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Felon Jury Exclusion:
A Series of Empirical Studies

DISSERTATION

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for the degree of

DOCTOR OF PHILOSOPHY

in Social Ecology

by

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DEDICATION

To

my wife Diana

purveyor of navy blazers and my beautiful neighborhood girl, you are the most caring person I have every known and the happiest moments of my life have been by your side – none of this would have been possible without your love and unconditional support for these last eleven wonderful years – you have made me a better person and I love you more than you will ever know, you are and always will be the end of my story;

and to my father, Richard Nelson Binnall and my mother, Marylou Binnall

who sacrificed so that I could have, struggled so that I wouldn't have to, and stood by me when no one else would have – I miss you Dad, the world is a dimmer place since you left;

and to my brother, Timothy Patrick

the most intelligent person I have ever know – you keep me humble and you keep me dreaming – some day it is all going to pay off!

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ABSTRACT OF THE DISSERTATION

Felon Jury Exclusion:
A Series of Empirical Studies

By

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Professor Mona P. Lynch, Chair

In forty-nine states and the federal court system, convicted felons are statutorily excluded from serving as jurors. Justifying felon jury exclusion, courts and lawmakers presume that convicted felons would compromise the integrity of the jury process, as they are assumed to lack character and harbor a pro-defense/anti-prosecution pre-trial bias. In a series of three studies, this dissertation explores the empirical validity of the justifications for felon jury exclusion and also examines the possible costs of felon jury exclusion.

Chapter 1 presents a quasi-experiment that compares the pre-trial biases of convicted felons, eligible jurors, and law students. Results suggest that a pro-defense pre-trial bias is not unique to convicted felons and that those with a felony criminal history likely pose no more of a risk to the impartiality of the jury process than do other groups of eligible jurors.

Chapter 2 presents a mock jury experiment that assesses the validity of the character rationale, which holds that convicted felons would diminish the quality of

deliberations. This Chapter compares homogenous juries comprised only of non-felon jurors to mixed juries comprised of non-felon and felon jurors, employing content analysis of deliberations and post-deliberation questionnaires. Results suggest that convicted felons likely do little to diminish the quality of deliberations and may enhance that process.

Chapter 3 presents a qualitative field study that involves in-depth, semi-structured interviews with eligible and former jurors – all convicted felons – in Maine, the only state that places no restriction on a convicted felon's opportunity to serve as a juror. Results suggest that inclusion in the jury process fosters a sense of empowerment and belonging for former offenders, bolstering self-esteem and enhancing one's sense of self. This study tends to demonstrate that a policy of inclusion may help foster the successful reintegration of those with a criminal history.

Taken together, the studies that comprise this dissertation are the first to empirically explore the rationales for felon jury exclusion and the possible impacts of banishing convicted felons from the jury process. This dissertation marks the start of a new field of inquiry that adds to research on juries, deliberating groups, reintegration, and criminal desistance.

INTRODUCTION

Approximately sixteen million American citizens bear the felon label (Uggen et al. 2006). For citizens who live with this permanent mark, "collateral sanctions" and "discretionary disqualifications" (American Bar Association 2004)[1] can make reintegration into the community exceedingly difficult (O'Brien 2001; Bontrager et al. 2005; Mele and Miller 2005; Travis and Vischer 2005; Chiricos et al. 2007; Bushway, Stoll, and Weiman 2007; Pinard 2006). Such sanctions and disqualifications differ wildly from one jurisdiction to the next (Love and Kuzma 1997; Petersilia 2005) and directly impact a number of areas of convicted felons' lives including: housing (Landau 2002; Carey 2004), employment (Aukerman 2005), public benefits (Hirsch 2002), parental custody (Schneider 2002), education (Ackelsberg and Hirsch 2002), and immigration status (Bernstein-Baker and Hohenstein 2002). In many jurisdictions, these restrictions also extend to civic and political realms, often preventing convicted felons from voting (Manza and Uggen 2006) or running for office (Steinacker 2003). Additionally, certain statutes limit a convicted felon's opportunity to take part in jury service (Kalt 2003; Binnall 2009, 2010, 2014). These felon jury exclusion statutes are the most severe and pervasive civic restrictions (Love 2007; see also Figure 1).

A Brief History of Felon Jury Exclusion

The exclusion of convicted felons from public life traces to ancient Greece (Grant et al. 1970; Itzkowitz and Oldak 1973). Characterized as "infamous" under Greek law,

[1] The American Bar Association defines a collateral sanction as "a legal penalty, disability or disadvantage, however denominated that is imposed on a person automatically upon that person's conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence" (ABA 2004 §19-1.1(a)).

convicted felons were prohibited from taking part in all civic activities (Damaska 1968). Such exclusions were imposed retributively and as a general deterrent to future criminal conduct (Grant et al 1970). Later, the Romans also adopted a version of "infamy," developing a series of complex statutes outlining civic disabilities that applied to convicted criminals (Damaska 1968).

After the fall of the Roman Empire, Germanic tribes imposed civic exclusion through a process of "outlawry" (Grant et al 1970). That process conceived of crime as an offense against society. In turn, "outlawry" authorized society to retaliate by, in part, stripping offenders of their civil rights (Richards 1902). As English law evolved, outlawry transformed into the more formal process of "attainder." Citizens convicted of serious felonies were labeled "attained," and suffered "civil death" whereby they forfeited all civil rights and were prohibited from participating in most civic activities. One such activity was appearing in court as a witness or as a juror (Grant et al 1970).

Around the time of the Founding, though colonists sought to distance themselves from the crown, the concepts of "civil death" and the exclusion of convicted felons from jury service were part of early American jurisprudence. Accordingly, as early as 1799 (New York), several states imposed civil death statutes (Grant et al. 1970). The development of such statutes signals a trend in the rather unremarkable history of civic restrictions – the blind adoption of traditional practices. As Grant et al. note:

> Unfortunately, there is no legislative history to explain the enactment of these disabilities. Public security and facilitation of prison administration have been offered as plausible explanations for the civil death statutes. It is likely, however, that civil disabilities in America were actually the result of the unquestioning adoption of the English penal system by our colonial forefathers and the succeeding generations who continued existing practices without evaluation (1970 p. 950).

Along these lines, Kalt suggests that the only significant development in the history of felon jury exclusion in America is the transition from subjective to objective juror eligibility criteria (2003). He notes that around 1800, while criminal history was not a formal disqualification from juror service – the common law, civil death statutes, and other narrowing requirements (male property owners of good character) ensured that convicted felons almost never found their way onto a jury (2003; Ewald and Smith 2008; Ewald 2002).

Only later (1850), when voting and jury service were formally extended to larger segments of the population, did jurisdictions begin to statutorily restrict juror eligibility (Kalt 2003). For example, in southern states, after the end of the Civil War and after the Civil Rights Act of 1875 outlawed the use of race-based juror selection procedures (Civil Rights Act 1875),[2] record-based juror eligibility criteria served as a mechanism for preventing African-American men from serving as jurors (Klarman 1998). By the early 1900's, felon jury exclusion statutes were relatively common in the United States (Kalt 2003).

In 1940, the Supreme Court began to reconceptualize the Sixth Amendment's impartiality mandate, and for the first time, the Court linked impartiality to the concept of representativeness (Cammack; Smith v. Texas). In a series of subsequent decisions (Glasser v. United States 1942; United States v. Ballard 1946; Peters v. Kiff 1972; Taylor v. Louisiana 1975; see also Zuklie 1996 for a review), the Court developed and refined the "fair cross section requirement." In 1968, Congress also codified the principle of

[2] The current version of the Civil Rights Act of 1875 states "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude…" (18 U.S.C.A. § 243 2000).

representativeness, enacting the Federal Jury Selection and Service Act which stated, "[i]t is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community… (28 U.S.C. § 1861 2000).

These developments signaled a more inclusive policy regarding jury service eligibility, but they did little to alter felon jury exclusion policies. In 1940, when the Court decided Smith, nearly every state barred convicted felons from serving (Kalt 2003). Since that time, while many jurisdictions have relaxed civic restrictions (Travis 2005; Kessar 2009) felon jury exclusion statutes remain pervasive. Summing up the history of felon jury exclusion, Brian Kalt states:

> The practice of excluding felons from jury service has both a rich pedigree and a sturdy presence in current law. Felon exclusion has evolved from being a product of subjective juror qualifications or anti-criminal common-law rules into being a product of objective statutes. In the process, it has become firmly entrenched and has avoided the general trend of expanded jury participation (2003 p. 189).

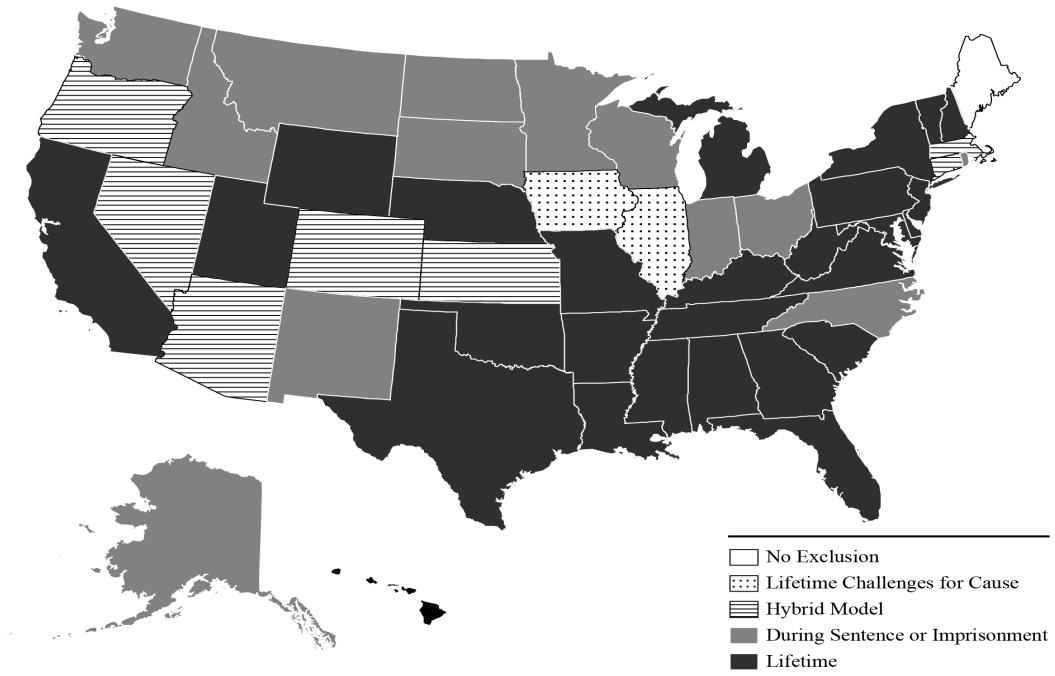
The Current State of the Practice

Felon jury exclusion statutes divide roughly into two types: those that permanently eliminate a convicted felon's opportunity to serve as a juror (lifetime ban) and those that allow for the possibility that a convicted felon might, at some point, decide a litigated matter (temporal ban) (Kalt, 2003; Love 2007). While twenty-seven states and the federal government bar convicted felons from the jury process permanently, remaining jurisdictions impose less severe, record-based juror eligibility criteria that vary significantly (Kalt, 2003; Appendix A).

Twelve states bar convicted felons from jury service until the full completion of

their sentence, notably disqualifying individuals serving felony-parole and felony-probation. Seven states enforce hybrid regulations that may incorporate penal status, charge category, type of jury proceeding, and/or a term of years. For example, the District of Columbia and Colorado adhere to differing hybrid models; the former excludes convicted felons from jury service during any period of supervision and for ten years following the termination of supervision, while the latter excludes convicted felons solely from grand jury proceedings. And finally, two states recognize lifetime for cause challenges, permitting a trial judge to dismiss a prospective juror from the venire solely on the basis of a felony conviction. Only Maine places no restrictions on a felon's opportunity to serve as a juror (Figure 1; Appendix A).

Figure 1. Felon Jury Exclusion Policies by Jurisdiction



Across jurisdictions, the application of felon jury exclusion statutes is relatively consistent. Only four jurisdictions tailor felon jury exclusion statutes, distinguishing first-time offenders from repeat offenders (Arizona), violent offenders from non-violent offenders (Nevada), grand juries from petit juries (Colorado), and civil cases from criminal cases (Oregon). In all remaining jurisdictions, felon jury exclusion statutes are categorical, applying to *all* prospective jurors with a prior felony conviction in *all* types of proceedings.

Justifications/Rationales

Legislators and courts cite two rationales for felon jury exclusion statutes. The first is the probity or character rationale (U.S. v. Barry 1995; R.R.E. v. Glenn 1994; U.S. v. Arce 1993; Rector v. State, 1983; U.S. v. Foxworth, 1979; People ex. rel. Hannon v. Ryan, 1970). The probity rationale seemingly contends that a convicted felon's character is forever marred by his or her involvement in criminal activity, to the point that only categorical exclusion from the venire will ensure the purity of the adjudicative process (*see e.g.* State of Oregon Special Election Voters' Pamphlet, 1999). Yet, courts have been unclear about how a lack of character diminishes one's fitness for jury service (Kalt, 2003). Some courts suggest that the commission of a crime reveals a lack of respect for the law and the criminal justice system. The Supreme Court of Arkansas has stated, "[u]nquestionably that exclusion is intended to bar from the jury box the one class of persons least likely to respect and give effect to the criminal laws" (Rector v. State, 1983). Other courts contend that it is the appearance of probity that is paramount, arguing that including convicted felons in the adjudicative process damages the jury's image. As a New York Appellate Court has held, "it would be a strange system, indeed, which permitted those who had been

convicted of anti-social and dissolute conduct to serve on its juries" (People ex rel. Hannon v. Ryan, 1970).

