock, Jr., Social Statistics 197-203 (1960).

[51]

TABLE III

Mean and Standard Deviations of NORC Scores of Defendant and Jury Groups

	Mean	Standard Deviation
Guilty Defendants	59.3	16.57
Not Guilty Defendants	62.78	12.78
Guilty Juries	71.16*	3.69
Not Guilty Juries	69.26*	3.53

*This mean represents the mean of the 50 jury panel means.

[52] $Z = .6963$, $p = .05$. For a definition of these variables, see note 50 supra. Here, Z is not so large as to require rejection of the hypothesis that there is no difference between the socioeconomic level of not guilty and guilty defendants.

[53] $Z = 2.5526$, $p = .05$. For a definition of these variables, see note 50 supra. Here, Z is large enough to indicate a significant difference between socioeconomic levels of not guilty and guilty juries.

[54] The sign test is based upon the signs of the differences between paired values. Here the values are the two sets of discrepancy scores between defendant and his jury. The test begins with the null hypothesis that plus and minus differences occur with equal probability. A mathematical equation is used to determine the validity of this hypthesis. If there is a significant difference in the occurrence of plus vis-a-vis minus differences, the null hypothesis is rejected, and one discrepancy will be considered greater than another. For a discussion of the sign test, see R. Steel & J. Torrie, Principles and Procedures of Statistics 400-02 (1960).

than between a defendant found not guilty and his jury. The results of the sign test tend to support the hypothesis.[55]

4. One other question relates to whether the discrepancy scores, supporting the hypothesis, indicate that the guilty juries consistently had a higher socioeconomic standing than the defendant, or indicate that the discrepancy for the guilty defendants was generally greater, irrespective of whether the jury had a higher or lower socioeconomic status. These data were compared to arrive at an answer.[56]

There were 30 matched pairs for which the jury of both the guilty and not guilty defendants was higher in socioeconomic level than the defendant. In 27 of the 30 instances, the hypothesis is substantiated, which suggests that significantly more frequently than would be expected by chance, if a not guilty jury had a higher socioeconomic level than the respective defendant, a guilty jury would still have a socioeconomic level higher than both.

There are 5 pairs in which both juries of the matched defendants had a socioeconomic level lower than that of the defendant. The data indicate that in 4 of the 5 instances the guilty jury was more discrepant than its matched not guilty jury. The suggestion made before is that the hypothesis tends to be substantiated even in the opposite direction; that is, when the jury had a lower socioeconomic status than the defendant. Unfortunately, there were only 5 instances with both juries of matched pairs of defendants having lower socioeconomic levels than their respective defendants. Nevertheless, the suggestion is that in 4 out of 5 instances when a not guilty defendant had a jury with a lower socioeconomic level than himself, his matched guilty defendant had a jury whose socioeconomic level was even lower (i.e., more discrepant).

There are two other possibilities. The data indicate that in the 9 instances in which the not guilty jury had a higher socioeconomic level than its defendant, and the matched guilty jury had a socioeconomic level lower than its defendant, in 6 of the 9 cases the guilty case still has a more discrepant score than its matched not guilty case. In the reverse combination in which the not guilty jury had a lower socioeconomic level than its defendant, and the matched guilty jury had a socioeconomic level higher than its defendant, the hypothesis is supported in 4 of the 6 cases.

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[55] The mathematical formula used here is as follows for the .05 significance level. If the sum of plus differences added to the negative of minus differences (D) is greater than twice the square root of the total number of cases, there is a significant difference. In the instant case, $D=\overset{+}{41}-\overset{-}{9}=32$, $N=41+9=50$; $D>2\sqrt{N}$; $32>2\sqrt{50}$; $32>14.14$.

[56]

TABLE IV

Direction of Discrepancy Related to Trial Outcome

	Mean occupational status of jury higher than both guilty and not quilty defendants	Mean occupational status of jury lower than both guilty and not guilty defendants	Mean occupational status of jury higher than not guilty but lower than guilty defendants	Mean occupational status of jury lower than not guilty but higher than guilty defendants
	n = 30	n = 5	n = 9	n = 6
Matched cases in which discrepancy between occupational status of convicting jury and defendant is greater than discrepancy between occupational status of non-convicting jury and defendant	n = 27 (% = 90)	n = 4 (% = 80)	n = 6 (% = 67)	n = 4 (% = 67)

These data indicate that the hypothesis is not only supported with the matched cases in which both juries exceed the defendants in socioeconomic level, but in other instances as well. While there are too few cases in each one of the other three instances, all trends are in the same direction and are consistent with the initial discrepancy hypothesis.

V. SUMMARY

We have found that discrepancy in occupational status between juror and defendant is related to trial outcome. High discrepancy between defendant and jurors is more likely to lead to a conviction than a trial situation in which low status discrepancy occurs. This relationship holds under various configurations of occupational level among jurors and defendants.

VI. CONCLUSION

The study presented in this paper provides further evidence as to the critical importance of the methods used in the jury selection process. At the very least an effort must be made to find that method or those methods which will insure a randomly selected cross section of the community. In theory, the jury system is designed to dispense substantial justice, but no system is any better than the conditions under which it operates, and under the present conditions of its operation the jury selection process sometimes results in juries which are almost totally drawn from nonpeer groups. Randomization would at least provide a cure for the extreme cases where as a matter of course certain classes of defendants would be subject to trial by a jury composed entirely of people of a different socioeconomic level.

Courts frown on any attempt to discover what transpires during jury deliberations.[57] A broad ban on post-trial questioning of jurors stems from an attempt to implement two policies. The first of these is the protection of the jury system and, more specifically, the protection of the finality of jury verdicts.[58] The second is the protection of the jury members.[59] But, since each day the lives and liberties of so many are at stake, more research is needed into the questions which have been raised in this paper. So far the law has done its best to avoid finding answers.

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[57] See e.g., Northern Pac. Ry. v. Mely, 219 F.2d 199 (9th Cir. 1954); United States v. Driscoll, 276 F. Supp. 333 (S.D.N.Y. 1967); Primm v. Continental Cas. Co., 143 F. Supp. 123 (W.D. La. 1956). See also Sinclair v. United States, 279 U.S. 749 (1929).

[58] McDonald v. Pless, 238 U.S. 264 (1915).

[59] Rakes v. United States, 169 F.2d 739 (4th Cir.), cert. denied, 335 U.S. 826 (1948).

Another consideration which applies to questioning of jurors by attorneys is the ethical requirements of bar membership. However, such ethical requirements represent an ideal standard born of these two policies mentioned above.