A second rationale for the exclusion of convicted felons from jury service is the inherent bias rationale (Kalt, 2003; Binnall, 2014). Unlike the probity rationale, the inherent bias rationale has spawned considerable precision among courts and lawmakers. The inherent bias rationale holds that felonious jurors harbor biases directly resulting from their experiences with the criminal justice system (People v. Miler, 2008; Companioni Jr. v. City of Tampa, 2007). Forecasting the direction and strength of such biases, courts have opined that a convicted felon's "former conviction and imprisonment would ordinarily incline him to compassion for others accused of crime" (State v. Baxter, 1978, p. 275), and that felonious jurors are "biased against the government" (US v. Greene, 1993, p. 796). Explaining the inherent bias rationale, Kalt notes "a felon will be less willing, if not unwilling altogether, to subject another person to the horrors of the punishment that he has endured, and may engage in nullification…[h]e may also exhibit mistrust of police and prosecutors, and give unduly short shrift to their testimony and arguments" (2003, p. 105). Similarly, the Supreme Court of California has stated:

> The Legislature could reasonably determine that a person who has suffered the most severe form of condemnation that can be inflicted by the state – a conviction of felony and punishment therefore – might well harbor a continuing resentment against 'the system' that punished him and equally unthinking bias in favor of the defendant on trial, who is seen as a fellow underdog caught in its toils. Because these antisocial feelings would often be consciously or subconsciously concealed, the Legislature could further conclude that the risk of such prejudice infecting the trial outweighs the possibility of detecting it in jury selection proceedings. The exclusion of ex-felons from jury service thus promotes the legitimate state goal of assuring impartiality of the verdict (Rubio v. The Superior Court of San Joaquin County 1979, p. 101).

A third rationale for felon jury exclusion is largely philosophical. The social contract theory of felon jury exclusion seems to hold – like early "civil death" statutes – that criminal offenders "deserve" banishment from public life (Kalt 2003). Courts and lawmakers rarely cite this retributive justification when discussing the appropriateness and constitutionality of felon jury exclusion statutes, opting instead for the utilitarian "probity" and "inherent bias" rationales.

Prior Legal Challenges

Legal challenges to felon jury exclusion statutes have taken two forms – cross-section claims and equal protection claims. Yet, these challenges have never met with success. The Supreme Court has held that "jurisdictions are 'free to confine the [jury] selection…to those possessing good intelligence, sound judgment, and fair character'" (Carter v. Jury Comms'n of Greene County, 1970, p. 332), and lower courts have rejected all constitutional attacks on felon jury exclusion statutes (Buchwalter 2000; Kalt 2003).

Cross Section Claims

Cross-section claims are the most common challenges to felon jury exclusion statutes (Shows v. State 1972; U.S. v. Foxworth 1979; State v. Brown 1975; Rubio v. The Superior Court of San Joaquin County 1979; U.S. v. Barry 1995; Carle 1998; U.S. v. Best 2002; State v. Compton 2002). Alleging that felon jury exclusion compromises the representativeness of the jury pool, cross-section claims are rooted in the Sixth Amendment's guarantee of an impartial jury (Taylor v. Louisiana 1975; Const. Amend. VI). As the Supreme Court has stated, "[t]he Sixth Amendment requirement of a fair cross-section on the venire is a means of assuring, not a representative jury (which the

Constitution does not demand), but an impartial one (which it does)" (Holland v. Illinois 1990, p. 480-481).

Though the cross-section doctrine has evolved considerably over time (Strauder v. West Virginia 1880; Thiel v. Southern Pacific Railway 1946; U.S. v. Ballard 1946), in 1979, the Supreme Court enunciated a standard for such claims (Duren v. Missouri 1979). In Duren v. Missouri (1979, p. 364), the Court held that a cross-section claim requires a prima facie showing:

> (1) that the group alleged to be excluded is a 'distinctive group' within the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

The Court explained, however, that "[t]he demonstration of a prima facie fair-cross-section violation by the defendant is not the end of the inquiry into whether a constitutional violation has occurred" (Duren 1979, p. 367). Writing for the Court, Justice White noted that such schemes also "require that a significant state interest be manifestly and primarily advanced by those aspects of the jury-selection process…that result in the disproportionate exclusion of a distinctive group" (Duren 1979, p. 367-68).

Yet, courts have unanimously held that cross-section attacks on felon jury exclusion do not meet even the prima facie elements of cross-section claims, concluding that convicted felons do not constitute a distinct group (Rubio v. The Superior Court of San Joaquin County 1979). To establish that a group is distinct, a defendant must show:

> (1) that the group is defined and limited by some factor (i.e. that the group has definite composition such as by race or sex); (2) that a common thread or basic similarity in attitude, ideas, or experiences runs through the group; and (3) that there is a community of interest among members of the group such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process (Kalt 2003, p. 82).

Evaluating cross-section claims to felon jury exclusion, law professor Brian C. Kalt (2003) argues that convicted felons satisfy this vague definition of distinctiveness. He contends that, in making the distinctiveness determination, courts "distort" the legal standard (Kalt 2003, 85; see also Lockhart v. McCree 1986). He suggests that courts may be hesitant to engage in "demographic micromanagement" (Kalt 2003, 86-87), and perhaps view groups as distinct only when they warrant heightened constitutional protections under the equal protection doctrine or are defined by immutable characteristics (Kalt 2003). Nevertheless, no court has classified convicted felons as a distinct group. As a result, courts have never completed the cross-section analysis and definitively determined whether preserving the impartiality of the jury is a significant state interest manifestly and primarily advanced by felon jury exclusion statutes.[3]

Equal Protection Claims

While most challenges to felon jury exclusion statutes allege a violation of the cross-section requirement, some assert that record-based juror eligibility criteria contravene the Equal Protection Clause (Rubio v. The Superior Court of San Joaquin County 1979; Greene 1993; U.S. v. Arce 1993; U.S. Const. Amend. XIV). Brought by litigants on behalf of excluded jurors, equal protection claims allege that the exclusion of convicted felons from jury service violates the equal protection rights of those with a felony criminal record.

Equal protection attacks on felon jury exclusion statutes have never met with success. Courts hold that such challenges do not warrant heightened constitutional scrutiny, as they do not recognize jury service as a fundamental or important right (U.S. v.

[3] Kalt, 2003, p. 85 notes that in US v. Barry (1995), US v. Greene (1993), and Carle v. US (1998), the court performed this analysis in the context of prospective jurors with *pending* felony criminal charges and ultimately authorized exclusion.

Conant 2000), and do not classify convicted felons as a protected class (Hilliard v. Ferguson 1994; Aukerman 2005). Rather, when analyzing equal protection challenges to felon jury exclusion, courts apply only rational basis review. Under that minimal standard, courts authorize state action if it is rationally related to a state's legitimate interest (U.S. v. Carolene Products Co. 1938). Not surprisingly, under rational basis review, state action almost always survives challenge (Issacharoff 2002; Saxonhouse 2004). Felon jury exclusion statutes are no exception.

The failure of cross-section claims and equal protection challenges is principally attributable to courts' unwillingness to group or classify convicted felons. Some commentators contend that this unwillingness has little to do with objective legal criteria. They argue that courts will not categorize convicted felons because they are at least partly responsible for their membership in their class or group (Aukerman 2005; Geiger 2006). Yet, interestingly, courts authorize felon jury exclusion statutes by relying on the probity and inherent bias rationales, justifications that turn on the presumption that many convicted felons are alike, in that they lack character and allegedly harbor pro-defense/anti-prosecution pre-trial biases.

Prior Research

Research on felon jury exclusion is scant and is almost entirely non-empirical. In the seminal study of felon jury exclusion, law professor Brian Kalt first detailed the pervasiveness of the practice and the proffered justifications for the exclusion of convicted felons from jury service (2003). Kalt argued that felon jury exclusion undermines the representativeness of jury pools and that the rationales for exclusion are both under and over inclusive, doing little to protect the jury while creating a class of civic outsiders that

pose little or no threat to the jury process (2003). In recent years, a number of studies have built on Kalt's research (Binnall 2008, 2009, 2010; Segal 2010), yet, prior to the present research, only one has employed empirical methods (Wheelock 2012).

In that study, Wheelock explored the exclusion of convicted felons from juries in Georgia, a state that permanently banishes convicted felons from the adjudicative process. He found that felon jury exclusion statutes disproportionately impact African-Americans. Specifically, Wheelock's research demonstrated that across Georgia, felon jury exclusion reduced the number of African-American men expected to serve as jurors from 1.65 to 1.17 per jury (Wheelock 2012 p. 352). As Wheelock notes, in many Georgia counties this effect was even more prominent, reducing the expected number of African-American male-jurors to under 1, a significant reduction as prior research suggests that, in capital cases, juries with 1 African-American male are less likely to sentence a defendant to death than juries without an African-American male. In sum, Wheelock's research suggests that felon jury exclusion has the potential to racially homogenize juries (2012).

Present Research

By exploring the presumption that convicted felons harbor a unique pro-defense bias (Chapter 1), lack character and may negatively impact jury deliberations (Chapter 2), and whether participation in the jury process can influence convicted felons' efforts to desist from criminal activity (Chapter 3), the present studies add to (and in many ways initiate) a fledgling body of empirical research on felon jury exclusion. The goal of the present research is to begin an empirically informed dialogue about the wisdom of excluding convicted felons from jury service.

In Chapter 1, I present my findings from a quasi-experimental field study assessing the validity of the inherent bias rationale. In that study, I test the presumptions of the inherent bias rationale by comparing eligible jurors (245), eligible jurors enrolled in law school (218), and otherwise eligible jurors with a felony conviction (242) on measures of pre-trial biases and views of the law's fairness and legitimacy. The study detailed in Chapter 1 is the first study centered on the rationales for felon jury exclusion and adds to existing literature on juror biases. The results of that study suggest that convicted felons pose no more of a risk to the impartiality of the jury than do other groups of eligible jurors (in particular law students). This finding calls into question the tenability of the inherent bias rationale.

Chapter 2 focuses on an experimental mock jury study that explores the possible impact of felon jurors on the jury deliberation process. By evaluating how felon jurors deliberate in a mixed jury setting, Chapter 2 assesses the validity of the probity or character rationale for felon jury exclusion. Chapter 2 examines a series of 19 mock juries comprised of 101 participants, comparing juries and jurors on several measures of deliberation quality. Chapter 2 explores the accepted premise for felon jury exclusion, that convicted felons, if allowed to serve, would diminish the quality of deliberations. Results suggest that the inclusion of convicted felons in deliberations does little to diminish their quality and may enrich the process as convicted felons may participate at a greater rate and recall more case facts than do their non-felon counterparts.

In the final empirical Chapter of my dissertation, Chapter 3, I detail the results of an inductive qualitative field study on the potential consequences of felon jury exclusion. Conducted in Maine, the only jurisdiction that places no restriction on a convicted felons

opportunity to serve on a jury, Chapter 3 includes interviews with 32 convicted felons. In this study, I assess convicted felons attitudes towards jury service, concluding that jury inclusion has a positive impact on the criminal desistance process and convicted felons' efforts to reintegrate.

In Chapter 4, I conclude by discussing the theoretical contributions and the policy implications of the present research. In sum, the present research suggests that the proffered justifications for felon jury exclusion lack empirical support. Evidence tends to show that convicted felons likely pose little risk to the jury process and that inclusion in that process may foster feelings of empowerment and self-worth. Taken together, these findings call into question the utility of felon jury exclusion and seem to show that the policy may delegitimize the jury by excluding a class that poses little threat to the jury's partiality or integrity. Moreover, I conclude that a policy of felon jury exclusion is likely self-defeating, marginalizing those most jurisdictions spend considerable time and energy attempting to reintegrate.

CHAPTER 1

A Test of the Inherent Bias Rationale

Justifying the statutory exclusion of convicted felons from jury service, policymakers and courts cite a need to protect the adjudicative process from those who might compromise its integrity (Kalt 2003). Noted above, would-be-felon-jurors purportedly threaten the jury's neutrality because they harbor an "inherent bias" (Kalt 2003, 105), making each sympathetic to criminal defendants and adversarial towards prosecutorial agents.[4] As the D.C. Court of Appeals explains, "[t]he presumptively 'shared attitudes' of convicted felons as they relate to the goal of juror impartiality are a primary reason for the exclusion" (Carle v. United States 1998, p. 686).

Though an extensive body of research focuses on the pre-trial biases of prospective jurors, no study has assessed the viability of the inherent bias rationale. Nevertheless, lawmakers proceed undeterred. Felon jury exclusion statutes often appear as riders on larger pieces of legislation, seldom eliciting debate (Rubinstein and Mukamal, 2002; Editorial 2003; Travis 2005). And in those atypical instances during which policymakers consider the wisdom of barring convicted felons from the venire, they assume the merits of the inherent bias rationale.

Courts, too, are ostensibly unfazed by a want of empirical evidence on the inherent bias rationale. Faced with constitutional challenges to felon jury exclusion statutes, they conduct only cursory reviews. Courts do not force jurisdictions to clarify or defend their

[4] Though the exclusion of felons from jury service includes both civil and criminal litigation, this study addresses the justifications for felon jury exclusion solely in the context of criminal trials. Courts have questioned the inherent bias rationale as a justification for excluding convicted felons from civil trials (see e.g. Companioni Jr. v. City of Tampa 2007, p. 413 ["To the extent that the theory that felon jurors have an 'inherent bias' has any validity at all, its applicability is limited to criminal cases."]).

proffered justifications for banning convicted felons from the venire. Rather, they accept the inherent bias rationale *a priori*. Hence, while "[t]here is hardly an opinion involving jury law that does not cite empirical research findings" (Hans and Vidmar 1986, p. 5), such findings play no role in felon jury exclusion precedent.

Though the jury system performs an adjudicative function, "[i]t would be a very narrow view to look upon the jury as a mere judicial institution" (Tocqueville 1835, p. 282). The jury process is symbiotic. Citizens serve the justice system by settling legal disputes. At the same time, the jury bestows on society instrumental benefits, transcending its time-honored station as a decision-making tribunal (Haddon 1994). Jury service affects jurors' attitudes and behaviors, bolstering perceptions of the law and prompting other forms of civic participation (Consolini 1992; Gastil et al. 2008).[5] Perhaps recognizing these attributes of jury service, Tocqueville remarked, "I do not know if the jury is useful to those who have lawsuits, but I am certain it is highly beneficial to those who judge them" (1835, p. 282).

Almost all jurisdictions preclude convicted felons from the venire permanently or temporarily, but at what cost? By imposing such restrictions, jurisdictions may forego opportunities to enhance convicted felons' views of the law and facilitate their enduring civic involvement – two factors linked to criminal desistence (Tyler 2006; Manza and Uggen 2006).[6] Despite these potential costs, however, jurisdictions still justify felon jury exclusion statutes by relying on an untested, "intuitively based theory of personality"

[5] In her 1992 study, Consolini found that participants held a more favorable view of the law after serving. Gastil et al. found that, in accordance with the participation hypothesis, subjects who serve on a jury are more likely to vote in subsequent elections.

[6] Tyler and others have conducted numerous studies that suggest that those who view the law more favorably are more likely to comply with its mandates. In their work on felon voter disenfranchisement, Manza and Uggen found a strong correlation between voting and criminal desistence. For a description of these studies,

(Sealy 1981, p. 190).

Felon jury exclusion statutes are categorical and, as such, are seemingly premised on the claim that convicted felons would harbor a "universal, unidirectional bias" (Kalt 2003, p. 106) against the government and in favor of criminal defendants (Kalt 2003). Yet, courts and lawmakers do not make clear how many convicted felons assumedly possess such a bias, or what prevalence of pre-trial bias warrants the exclusion of a class.[7] Does fifty-one percent suffice? Ninety percent? Prior to voir dire, no other group of prospective jurors is categorically excluded from the jury process because of an alleged pre-trial bias. Instead, other groups likely to harbor some form of pre-trial bias (e.g. law enforcement), are subject to individual screening and, if bias presents, removed through challenges for cause or peremptory strikes. Courts suggest that convicted felons pose a unique risk to the jury process, because they are simply more pro-defense/anti-prosecution than other identifiable groups of non-felon jurors and/or because their pro-defense/anti-prosecution biases, born of negative view of the law, are qualitatively different, and more threatening, than those of non-felon jurors (Rubio v. The Superior Court of San Joaquin County 1979).

[7] When interpreting the inherent bias rationale, courts do not explicitly state the assumed pervasiveness of a pro-defense/anti-prosecution bias among felons but suggest that most, if not all convicted felons harbor such a bias (see e.g. Commonwealth v. Aljoe 1966, n. 6 ["It is well known by Judges and lawyers that in the selection of a jury, most defense lawyers *welcome a person who has been previously convicted of a crime*."]); (see also State v. Baxter 1978, p. 275 [[juror's] former conviction and imprisonment would *ordinarily* incline him to compassion for others accused of crime."]) (see also Rubio v. The Superior Court of San Joaquin County 1979, p. 101 ["a person who has suffered the most severe form of condemnation that can be inflicted by the state – a conviction of felony and punishment therefore – *might well* harbor a continuing resentment against 'the system' that punished him and equally unthinking bias in favor of the defendant on trial"]); (see also U.S. v Greene 1992, p. 796 ["[I]t is rational to assume that persons currently facing felony charges *may be* biased against the government…"]); (see also Carle v. US 1998, p. 686 ["The presumptively *'shared attitudes'* of convicted felons as they relate to the goal of juror impartiality are a primary reason for the exclusion."]); (see also Companioni Jr. 2007, p. 413 ["[t]he per se rule *assumes* that the felon juror harbors an 'inherent bias.'"]); (see also People v. Miller 2008, p. 874 ["At some point, a juror's past experience *must* lead to a presumption of bias because of the juror's inherent knowledge from experience."]) (*see also* Michigan Senate Fiscal Agency Bill Analysis 2003, p. 5 ["A person who has been convicted of a felony *might have* a tainted view of the criminal justice system and sympathize with a criminal defendant. Such a situation is blatantly unfair to the prosecution and the crime victim."]) (emphasis added in all cases).

This study is the first empirical analysis of the inherent bias rationale. Using the Revised Juror Bias Scale (Myers and Lecci 1998; Kassin and Wrightsman 1983) and a measure of participants' views of law, I examine the pre-trial biases of a group of otherwise juror-eligible convicted felons (N = 242). I then compare convicted felons to a group of non-felon eligible jurors (N = 245) and a group of non-felon eligible jurors currently enrolled in law school (N = 218). Three inquiries drive this quasi-experiment. First, how prevalent is pro-defense/anti-prosecution bias among convicted felons? Second, how does the direction and strength of convicted felons' pre-trial biases compare to other groups of non-felon jurors? And third, how do convicted felons view the law and legal processes? Do these views shape their pre-trial biases? The goal of this study is to, for the first time, provide data that will inform a debate about felon jury exclusion statutes and the inherent bias rational. To that end, I first detail prior empirical research on the pre-trial biases of prospective jurors. I then describe the methods, results, and potential weaknesses of this field study of the inherent bias rationale. And finally, I discuss the findings of the present study, highlighting the costs of excluding convicted felons from jury service and contemplating the broader implications of barring convicted felons from deliberation room.

Prior Research on Jurors' Pre-Trial Biases

Empirical juror research examines how individuals evaluate evidence, interpret law, and ultimately reach a verdict (Mazzella and Feingold 1994). One strain of empirical juror research explores how jurors' pre-trial biases influence their verdict preference.

Pre-trial biases can take two forms: specific or general (Note 1977; People v. Wheeler 1978; Kaplan and Miller 1978; Ellsworth 1993; Brown 1994; Cammack 1995;

Villiers 2010). While specific biases are those spawned by the attributes of a given case or defendant (e.g. how a juror might feel about an African-American defendant charged with sexually assaulting a white woman), general biases are unrelated to case features (e.g. how a given juror might feel about African-Americans generally) (Myers and Lecci 1998). Instead, general biases are individualized, shaped by jurors' perspectives and life experiences (Cammack 1995). The inherent bias rationale invokes a theory of general bias.

Since the early 1970s, the predictive value of general biases has been the subject of extensive research (Hastie et al. 1983; Devine et al. 2001). Yet, the results of that research are mixed (Devine 2012; Devine et al. 2001; Saks 1997). Studies demonstrate that juror demographics, attitudes, and personality traits seldom yield biases that accurately and uniformly influence juror decision-making processes (Devine 2012; Ellsworth 1993; Bonnazoli 1998). These results have prompted some scholars to conclude that, "few if any juror characteristics are good predictors of juror verdict preferences" (Devine et al. 2001, 673).

Research on general pre-trial biases most often focuses on juror demographics and their potential influence on verdicts. Yet, studies exploring the predictive value of juror demographics have largely yielded inconclusive results (Devine et al. 2001). Evidence indicates that juror demographics alone are inaccurate predictors of verdict preference. Rather, demographic variables play a more nuanced role in the juror decision-making process, eliciting predictive biases that are case and defendant specific (Bonnazoli 1998; Sweeney and Haney 1992; Lynch and Haney 2009; Mitchell et al. 1995).

Research also demonstrates that juror attitudes seldom predict verdict (Devine et al. 2001). One notable exception, however, are jurors' views of the death penalty. Studies

have shown that a juror's attitude towards capital punishment spawns a general bias that can influence verdict preference (Bowers et al. 1998). Across cases, death qualified jurors are more likely to convict than are jurors who oppose the death penalty (Moran and Comfort 1982b; Bernard and Dwyer 1984; Cowan et al. 1984; Horowitz and Sequin 1986; Allen et al. 1998).

Studies of general biases have also focused on juror personality traits and their impact on juror decision-making processes. Though research in this area has established few links between juror personality traits and verdict preference (Devine et al. 2001), studies do reveal that the personality trait of authoritarianism can significantly affect a juror's determination of guilt or innocence in a variety of cases (Narby, Cutler, and Moran 1993; Lerner 1970; Gerbasi 1977). In a meta-analysis of studies exploring the impact of traditional authoritarianism and legal authoritarianism on juror verdict preference,[8] Narby, Cutler, and Moran (1993) discovered that jurors who scored high on measures of authoritarianism, and to a greater extent legal authoritarianism, tended to convict more often.

Though views of the death penalty and the personality trait of authoritarianism can affect juror decision-making processes, studies show that general biases are typically weak predictors of jurors' verdict preferences (Devine 2012). In this way, prior research indirectly calls into question the empirical viability of the inherent bias rationale. This study further explores the empirical underpinnings of that justification.

[8] Narby, Cutler, and Moran 1993, 286-87 describe traditional authoritarianism as "an individual's tendency to be politically conservative, hold conventional values, prefer powerful leadership, engage in stereotypical thinking, and manifest overly punitive and rigid thinking." They describe legal authoritarianism as "an individual's tendency to engage in anti-libertarian thinking and specifically focuses on beliefs related to the legal system and an inclination to slight the defendant's civil liberties."

Methods

This study examines the pre-trial biases of convicted felons, compares convicted felons to other groups of non-felon jurors, and explores the nexus between view of the law and pre-trial biases. Three inquiries drive this study: 1) Is there a level of bias homogeneity among convicted felons such that all, or at least the vast majority of convicted felons harbor a pro-defense/anti-prosecution pre-trial bias? 2) Are the strength and direction of convicted felons' pre-trial biases markedly different than those of other groups of non-felon jurors? 3) Are convicted felons' pro-defense/anti-prosecution pre-trial biases born of a negative view of the law making them qualitatively different from the pro-defense/anti-prosecution pre-trial biases of non-felons? To explore these inquiries, I conducted a quasi-experiment in a large county in southern California.

A quasi-experiment allows for the comparison of grouped subjects when a researcher cannot, for practical or ethical reasons, manipulate the experimental stimulus and control for confounding variables through matching and randomization (Campbell and Stanley 1963; Cook and Campbell 1979; Shadish, Cook, and Campbell 1979). Here, I compare a group of otherwise juror-eligible subjects with a felony criminal record (focal group) to a group of eligible jurors (comparison group 1) and a group of eligible jurors currently enrolled in law school (comparison group 2). The independent variable in this quasi-experiment is status or group membership. For obvious reasons, I could not control for subjects' status, nor did I have the opportunity to conduct pre-tests. Hence, I used a post-test only, non-equivalent control group design. (Shadish, Cook, and Campbell 1979).

Participants

This study includes 707 participants that divide into three groups: 247 otherwise eligible jurors with a felony criminal record ("convicted felons"), 242 eligible jurors without a felony criminal record ("eligible jurors"), and 218 eligible jurors without a felony criminal record and currently enrolled in law school ("law students"). To construct each study group, I recruited participants at a variety of locations over the course of 12 months. To avoid conditioning during recruitment, I presented prospective subjects with only a brief overview of the study before asking each to respond to a series of written questions. Because this study involves eligible jurors in California, I used California's juror eligibility guidelines as exclusionary criteria, pre-screening participants to ensure they met these guidelines.

The focal group includes 247 convicted felons. I recruited convicted felons from Parole and Community Team (PACT) meetings over 3 months in 2011 (Ross 2008).[9] The California Department of Corrections and Rehabilitation (CDCR) requires all newly released prisoners to attend a PACT meeting within 30 days of their release from prison. The CDCR conducts 5 PACT meetings per month in the host county. For 3 months, I attended all PACT meetings in the host county, recruiting participants at a total of 15 meetings at which attendance ranged from 10 to 50 convicted felons. In total, I solicited 304 PACT meeting attendees. A response rate of 81% yielded 247 convicted felon participants. Appendix B provides a description of participant characteristics.

When constructing the focal group, rather than recruiting convicted felons who had completed their term of supervision, I chose to recruit parolees. I hypothesized that if a

[9] At PACT meetings, local community agencies discuss the services available to parolees.

strong pre-trial bias were to exist, it would likely present most regularly and strongly in convicted felons who had recently finished a period of incarceration. Accordingly, the focal group is comprised exclusively of participants who were no more than 30 days removed from prison.[10]

Comparison group 1 consists of 242 eligible jurors without a felony criminal conviction. I recruited eligible jurors from business and community centers in four culturally and socio-economically diverse areas of the host county. Though the setting for recruitment varied slightly from location to location, I consistently chose highly trafficked areas. I recruited eligible jurors for 6 months in 2011, soliciting approximately 380 eligible jurors. A 64 percent response rate resulted in 242 eligible juror participants.

The host county's felon population differs from its eligible juror population on a number of key features. Felons in the host county are disproportionately young, male, black or Latino, and poor (Appendix B). To mitigate these differences, I aggregately matched the eligible juror group and the convicted felon group by purposively recruiting a group of eligible jurors similar to convicted felons in age, gender, and race (Schutt 2012).[11]

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[10] The convicted felon group mirrors California's parolee population on several important factors. As of December 31, 2011, California's parolee population consisted of 10 percent females and 90 percent males. The average age of female parolees is 38, males 37. In the present study, 24 percent of convicted felons are women and 76 percent are men. The ages of female convicted felons ranged from 19-60 with a mean age of 35 (SD = 9.61), while the ages of males ranged from 19-71 with a mean age of 36 (SD = 11.19). Hence, though female convicted felons are overrepresented in this study, the average ages of female and male felons are comparable to California's parolee population (Parole Census Data as of December 11, 2012; Appendix B).

The racial composition of convicted felons in this study differs slightly from California's parolee population. Of parolees in California, 29.9 percent are White, 27.9 percent are Black, 36.7 percent are Latino/a, and 5.5 percent are some other race. In the present study, 32.5 percent of convicted felons are White, 23.5 percent are Black, 30 percent are Latino/a, and 14 percent are some other race. Thus, Black and Latino/a felons are slightly underrepresented in the present study while White and "other" ethnicities are slightly overrepresented (Parole Census Data as of December 11, 2012; Appendix B).

[11] The host county does not collect or maintain data on its juror demographics. The closest approximation is United States Census data for the host county. For 2010, the United States Census reported that the host county was approximately 49.8 percent female and 50.2 percent male. Roughly 48.5 percent of the residents in the host county are White, 4.7 percent are Black, 32 percent are Latino/a, and 14.8 percent are of some other ethnicity. The eligible juror group in the present study consists of 58 females (24 percent) and 184

Because the goal of this study was to isolate the impact of a felony conviction on the pre-trial biases of prospective jurors, I controlled other group differences later using regression analyses. Notably, those analyses demonstrate that while age and gender are not significant predictors of pre-trial biases (RJBS score), race is significantly associated with pre-trial bias. As compared to White/Caucasian subjects, Black/African American subjects are more likely to harbor a pro-defense pre-trial bias. While those who self-identify as Black/African American make up only 4.7 percent of the host county's population, they amount to 24 percent of the present study's eligible juror group. Given this discrepancy in race, the eligible juror group is more apt to favor the defense than is the host county's population.

Comparison Group 2 is composed of 218 eligible jurors who are currently enrolled in law school. I recruited law students from a local law school in the host county. There, I conducted in-person solicitation in 10 individual classes over the course of 4 weeks in 2011. Classes ranged in size from 12-60 students, were topically varied, and included students at various stages of their legal studies.[12] In sum, those classes were comprised of

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males (76 percent). Of the eligible juror group, 33 percent are White, 24 percent are Black, 27 percent are Latino/a, and 17 percent are of some other ethnicity (United States Census Bureau, 2010; Appendix B).

Overall, the gender and race of the eligible juror group is dissimilar to the population of the host county. Specifically, males and Black eligible jurors are significantly overrepresented in the eligible juror group, while White eligible jurors are underrepresented. Though the gender and race distribution in the eligible juror group approximate that of the felon group, the discrepancies between the eligible juror group and the host's cities Census data likely detract from the generalizability of the present study (United States Census Bureau 2010; Appendix B).

[12] The gender and ethnic breakdown of the law student group are similar to the Fall 2011 matriculant group. The Law School Admission Council reports that the matriculant group for Fall 2011 totaled 45,600 students. Of those students, roughly 47 percent are female and 53 percent are male. In the present study, 44.5 percent of the law student group is female and 55.5 percent is male. Hence, the gender distribution of the law students in the present study closely resembles that of the law student matriculant group for Fall 2011 (Law School Admission Council 2011; Appendix B).

Of the Fall 2011 matriculant group, 61 percent are White, 7 percent are Black, 6 percent are Latino/a, and 26 percent are some other ethnicity. Of the law students in the present study, 60.4 percent of students are White, 7.8 percent are Black, 7.8 percent are Latino/a, and 24 percent are some other ethnicity. Thus, the ethnic breakdown of law students in the present study approximates that of the law student matriculation group for Fall 2011 (Law School Admission Council 2011; Appendix B).

248 students. The response rate for law students was 88 percent. Again, I attempted to mitigate group differences using aggregate matching and later regression analyses.[13]

I chose to include law students as a comparison group to assess whether pro-defense/anti-prosecution bias exists in other groups of non-felon jurors. As part of their training, law students learn that in a criminal case, defendants are innocent until proven guilty. They also learn that to secure a conviction, the prosecution must prove – beyond a reasonable doubt – that the defendant committed the crime in question. I recruited law students from a small, regional law school that produces many lawyers who practice criminal defense and public interest law. Given law students' training and the culture of the recruitment site law school, I hypothesized that the law student group would harbor a pro-defense pre-trial bias.

Measures

To test the underlying presumptions of the inherent bias rationale, I used a measure of pre-trial bias (the Revised Juror Bias Scale – "RJBS")[14] and a measure of participants' view of the law's fairness and legitimacy (the Fairness and Legitimacy Scale – "FLS"). Additionally, from each subject, I collected demographic and viewpoint data that may impact pre-trial juror bias.

Developed by Kassin and Wrightsman (1983), the Juror Bias Scale ("JBS") is the most commonly used measure of juror bias (Smith and Bull 2012; Devine 2012). The JBS measures prospective jurors' pre-trial dispositions towards guilt or innocence (Kassin and

[13] The law students at the recruitment site were relatively homogenous with respect to age and race. Hence, purposive sampling did not yield a law student group that approximated the convicted felon group. Group differences between law students and convicted felons were largely controlled for using regression analyses.
[14] The Revised Juror Bias Scale is a refined version of the Juror Bias Scale and measures the pre-trial biases of subjects using two underlying constructs: probability of commission and reasonable doubt. In this context, bias is defined as an inclination to favor the prosecution or the defense without knowledge about the facts of a particular case or the evidence presented.

Wrightsman 1983), using two separate but related constructs: Probability of Commission (PC) and Reasonable Doubt (RD) (Kassin and Wrightsman 1983). The PC subscale measures a subject's "beliefs about how likely criminal defendants are to have committed a crime," while the RD subscale measures "the level of subjective certainty needed to (personally) justify convicting a defendant" (Devine 2012, 106; Kassin and Wrightsman 1983). A number of studies have demonstrated that JBS scores predict verdict (Kassin and Wrightsman 1983; Cutler et al. 1992; Dexter et al. 1992; Narby, Cutler, and Moran 1993; Myers and Lecci 1998; Chapdelanie and Griffin 1997; Lecci et al. 2000; Tang and Nunez 2003; Warling and Peterson-Badali 2003), only two have called into question the predictive validity of the JBS (Weir and Wrightsman 1990; Kassin and Garfield 1991). As a result, scholars generally characterize the JBS as a reliable measure of pre-trial bias (Devine 2012; Smith and Bull 2012).[15]

In 1998, Myers and Lecci (1998) performed a confirmatory factor analysis on the JBS and found that empirical evidence did not support the underlying two-factor structure of the scale (1998). Using exploratory factor analysis, Myers and Lecci (1998) then generated an alternative model of the JBS with higher predictive validity than the original (Devine 2012). The resulting scale, the Revised Juror Bias Scale, consists of 12 questions that assess a juror's pre-trial propensity to favor either the defense or the prosecution. In a cross-validation study, the RJBS has proven a more robust measure of pre-trial juror bias than the original JBS (Lecci and Myers 2002; Devine 2012).[16]

[15] Narby, Cutler, and Moran 1993, 36) note that in a personal communication, Kassin indicated that the JBS could be considered a measure of legal authoritarianism, a personality trait shown to generate general biases that influence juror decision-making processes in a variety of cases.

[16] I chose to use the RJBS because the RJBS is a refined version of the JBS – the most tested and validated measure of pre-trial bias. Another modified version of the RJBS/JBS – the Pretrial Juror Attitude

Scored on a standard five-category Likert scale (strongly disagree, disagree, no opinion, agree, strongly agree), the RJBS produces total scores that range from 12 to 60, with a scale median score of 36 (Myers and Lecci 1998). Generally, researchers employing the JBS or the RJBS as possible predictors of verdict use subject groups' median score to divide participants into pro-defense and pro-prosecution groups (Kassin and Wrightsman 1983; Weir and Wrightsman 1990; Kassin and Garfield 1991; Cutler et al. 1992; Dexter et al. 1992; Narby, Cutler, and Moran 1993; Tang and Nunez 2003). Scores below the subject groups' median indicate a pro-defense bias, while scores above the subject groups' median indicate a pro-prosecution bias (Kassin and Wrightsman 1983; Myers and Lecci 1998). Because the present study does not test the predictive validity of the RJBS, but rather compares the pre-trial biases of groups, I use the scale median of the RJBS to delineate pro-defense and pro-prosecution.

I also employed a measure of subjects' perceptions of the law's fairness and legitimacy to assess the possible connection between view of the law and pre-trial bias. Developed for this study, the Fairness and Legitimacy Scale ("FLS") operationalizes subjects' views of the law. In their research on how perceptions of the law impact legal compliance, procedural justice scholars have developed measures to assess subjects' feelings about the perceived fairness of legal processes (Paternoster et al. 1997; McIvor 1999; Taxman et al. 1999; Tyler 2006; Gottfredson et al. 2007). The FLS draws on these measures. The FLS contains 8 questions, scored on a standard Likert scale (strongly disagree, disagree, no opinion, agree, strongly agree) with possible scores ranging from 8 to 40 and a standard median score of 24. Higher scores indicate a favorable view of the law's

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Questionnaire (PJAQ) – was developed by Myers and Lecci (2008) but has not undergone extensive validation.

fairness and legitimacy; lower scores indicate a negative view of the law's fairness and legitimacy.[17]

Prior studies on juror decision-making processes reveal that some juror characteristics can spawn general pre-trial biases. Accordingly, along with responses to the RJBS and FLS, I collected data on a number of characteristics shown to potentially influence jurors' pre-trial attitudes. The data record subjects' age (Higgins et al. 2007), gender (Moran and Comfort 1982a; Quas et al. 2002), race (Mills and Bohannon 1980; King 1993), native language (Hsieh 2001), occupational status (Simon 1967; Bridgeman and Marlowe 1979; Cowan et al. 1984), religion (Eisenberg, Garvey, and Wells 2001; Seltzer 2006; Miller et al. 2011), socioeconomic status (Reed 1965; Adler 1994), level of education (Simon 1967; Bridgeman and Marlowe 1979; Mills and Bohannon 1980), history of victimization (Culhane, Hosch, and Weaver 2004), view of the death penalty (Moran and Comfort 1982b; Bernard and Dwyer 1984; Cowan, Thompson, and Ellsworth 1984; Horowitz and Sequin 1986; Allen, Mabry, and McKelton 1998), and political affiliation (Kravitz, Cutler, and Brock 1993).

Results

The Prevalence of Pro-Defense/Anti-Prosecution Pre-Trial Biases

To explore prevalence of a pro-defense/anti-prosecution pre-trial bias among convicted felons, I first examine the central tendencies and dispersion of convicted felons' scores on the RJBS (Table 2.1).

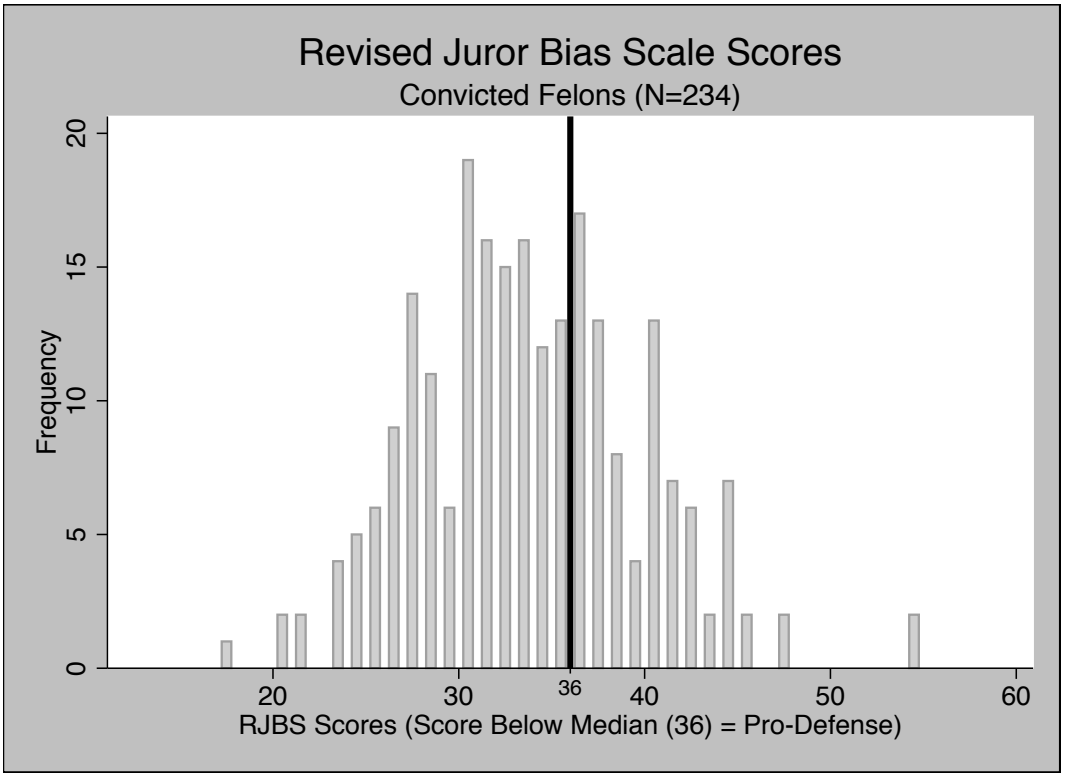
[17] The FLS was pre-tested on 10 members of each group. Participants were asked to answer the questions contained in the FLS and to then take part in a 30-minute interview about their experiences with and views of the law and legal processes. In all cases, subjects' FLS score mirrored their interview responses. Details of these validations are available upon request.

Table 2.1 Revised Juror Bias Scale Scores by Group

	Eligible Jurors	Convicted Felons	Law Students
N	235	234	209
Mean	35.41	33.29	32.07
Median (36)	35	33	33
Std. Deviation	5.10	6.08	5.64
Range (12 – 60)	21 – 49	17 – 55	18 – 53

Note: Parentheses indicate the scale properties. The RJBS's median score is 36 and its possible range is 12 – 60. N's differ from the total number of participants because I did not impute missing values for dependent variable (RJBS score), dropping participants who did not answer all items on the RJBS scale.

Figure 2.1 Frequency Distribution of Convicted Felons' Scores on the Revised Juror Bias Scale.



Note: The bolded line identifies the Revised Juror Bias Scale's median value of 36. Scores below that median indicate a pro-defense bias and scores above that median indicate a pro-prosecution bias.

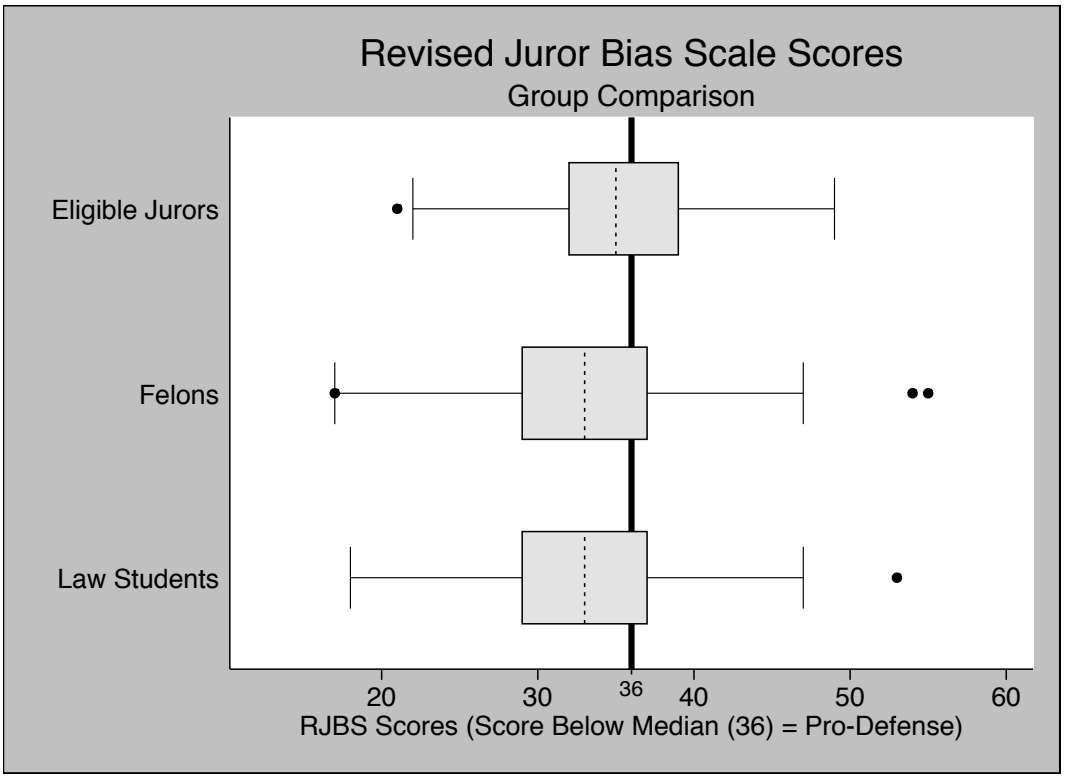
A frequency distribution of convicted felons' RJBS scores reveals that 151 felons scored below the scale median, 17 scored at the scale median, and 66 scored above the scale median (Figure 2.1). Thus, 65 percent possessed a pro-defense/anti-prosecution pre-trial bias, 7 percent were neutral, while 28 percent favored the prosecution.

Group Level Pre-Trial Biases

I next explored the group level biases of study participants. To do so I first examine the central tendencies and dispersion of each group's scores on the RJBS (Table 2.1). Each group's mean RJBS score falls below the scale median (36), suggesting a pro-defense/anti-prosecution bias across groups. Additionally, the mean RJBS score of convicted felons matches that of law students (33) and is lower than the mean RJBS of eligible jurors (35). This suggests that convicted felons and law students harbor similar pro-defense pre-trial biases that are more extreme than those of eligible jurors.

Among groups, the dispersion of RJBS scores takes on a comparable pattern. The range of RJBS scores for convicted felons and law students are alike and vary substantially (17 to 55 and 18 to 53 respectively), while the RJBS scores of eligible jurors are more centralized, ranging from 21 to 49. These results seem to demonstrate that the pre-trial biases of convicted felons and law students 1) are similar in strength, direction, and variation, but 2) differ from the pre-trial biases of eligible jurors. A graphical comparison of group RJBS scores illustrates these relationships. Figure 2.2 shows the score distribution, interquartile range, and median of group RJBS scores.

Figure 2.2 A Boxplot Comparison of Group Scores on the Revised Juror Bias Scale.



Note: The bolded line identifies the Revised Juror Bias Scale's median value of 36. Scores below that median indicate a pro-defense bias and scores above that median indicate a pro-prosecution bias. For each group, shaded boxes indicate the interquartile range of RJBS scores, whiskers indicate the overall range of RJBS scores, dotted line indicates the group mean RJBS score, and dots are outliers.

Using mean as the measure of central tendency, I then compare each groups' RJBS score. The Shapiro-Wilk test of normality reveals that all groups are normally distributed on the RJBS (Eligible Jurors: p = .82, Felons: p = .18, Law Students: p = .87) (Shapiro and Wilk 1965; Shapiro and Francia, 1972). Yet, Bartlett's test of group-wise heteroskedasticity shows that variances are not equal across groups (Felons/Eligible Jurors: p = .0001, Felons/Law Students: p = .291, Eligible Jurors/Law Students: p = <.0000) (Box, 1953;

Brown and Forsythe 1974).[18] For this reason, I use a series of unequal variance t-tests to test the null hypothesis that the intergroup means are equal (Satterthwaite 1946; Welch 1947). Table 2.2 presents these results.[19]

Table 2.2 Unequal Variance t-tests Comparing Revised Juror Bias Scale Scores

	Sattherthwaite df	*p*-value	Welch df	*p*-value
Convicted Felons v. Eligible Jurors	452.7	0.0001***	454.58	0.0001***
Eligible Jurors v. Law Students	422.04	<0.0000***	423.95	<0.0000***
Convicted Felons v. Law Students	440.33	0.29	442.34	0.29

Note: *** p < .001.

The results of these comparisons reveal two notable findings. First, evidence indicates that there is no statistically significant difference between the mean RJBS scores' of convicted felons and law students. Thus, as a group, law students appear to harbor a pro-defense/anti-prosecution bias as severe as that of convicted felons. A comparison of mean group scores on the RJBS also reveals that while the pre-trial biases of convicted

[18] Sensitive to departures from normality, Barlett's test of group heteroskedasticity is optimal when the variable of interest is normally distributed. The results of Levene's test of groupwise heteroskedacticity produced results similar to Bartlett's test (Felons/Eligible Jurors: p = .0076, Felons/Law Students: p = .2731, Eligible Jurors/Law Students: p = .1333).

[19] A series of t-tests presuming equality of variances across groups yielded similar results (Eligible Jurors/Convicted Felons: p = 0.0001, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.2909).

The results of a one-way analysis of variance with post-hoc multiple group comparison tests (Bonferroni, Scheffe, and Sidak) also mirrored prior tests (Bonferroni – Eligible Jurors/Convicted Felons: p = <0.0000, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.808: Scheffe – Eligible Jurors/Convicted Felons: p = <0.0000, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.543: Sidak – Eligible Jurors/Convicted Felons: p = <0.0000, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.61).

Results from the Kruskal-Wallis test, a non-parametric analysis of variance, are consistent with the above results (Eligible Jurors/Convicted Felons: p = 0.00013, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.1999).

felons are similar to those of law students, there is a statistically significant difference between the mean RJBS score of convicted felons and eligible jurors. To determine whether this disparity is entirely attributable to group membership or whether juror traits that may be correlated with group membership (*e.g.* race or age) might account for the difference in RJBS scores, I conduct a multiple regression analysis (ordinary least squares) that examines the relationship between RJBS scores, group membership, and subject characteristics that studies have shown may impact a juror's pre-trial biases.[20] Table 2.3 summarizes the results of this analysis.[21]

As shown in Table 2.3, felony conviction has a significant negative regression weight (b = -0.174), indicating that, after controlling for all other variables, a felony conviction predicts a lower score on the RJBS (a pro-defense/anti-prosecution pre-trial bias) relative to eligible jurors. Yet, a number of other variables also predict such a bias. For example, those subjects who self-identify as law students (b = -0.246), African-American (b = -0.090), crime victims (b = -0.098), strongly opposed to the death penalty (p = -0.136), or liberal (b = -0.091), are also more likely to harbor a pro-defense/anti-prosecution bias (relative to the respective reference groups listed in the caption in Table 2.3). Conversely, participants having less than a high school education (b = 0.154) or who are strong supporters of the death penalty (b = 0.159) are more likely to favor the prosecution (relative to reference categories).

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[20] A preliminary investigation of the data revealed that 20% of the possible responses on predictor variables were missing at random (Little and Rubin 2002; Enders et al. 2006). I used multiple imputation by chained equation ("MICE") to handle this missing data (Rubin 1987; Little and Rubin 1989-1990). In several studies, MICE outperformed other common techniques for handling missing data (*e.g.*, complete case analysis or single imputation), yielding the least biased parameter estimates (Graham 2009; White et al. 2011). *See* Appendix 2 for a more thorough discussion of the missing data in this study.

[21] Because my dependent variable (RJBS) is bounded (12-60), for each multiple regression analysis presented, I predicted values of RJBS post-estimation to ensure that all values fell within the bounds of the scale. No problems presented.

Table 2.3 Revised Juror Bias Scale Scores as a Function of Group Membership, Demographics, and Viewpoints.[22]

	Coef.	Std. Err.	Stzd. Coef.
Convicted felon	-2.095**	0.745	-0.174**
Law student	-3.021***	0.677	-0.246***
Age	0.020	0.022	0.037
Gender	-0.527	0.480	-0.043
African-American	-1.305*	0.611	-0.090*
Latino/a	0.871	0.652	0.063
Other race	0.604	0.597	0.041
Less than high school	3.175**	1.020	0.154**
Some college	-0.593	0.670	-0.048
College	-0.676	0.847	-0.047
Graduate school	-0.333	0.913	-0.025
Income	0.006	0.104	0.002
Language	0.127	0.677	0.007
Victimization	-1.218**	0.463	-0.098**
Strongly support death penalty	2.232**	0.655	0.159**
Support death penalty	0.671	0.584	0.050
Oppose death penalty	-0.714	0.606	-0.043
Strongly oppose death penalty	-2.225**	0.738	-0.136**
Very liberal	-0.308	0.995	-0.014
Liberal	-1.308*	0.540	-0.091*
Conservative	-0.019	0.558	-0.001
Very conservative	1.050	0.903	0.047
Religious	-0.584	0.480	-0.048
Occupation	-0.205	0.978	-0.010
Constant	36.150	1.575	
Adjusted r^2	0.130		
N	687		

Note: *p < .05. **p < .01. ***p < .001. N differs from the total number of participants because I did not impute missing values for dependent variable (RJBS score), dropping participants who did not answer all items on the RJBS scale.

Notably, standardized coefficients reveal that the regression weight of law student was lower than that of convicted felon, suggesting that, as compared to eligible jurors, enrollment in law school has a greater effect on pre-trial bias than does a felony conviction.

[22] Reference categories: eligible jurors, female, white, high school education, native English speaker, no history of victimization, neutral view of the death penalty, moderate political perspective, self-identifies as not religious, does not have an occupation.

Moreover, across groups, education level and view of the death penalty have the greatest impact on pre-trial bias. In relation to those with a high school education or a neutral view of the death penalty, subjects who do not graduate high school or strongly support the death penalty are more apt to favor the prosecution. In sum, these results tend to show that though a felony conviction is a statistically significant predictor of a pro-defense pre-trial bias, it is not the sole predictor of such a bias, as a host of other factors can contribute to or mitigate the pre-trial dispositions of prospective jurors.

Perceptions of the Law and Pre-Trial Biases

Some courts suggest that convicted felons' pre-trial biases are qualitatively different than those of non-felons jurors because they stem from negative views of the criminal justice system (Rubio v. The Superior Court of San Joaquin County 1979). To explore the nexus between view of the law and pre-trial biases, I first examine the dispersion of convicted felons' FLS scores and then compare the FLS scores of convicted felons to those of eligible jurors and law students.

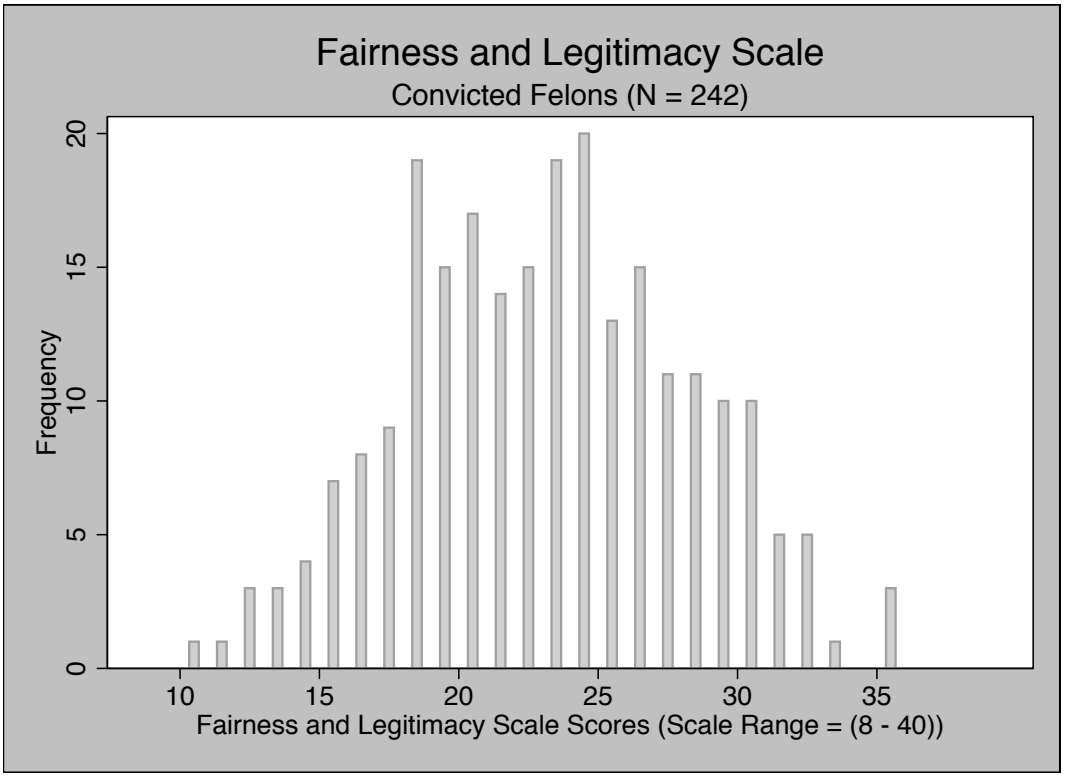
As Table 2.4 illustrates, convicted felons' FLS scores ranged considerably (10 to 40), virtually matching the scale range (8 – 40). Moreover, among groups, convicted felons' had the highest standard deviation on the FLS (5.09). Figure 2.3 displays the frequency distribution of convicted felons' FLS scores.

Table 2.4 Fairness and Legitimacy Scale Scores by Group

	Eligible Jurors	Convicted Felons	Law Students
N	237	239	204
Mean	22.41	22.64	24.17
Median	22	23	24
Std. Deviation	4.63	5.09	4.15
Range	10 – 40	10 – 36	10 – 34

Note: Parentheses indicate the scale properties. The FLS's median score is 24 and its possible range is 8 – 40. N's differ from the total number of participants because I did not impute missing values for dependent variable (RJBS score), dropping participants who did not answer all items on the RJBS scale.

Figure 2.3 Frequency Distribution of Convicted Felons' Fairness and Legitimacy Scale Scores.



Note: Higher scores on the Fairness and Legitimacy Scale indicate a more favorable view of the law.

Table 2.4 also shows that while law students have the greatest mean score on the FLS (24.17), eligible jurors and convicted felons had similar mean scores on the FLS (22.41 and 22.64 respectively). A boxplot comparison of FLS scores, Figure 2.4 also shows that the group FLS scores of convicted felons and eligible jurors are similar, but that both groups appear to possess a more negative view of the law than do law students. To further explore these relationships, I conducted an intergroup comparison of mean FLS scores.

A Shapiro-Wilk test of normality reveals that law students' scores on the FLS are not normally distributed (Eligible Jurors: p = .366, Convicted Felons: p = .778, Law Students: p = .0097) (Shapiro and Wilk 1965; Shapiro and Francia 1972).[23] Levene's test of heteroskedacticity shows that group variances differ (Eligible Jurors/Convicted Felons: p = .1516, Eligible Jurors/Law Students: p = .1037, Convicted Felons/Law Students: p = .0028) (Levene 1960). Therefore, to test the null hypothesis that the group means on the FLS are the same, I use the Kruskal-Wallis one-way analysis of variance, a test resistant to departures from normality and variance heterogeneity (Kruskal and Wallis 1952).[24]

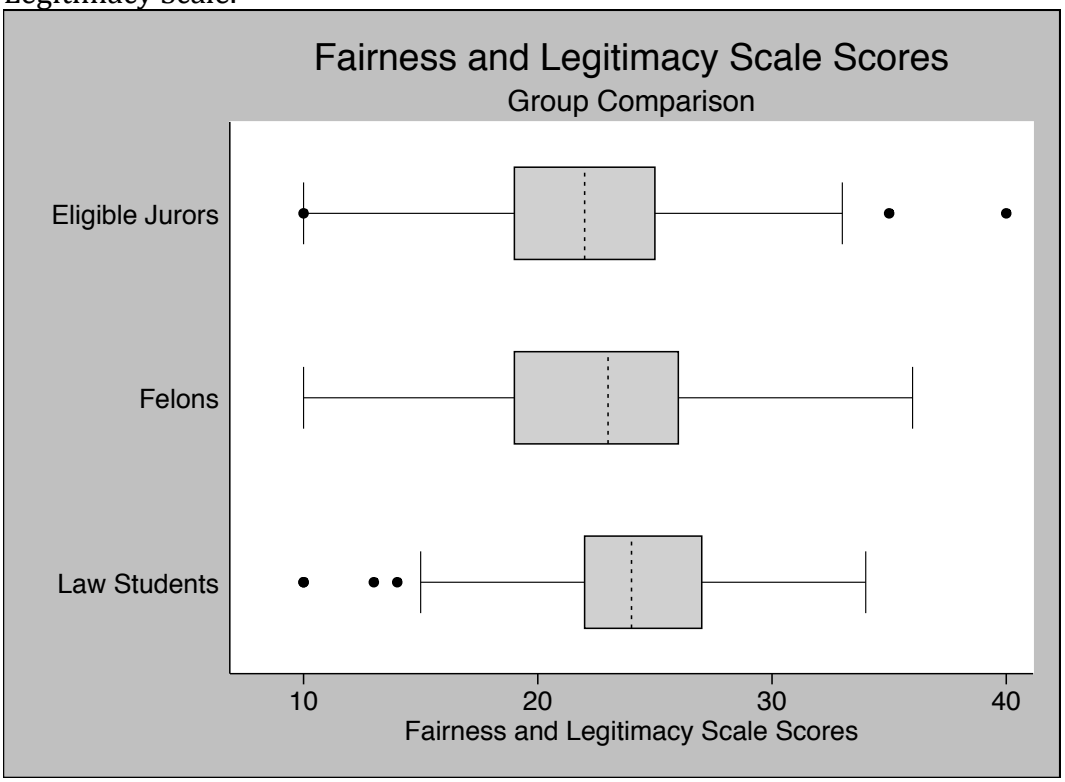
[23] In an attempt to normalize the distributions of FLS scores, I examined transformations of the variable. Yet, all transformations of FLS scores produced higher chi-square values than the untransformed FLS scores.

[24] A series of t-tests presuming equality of variances across groups yielded similar results (Eligible Jurors/Convicted Felons: p = 0.6117, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.0006).

A second series of t-tests that do not presume homogeneity of variances also support these results (Eligible Jurors/Convicted Felons: p = 0.6115, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.0005).

Additionally, the results of a one-way analysis of variance with post-hoc multiple group comparison tests (Bonferroni, Scheffe, and Sidak) also mirrored prior tests (Bonferroni – Eligible Jurors/Convicted Felons: p = 1, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.002: Scheffe – Eligible Jurors/Convicted Felons: p = 0.869, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.003: Sidak – Eligible Jurors/Convicted Felons: p = 0.934, Eligible Jurors/Law Students: p = <0.0000, Convicted Felons/Law Students: p = 0.002).

Figure 2.4 A Boxplot Comparison of Group Scores on the Fairness and Legitimacy Scale.



Note: Higher scores on the Fairness and Legitimacy Scale indicate a more favorable view of the law. For each group, shaded boxes indicate the interquartile range of FLS scores, whiskers indicate the overall range of FLS scores, dotted line indicates the group mean FLS score, and dots indicate outlier FLS scores.

As Table 2.5 illustrates, while the Kruskal-Wallis analysis reveals a statistically significant difference between the FLS scores of law students and other subject groups, the test also indicates no statistically significant difference between the FLS scores of convicted felons and eligible jurors.

I next examine the correlation between subjects' score on the Fairness and Legitimacy Scale and Revised Juror Bias Scale. As shown in Table 2.6, across groups, a subject's score on the FLS is significantly and positively correlated with his or her score on the RJBS, such that a positive view of the law makes it more likely that a subject will favor the prosecution.

Table 2.5 Kruskal-Wallis Test Comparing Fairness and Legitimacy Scale Scores.

	p-value
Eligible Jurors v. Convicted Felons	0.235
Convicted Felons v. Law Students	<0.000***
Law Students v. Eligible Jurors	<0.000***

Note: *** p < .001.

Table 2.6. Correlations of the Fairness and Legitimacy Scale and the Revised Juror Bias Scale.

	r	*p*-value
Eligible Jurors	.351	<0.000***
Convicted Felons	.432	<0.000***
Law Students	.272	<0.000***

Note: *** p < .001.

To separate the impacts of other subject characteristics from perceptions of fairness and legitimacy, I use regression analysis to control for features that might be correlated with FLS scores. In this model, I include FLS score as a predictor variable. Table 2.7 displays the results of this analysis.

Table 2.7 Revised Juror Bias Scale Scores as a Function of Juror Demographics, Viewpoints, and Fairness and Legitimacy Scale Scores.[25]

	Coef.	Std. Err.	Stzd. Coef.
Convicted felon	-2.282**	0.705	-0.190**
Law student	-3.533***	0.653	-0.288***
Fairness and legitimacy scale score	0.400***	0.047	0.328***
Age	-0.003	0.020	-0.005
Gender	-0.249	0.462	-0.020
African-American	-1.032†	0.597	-0.070†
Latino/a	0.991	0.617	0.072
Other race	0.982†	0.570	0.066†
Less than high school	2.756**	0.902	0.134**
Some college	-0.493	0.644	-0.040
College	-0.510	0.804	-0.036
Graduate school	-0.475	0.876	-0.035
Income	-0.113	0.010	-0.045
Language	0.083	0.642	0.005
Victimization	-0.980*	0.442	-0.079*
Strongly support death penalty	2.181***	0.616	0.156***
Support death penalty	0.748	0.567	0.056
Oppose death penalty	-0.526	0.586	-0.032
Strongly oppose death penalty	-1.797**	0.680	-0.109**
Very liberal	0.189	0.931	0.009
Liberal	-1.482**	0.530	-0.104**
Conservative	-0.012	0.530	-0.001
Very conservative	0.695	0.859	0.032
Religious	-0.672	0.463	-0.054
Occupation	-0.334	0.891	-0.017
Constant	27.929	1.788	
Adjusted r^2	0.230		
N	675		

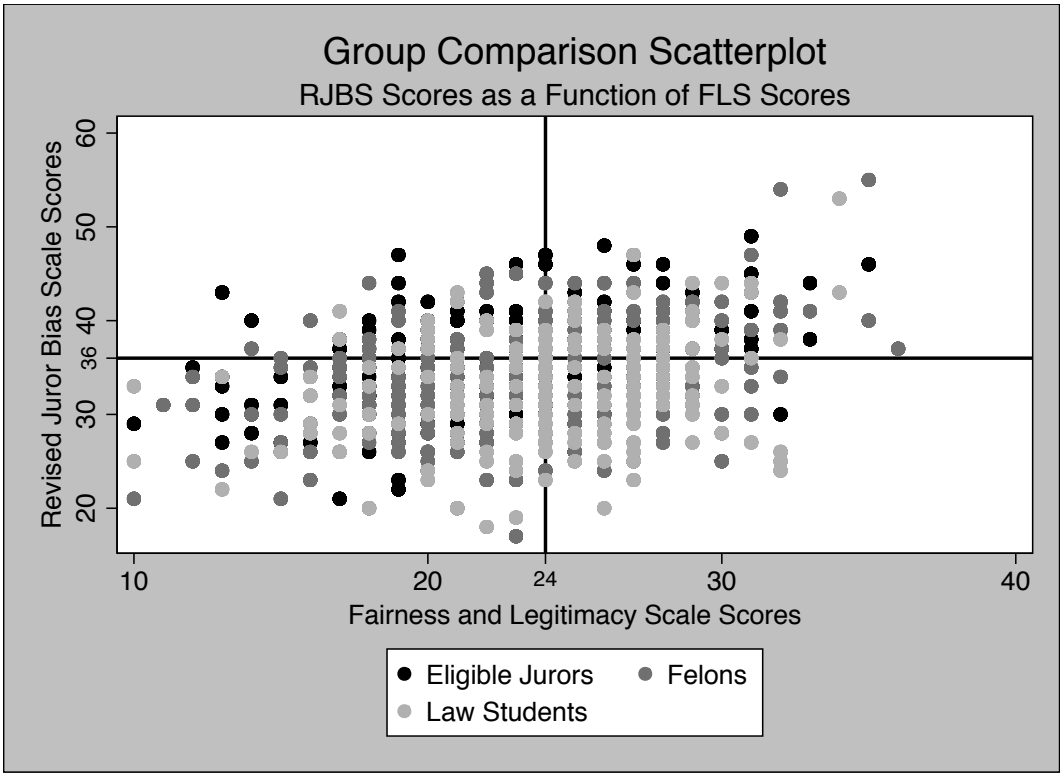
Note: † p < .10. *p < .05. **p < .01. ***p < .001. N differs from the total number of participants because I did not impute missing values for dependent variable (RJBS score), dropping participants who did not answer all items on the RJBS scale.

The results closely resemble those of the prior regression analysis. Table 2.7 illustrates that, as compared to reference categories, participants who self-identified as felons (*b* = -0.190), law students (*b* = -0.288), crime victims (*b* = -0.079), strongly opposed

[25] Reference categories: eligible jurors, female, white, high school education, native English speaker, no history of victimization, neutral view of the death penalty, moderate political perspective, self-identifies as not religious, does not have an occupation.

to the death penalty (b = -0.109), or liberal (b = -0.104), are more likely to harbor a pro-defense/anti-prosecution bias. Participants who self-identified as having less than a high school education (b = 0.134), relative to those with a high school education, or strongly supporting the death penalty (b = 0.156), relative to those with neutral views, are again more likely to harbor a pro-prosecution/anti-defense pre-trial bias. The variable of interest, FLS score, is a significant predictor of pre-trial bias, having the greatest effect on pre-trial bias (b = 0.328). Holding other traits constant, participants with a high FLS score (indicating a positive view of the law) are more likely to favor the prosecution in a criminal trial.

Figure 2.5. Scatterplot of Group Revised Juror Bias Scale Scores as a Function of Fairness and Legitimacy Scale Scores.



Note: Reference lines indicate scale medians – RJBS median (36) and FLS median (24).

Additionally, as shown in Table 2.7, the regression analysis including FLS score appears to explain a greater proportion of the variance in RJBS scores (adjusted $r^2 = 0.23$) than did the prior regression (adjusted $r^2 = 0.13$), which omitted FLS scores. These findings suggest that, along with several other factors, a juror's view of the law shapes his or her pre-trial biases.

Having observed that FLS scores correlate with and, when isolated, predict pre-trial bias, I next explore the possibility that a negative view of the law results in a pro-defense bias. To do so, I first examine the central tendencies of group FLS scores. As Table 2.4 shows, eligible jurors have the lowest mean score on the FLS (22.41), followed closely by convicted felons (22.64). Law students have the greatest mean score on the FLS (24.17), suggesting that law students, perhaps as a result of their training and indoctrination into law, view the law and legal processes more favorably than their counterparts.

Notably, eligible jurors hold the most negative view of the law, but also have the highest mean RJBS score (35.41), indicating that they are the least pro-defense group. Conversely, while law students view the law most favorably, they harbor the strongest pro-defense pre-trial bias. A scatterplot of subjects' RJBS scores as a function of their perceptions of the law (FLS) is consistent with this finding (Figure 2.5). This result suggests that while in isolation view of the law (FLS) is predictive of pre-trial biases; a host of characteristics may serve to exacerbate or mediate this effect. Hence, view of the law alone is not dispositive of a pre-trial bias in one direction or the other.

Table 2.8. Revised Juror Bias Scale Scores as a Function of Juror Demographics, Viewpoints, Fairness and Legitimacy Scale Scores, and Interaction Terms.[26]

	Coef.	Std. Err.	Stzd. Err.
Convicted felon	-2.223**	0.697	-0.185**
Law student	-3.422***	0.649	-0.279***
Fairness and legitimacy scale score	0.357***	0.068	0.292***
Felon * FLS	0.153	0.099	0.080
Law student * FLS	-0.075	0.118	-0.032
Age	-0.007	0.021	-0.012
Gender	-0.286	0.461	-0.023
African-American	-1.074†	0.593	-0.073†
Latino/a	0.954	0.613	0.069
Other race	0.917	0.572	0.062
Less than high school	2.598**	0.892	0.126**
Some college	-0.568	0.648	-0.046
College	-0.647	0.803	-0.045
Graduate school	-0.502	0.871	-0.038
Income	-0.108	0.100	-0.043
Language	0.093	0.632	0.005
Victimization	-1.037*	0.440	-0.084*
Strongly support death penalty	2.269***	0.614	0.162***
Support death penalty	0.743	0.565	0.056
Oppose death penalty	-0.462	0.588	-0.028
Strongly oppose death penalty	-1.672*	0.687	-0.101*
Very liberal	0.188	0.913	0.008
Liberal	-1.539**	0.532	-0.108**
Conservative	-0.016	0.522	-0.001
Very conservative	0.825	0.878	0.038
Religious	-0.663	0.466	-0.054
Occupation	-0.411	0.883	-0.021
Constant	29.175	2.066	
Adjusted r^2	0.231		
N	675		

Note: † p < .10. *p < .05. **p < .01. ***p < .001. N differs from the total number of participants because I did not impute missing values for dependent variable (RJBS score), dropping participants who did not answer all items on the RJBS scale.

I then examine whether the effect of view of the law on pre-trial bias differs among groups by performing a multiple regression analysis that incorporates two interaction

[26] Reference categories: eligible jurors, female, white, high school education, native English speaker, no history of victimization, neutral view of the death penalty, moderate political perspective, self-identifies as not religious, does not have an occupation, and Eligible Juror FLS.

terms: FelonFLS (Felon * FLS) and LawStudentFLS (Law Student * FLS).[27] This model, which includes subject characteristics, group membership, FLS scores, and interaction terms, indicates that, as compared to eligible jurors, being a convicted felon or a law student is not a statistically significant moderator of the effect between FLS score and RJBS score (FelonFLS, p = 0.125; LawStudentFLS p = 0.527) (Table 2.8). This result tends to show that convicted felon status does not exacerbate the impact of perceptions of the law on pre-trial bias.

Study Limitations

This post-test only, non-equivalent design has limitations. To analyze the effect of a felony conviction on pre-trial bias, I compared three non-equivalent groups in the field. These groups differ on a number of characteristics apart from a felony criminal history. To account for these anticipated differences, I used aggregate matching, purposively recruiting eligible jurors and law students that shared observable characteristics with convicted felons (Schutte 2012). I also attempted to mitigate group differences by using multiple regression analyses. Using aggregate matching and regression analyses, I was able to control for only a limited number of possible confounding variables (Schutte 2012), calling into question this study's internal validity (Shadish, Cook, and Campbell 1979). Because unidentified factors may have influenced findings, this study does not allow for unambiguous causal claims.

Moreover, the generalizability of this study is also limited. Because this study relied on volunteer participants from a limited geographic location, a measure of self-selection bias was likely present. Additionally, because I used aggregate matching to construct

[27] Prior to computing these interaction variables, I centered Fairness and Legitimacy Scale scores (Aiken and West 1991).

eligible juror and law student groups that approximated convicted felons, those groups may not accurately represent their corresponding populations. Yet, for some characteristics (*e.g.* race), this makes statistically significant group differences more robust. For example, the host county's population is predominately white and more likely to favor the prosecution, this study's eligible juror group was more diverse than that of the host county and thus more likely, in terms of racial composition, to favor the defense.

Despite these limitations, this study does allow for qualified inferences that shed light on a previously unexplored topic. As importantly, this study has the potential to initiate a line of inquiry into a pervasive practice that could have a profound impact on a uniquely democratic process.

Discussion

An Empirically Sound Policy or a Solution in Search of a Problem?

In the present study, I first explored the prevalence of pro-defense/anti-prosecution pre-trial bias among convicted felons. I then compared convicted felons to two groups of non-felons jurors: eligible jurors and law students. Through these comparisons, I examined the relative direction and strength of convicted felons' pre-trial biases. I also assessed the possible nexus between views of the law and pre-trial attitudes and dispositions.

The law does not identify the proportion of convicted felons that are assumed to harbor a pro-defense/anti-prosecution pre-trial bias. Accordingly, depending on the interpretation of the inherent bias rationale, the results of this study both support and refute a claim that convicted felons harbor a pro-defense/anti-prosecution pre-trial bias. Instrument responses reveal considerable variability in convicted felons' pre-trial biases. Of the convicted felons who took part, 65 percent possessed a pro-defense/anti-

prosecution pre-trial bias, 7 percent of convicted felons were neutral, while 28 percent favored the prosecution. In this way, evidence tends to support a claim that a majority of convicted felons would favor criminal defendants and disfavor the government (*see e.g. Baxter* 1978), but undermines a presumption that convicted felons are homogenous with respect to their pre-trial biases (see e.g. Carle 1998; Companioni Jr. 2007).

Similarly, the law also fails to identify the prevalence of pro-defense/anti-prosecution pre-trial bias that warrants en masse exclusion. In the present study, RJBS scores reveal that 55 percent (129/235) of eligible jurors and 68 percent of law students (148/218) harbor a pro-defense/anti-prosecution pre-trial bias. Perhaps two-thirds is a proportion adequate to justify the banishment of an entire population of prospective jurors? If so, the results of this study support the policy of per se excluding convicted felons from jury service, but also support a policy of excluding law students from the jury process. Yet, as law professor Brian Kalt notes, "[o]nly if every, or almost every, felon is irretrievably biased against the government might it make sense to have a blanket exclusion of felons from criminal juries on these grounds" (Kalt 2003, p. 106). Taking this view, evidence of variation in convicted felons' biases suggests that felon jury exclusion statutes are overinclusive. The exclusion of convicted felons from jury service bars roughly 13 million Americans from the adjudicative process (Kalt 2003). This study suggests that as many as 4.5 million of these citizens may not hold the views that the inherent bias rationale seeks to eradicate. Moreover, the inherent bias rationale says little about the severity of the pro-defense/anti-prosecution bias that ought to warrant exclusion. In the present study, of the two-thirds of convicted felons who scored below the RJBS scale

median, over half were within 6 points of that scale median (36) suggesting only a moderate pro-defense/anti-prosecution pre-trial bias.

The present study also shows that the strength and direction of convicted felons' group-level pre-trial biases are, at once, both distinct and similar to those of other groups of non-felon jurors. A comparison of mean RJBS score reveals a statistically significant difference between the pre-trial biases of convicted felons and eligible jurors. Convicted felons, as a group, tend to exhibit a stronger level of pro-defense/anti-prosecution bias, suggesting that felon jury exclusion statutes premised on the inherent bias rationale are justified. Yet, findings also reveal no significant difference between the group-level bias of convicted felons and that of law students, tending to show that law students pose as much of a threat to the jury process as do their felonious counterparts. Still, law students are not subject to exclusion prior to voir dire. Instead, they are permitted to take part in the jury selection process, and if shown to possess threatening biases, are removed through challenges for cause or preemptory strikes. This calls into question the uniqueness of the threat posed by convicted felons. Would other non-felon groups exhibiting a pro-prosecution/anti-defense pre-trial bias at the unacceptable rate also be subject to exclusion?

Along those lines, the results of this study demonstrate that a felony conviction is not the sole predictor of a pro-defense/anti-prosecution pre-trial bias. Controlling for subjects' group membership, and other relevant characteristics, a multiple regression analysis showed that several factors are significant predictors of a pro-defense/anti-prosecution pre-trial bias. Notably, enrollment in law school and perception of the law have a greater effect on participants' pre-trial biases than does a felony conviction.

Moreover, African-Americans, crime victims, those strongly opposed to the death penalty, and liberals are more likely to harbor a pro-defense/anti-prosecution bias. A policy categorically excluding these groups of prospective jurors from the jury process would be indefensible.

Some courts suggest that the source of convicted felons' biases is cause for concern. They intimate that a pro-defense/anti-prosecution bias that necessarily stems from a negative experience with the law is qualitatively different, and more threatening than such a bias borne of other circumstances. Yet, this study offers direct evidence that, like law students and eligible jurors, convicted felons' views of the law vary considerably. Moreover, at the group-level, results reveal no statistically significant difference between convicted felons' view of the law and that of eligible jurors. Findings also indicate that while a subject's view of the law correlates with and predicts the direction of pre-trial biases, a negative view of the law is not dispositive of a pro-defense/anti-prosecution bias. Of the three groups who took part in this study, law students viewed the law most favorably yet also held the most pro-defense/anti-prosecution pre-trial bias. A regression analysis incorporating interaction terms shows that group membership is not a statistically significant moderator of the effect between perception of the law and pre-trial bias. Thus, this study suggests that while a pro-defense/anti-prosecution bias spawned from a negative view of the law may shape pre-trial biases, such a view is not unique to or more prevalent among convicted felons.

Overall, the impact of this study turns entirely on a precise interpretation of the inherent bias rationale. Courts and lawmakers may presume that most convicted felons harbor a group-level pro-defense/anti-prosecution pre-trial bias that warrants blanket

exclusion from the jury process prior to voir dire. They may justify this position by noting that convicted felons are significantly more pro-defense/anti-prosecution than eligible jurors generally. The results of this study would support that interpretation. But courts and lawmakers have not identified the acceptable rate of group-level pre-trial bias. Such an interpretation also fails to account for other discernable groups of non-felon jurors who harbor similarly severe pro-defense/anti-prosecution pre-trial biases.

Describing voir dire, the Supreme Court has stated, "it is fair to assume that the method we have relied on since the beginning usually identifies bias" (Patton v. Yount 1984, p. 1038). Likewise, lower courts laud the jury selection process, noting "voir dire has long been recognized as an effective method of rooting out such bias, especially when conducted in a careful and thoroughgoing manner" (In re Application of National Broadcasting Co. 1981, p. 362). These sentiments suggest that voir dire is an accepted, accurate method for identifying and eliminating the pre-trial biases of convicted felons and other potentially biased jurors. Nevertheless, because of the assumed nature of their purported biases, most jurisdictions preclude convicted felons from taking part in voir dire. This study suggests that convicted felons, law students, and perhaps other non-felon groups, are likely to exhibit statistically similar levels of pro-defense/anti-prosecution bias. So why do jurisdictions permit biased non-felons to take part in the jury selection process while banishing convicted felons prior to voir dire?

The inherent bias rationale is only one justification for categorical felon jury exclusion statutes. Courts and lawmakers often note that convicted felons lack the requisite character to take part in jury service (see e.g. US v. Barry 1995; US v. Arce 1993). Though they do not identify the exact mechanism by which a felon's character diminishes

his or her capabilities as a juror, authorities suggest that convicted felons would lessen the quality of deliberations and compromise the appearance of the jury as a legitimate finder of facts (Kalt 2003). Jurisdictions may forbid convicted felons from taking part in voir dire solely because they do not possess the obligatory character to serve as jurors. If so, the inherent bias rationale is not actually directed at ensuring impartiality, but is instead a "convenience rather than a sincere belief" (Kalt 2003, p. 108). Chapter 2 examines the probity or character rationale more closely.

CHAPTER 2

Assessing Felon-Jurors' Impact on Deliberations

> When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience unknown and perhaps unknowable…exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented (Peters v. Kiff, 1972).

The Supreme Court has long favored an inclusive jury system and disfavored the en masse exclusion of any one group of prospective jurors. As Justice Marshall makes clear in Peters v. Kiff, the Court believes that diverse perspectives and experiences have the potential to enhance the deliberation process. The Court has explained that effective deliberations require jurors to recall "important pieces of evidence or argument" and "make critical contributions necessary for the solution of a given problem" (Ballew v. Georgia, 1978 p. 233). The Court has further held that diversity is a crucial part of such participation, as it promotes "the opportunity through full deliberation to temper the opposing faction's degree of certainty" (Johnson v. Louisiana 1972 p. 390). Still, while the Court has embraced diversity of perspective as a means of bolstering the deliberation process, it has implicitly authorized the banishment of convicted felons from the jury room (Carter v. Jury Comms's of Greene County 1970).

Forty-nine states, the federal government, and the District of Colombia restrict convicted felons' opportunities to serve as jurors (Figure 1). One of the primary justifications for such restrictions is the probity or character rationale (Kalt 2003). The probity rationale holds that convicted felons lack character and are a "corrupting influence" (Note 1967 p. 406) that would taint the jury process. As one New York appellate court held "it would be a strange system, indeed, which permitted those who had been convicted of

anti-social and dissolute conduct to serve on its juries" (People ex rel. Hannon v. Ryan 1970 p. 712). By justifying felon jury exclusion on the premise the convicted felon lack character, the vast majority of U.S. jurisdictions seemingly suggest that the perspectives of those who have been subject to the criminal justice system will do nothing to improve and can only diminish the quality of jury deliberations.

Though empirical jury research is vast, research on the jury deliberation process is scant (Devine et al. 2001). Few studies have examined the deliberation process systematically and even fewer have explored how diversity impacts the quality of jury deliberations (Cowan, Ellsworth, and Thompson 1984; Marder 2002; Sommers 2006; Sommers 2008). Those studies that have compared mixed and homogenous juries focus exclusively on the race (Sommers 2006), gender (Marder 2002), and views of the death penalty (Cowan, Thompson, and Ellsworth 1984) of participating jurors. In sum, that research suggests that diversity does have positive effects on the deliberative process and the Supreme Court was likely correct in assuming that mixed juries engage in more thoughtful, conscientious deliberations. The present study builds on that research.

This study is the first to examine how convicted felons may influence the quality of jury deliberations. Using an experimental, mock-jury design that includes 101 participants that divide into 19 juries, I compare homogenous juries comprised entirely of non-felon jurors to heterogeneous juries that include one or more felon-jurors. I compare these juries on measures of deliberation structure, content, and perceptions. The overarching goal of this study is to explore the claim inherent in the probity justification for felon jury exclusion – that convicted felons will "taint" or "poison" jury deliberations. To do so, I first discuss the legal history of inclusive juror eligibility criteria and prior research on

deliberation quality and jury diversity. I then detail the methods of the present study and present my findings, discussing the impact of the present study on common presumptions about convicted felons and their potential role in the deliberation process.

The Supreme Court, Inclusion, and the Benefits of Diversity

The Sixth Amendment of the U.S. Constitution entitles a criminal defendant to trial by an impartial jury (U.S. Const. Amend VI). Traditionally, the Supreme Court interpreted this "impartiality doctrine" (Villiers 2010; Howe 1995) as applying solely to individual jurors (Reynolds v. United States 1878; United States v. Wood 1936; Irvin v. Dowd 1961; see also Abramson 1994). Under that view, the Sixth Amendment mandated only that a jury include those free of bias (Morgan v. Illinois 1992; Holland v. Illinois 1990; see also Cammack 1995) or those able to set aside biases and "conscientiously apply the law and find the facts" (Wainwright v. Witt 1985 p. 423; see also Logan v. United States 1892; Lockhart v. McCree 1986).

Yet, beginning in 1940, in a series of cases, the Court altered its interpretation of the impartiality doctrine. In those cases, the Court emphasized that impartiality requires not only unbiased jurors, but also a representative jury comprised of diverse views and perspectives (Abramson 1994; Ellis and Diamond 2003). The Court theorized that varied life experiences necessarily yield richer, higher quality deliberations. The Supreme Court's decisions regarding jury inclusiveness divide into roughly two categories: those focused on the formation of the jury venire and those centered on the exercise of peremptory challenges (Brand 1994). The exclusion of convicted felons from the jury pool occurs prior to the formation of the venire and thus implicates jurisprudence focused on discriminatory jury selection procedures early in the process.

As early as 1880, the Supreme Court invalidated a racially discriminatory jury selection scheme. In Strauder v. West Virginia (1880), the Court held that a statute prohibiting African-Americans from serving as jurors violated the Fourteenth Amendment's Equal Protection Clause (U.S. Const. Amend. XIV). Between 1880 and 1975, the Court intermittently struck down several overtly prejudicial jury selection procedures under the same equal protection analysis (Norris v. Alabama 1935; Hale v. Kentucky 1938; Pierre v. Louisiana 1939; Patton v. Mississippi 1947; Avery v. Georgia 1953). In 1940, however, the Court seemingly began to alter its approach to such cases, reassessing the meaning of impartiality.

In Smith v. Texas (1940), the Court overturned the appellant's conviction, finding that African Americans were "systematically excluded from grand jury service solely on account of their race and color" (p. 129). For the first time, the Court did not merely prohibit exclusion but also hinted that impartiality necessitates inclusion and representativeness. The Court noted, "[i]t is part of the established tradition in the use of juries as instruments of public justice that the jury be a body *truly representative of the community*" (Smith v. Texas 1940 p. 130 [emphasis added]).

Two years later, in Glasser v. United States, the Court again confronted a discriminatory jury selection scheme (1942). In Glasser, jury selection procedures limited eligible women jurors to only members of the League of Women (1942 p. 82-83). Though the Court rejected Glasser's claim for lack of evidence, the Court expanded on Smith's holding, enunciating what has come to be known as the cross-section requirement. The Court stated,

> [T]he officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as *a cross-section of the community*. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted (Glasser v. United States 1942 p. 86 [emphasis added]).

Four years after Glasser, in Thiel v. Southern Pacific Railroad Company, the Court again assessed discriminatory jury selection processes under fair cross-section principles (1946). At issue in Thiel was the exclusion of daily wage earners from jury rolls. Thiel claimed that engineering jury pools in such a way gave wealthy railroad owners an impermissible litigation advantage. Building on their holding in Glasser, the Court explained,

> 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 does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury (Thiel v. Southern Pacific Railroad Company 1946 p. 220).

In 1946, the Court also decided Ballard v. United States, and again invalidated a jury formation system because it excluded women – all women – from the jury pool. In Ballard, the Court once more stressed that a jury must represent the community from which it is drawn. The Court also held that by excluding women from juries, the selection procedures

at issue deprived potential litigants of viewpoint that may impact deliberations and verdict outcomes. As the Court carefully explained:

> It is said…that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; *the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded.* The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded (Ballard v. United States 1946 p.193-194 [emphasis added])

Though the Court alluded to the cross-sectional requirement in Smith, Glasser, Thiel, and Ballard, the Court decided those cases based on its supervisory powers over federal courts and federal jury selection procedures. The next step in the evolution of the cross-section requirement did not come until 1968 with the Jury Selection and Service Act (28 U.S.C. § 1861 2000). The JSSA held, "all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community…[and] all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States" (28 U.S.C. § 1861 2000). Thus, with that the JSSA, Congress codified the cross-section requirement and the policy of inclusion promulgated by the Court during the 1940's.

Soon after the passage of the JSSA, in 1975, the Supreme Court constitutionalized the cross-section requirement. The Court did so by expanding its interpretation of the

Sixth Amendment's impartiality doctrine. In Taylor v. Louisiana (1975), the Court held that "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial" (1975 p. 529). Taylor represents the Court's official recognition of the cross-section doctrine as a constitutionally guaranteed right of a litigant.

The cross section requirement demonstrates the Court's clear preference for inclusive jury selection procedures. Additionally, and perhaps more importantly, the Court's preference for inclusiveness and the development of the cross section requirement are rooted in a reinterpretation of the notion of impartiality. In a sense, the Court has determined that an impartial jury requires a mix of biases and prejudices (Abramson 1994). In turn, as precedent makes clear, the Court contemplates the possibility that exclusion of any group or class from jury service can result in less effective deliberations and potentially inaccurate verdicts. Still, the vast majority of U.S. jurisdictions banish convicted felons from the jury service, seemingly in direct contention with the spirit of the cross-section doctrine, assuming that the inclusion of convicted felons would diminish rather than bolster the deliberation process.

The Quality of Deliberations and Mixed Juries

Empirical research on "the jury" divides roughly into two categories: juror research and jury research (Davis, Bray, and Holt 1977; Pennington and Hastie 1990). While *juror* research explores how an individual juror arrives at a verdict preference, *jury* research focuses on group-level decision-making processes (Mazella and Feingold 1994). Approximately five to ten percent of jury research centers on the dynamics of the

deliberation process, yet of those studies, few assess the quality of deliberations (Devine et al. 2001; Devine et al. 2007; Devine 2012).

As Devine et al. point out (2007), the dearth of research on jury deliberations is likely attributable, in part, to conflicting data on the actual impact of deliberations on jury verdicts. Certain studies have called into question the impact of deliberations on jurors' verdict preferences (MacCoun and Kerr 1988 ["majority effect"]). Some evidence tends to show that jurors' early inclinations (demonstrated by pre-deliberation questionnaires [mock juries] and polling [actual juries]) consistently predict their ultimate decision in any given case (Devine et al. 2001). Yet, a host of more recent research suggests that the structure and content of jury deliberations likely does have some effect on verdict outcome (Hannaford, Hans, and Munsterman 2000; Bentele and Bowers 2001; Hannaford-Agor et al. 2002; Hans et al. 2003; Diamond et al. 2003). Such studies tend to show that while initial positions are significant predictors of verdict preference, group interactions can mediate those positions (Devine et al. 2007).

Though the actual impact of jury deliberations on verdicts is somewhat unclear, some scholars propose that the effect of deliberations on verdict outcome, however significant, is likely more prominent as deliberation quality increases. (Devine et al. 2007). Still, what constitute high quality deliberations? Is the quality of deliberations tied to whether the jury "gets it right?" Devine et al. (2007) suggest that the quality of jury deliberations are independent of verdict accuracy. As they note, it is virtually impossible to judge the "'correctness' of a jury verdict" (p. 276). Moreover, even assuming an objective standard against which to judge that accuracy of jury verdicts, it is likely that low quality

deliberations will occasionally produce “correct” results and equally as likely that high quality deliberations will produce “incorrect” results (Devine et al. 2007).

To determine what aspects of jury deliberations may serve as measures of deliberation quality, researchers look primarily to jury instructions (Cowan, Thompson, and Ellsworth 1984; Ellsworth 1989; Devine et al. 2007). For example, in an early study of deliberations, Pennington and Hastie (1983) devised a schema for evaluating a juror’s competence, describing a juror’s tasks as:

1) The jury members must "encode" the information they get at trial. A competent jury must pay attention to the testimony and remember it.
2) The jury must define the legal categories. A competent jury should define these categories as they are presented in the judges' instructions.
3) The jury must select the admissible evidence and ignore evidence that is inadmissible.
4) The jury must construct the sequence of events.
5) The jury must evaluate the credibility of the witnesses.
6) The jury must evaluate the evidence in relation to the legal categories provided in the instructions. That is, certain elements of the story the jury constructs are particularly important in determining the appropriate verdict. The jury must identify these elements and understand how differences in the interpretation of the facts translate into differences in the appropriate verdict choice.
7) The jury must test its interpretation of the facts and the implied verdict choice against the standard of proof: preponderance of evidence, clear and convincing evidence, or beyond a reasonable doubt.

8) The jury must decide on the verdict.

Similarly, Devine et al. (2007) suggest that common elements of jury instructions reveal several "process-oriented criteria" helpful in the operationalization of deliberation quality. They note:

> [A]ll juries are instructed to review the evidence presented at trial in order to establish the facts of the case as they see them, and then choose an appropriate verdict in light of these facts and the requirements of the law. If differences emerge during this process, they are to be discussed until some threshold level of agreement has been reached. To the extent that changes in belief or opinion take place, they should ideally occur as the result of new inferences or insights related to the evidence or the instructions, not conformity pressure or other extraneous forms of interpersonal influence (p. 276).

From these standard jury tasks, Devine et al. offer a conceptual framework like that proposed by Pennington and Hastie, surmising that deliberation quality turns, in part, on whether jurors:

1) have a complete and accurate understanding of their legal instructions,

2) thoroughly review and discuss the evidence presented,

3) establish the facts of the case as best they can and systematically compare these facts to the requirements of the legal instructions to reach a decision,

4) secure and maintain the active participation of most (if not all) members, and

5) foster an environment where individual opinion/belief change is a function of informational influence as opposed to peer pressure or factionalism (p. 276-277).

Using these formulations of a juror's tasks, several studies have examined quality of deliberations (Devine et al. 2007). One strain of that research explores how mixed juries compare to homogenous juries. Yet, only a few studies have systematically examined this topic (Cowan, Thompson, and Ellsworth 1984; Marder 2002; Sommers 2006).

In an early study of mixed juries, Cowan et al. examined how death qualified jurors compared to excludable jurors (Witherspoon excludables) based on their views of the death penalty (1984). Cowan et al. compared homogenous juries comprised entirely of death qualified jurors to those comprised of both qualified and excludable jurors using post-deliberation questionnaires. Subjects in Cowan et al.'s study were drawn from venire lists and solicited from newspaper advertisements (1984).

At the juror level, Cowan et al. found that death qualified jurors tended to rate prosecution witnesses more favorably than excludable jurors, excludable jurors (in the minority) were less satisfied with deliberations, and no significant differences between death qualified jurors and excludable jurors on measures of memory of judge's instructions or evidence recall (1984).

At the jury level, Cowan et al. found that mixed juries (those that included excludable jurors) were more critical of prosecution witnesses and rated the deliberation experience as less satisfying. Perhaps most importantly, while the inclusion of excludable jurors did not increase overall performance with regard to the recall of judge's instructions, mixed juries did, on average, remember more case facts than did homogenous juries comprised only of death qualified jurors (Cowan, Thompson, and Ellsworth 1984). Taken together, Cowan et al.'s findings at the juror and jury levels suggest that more diverse juries do not inhibit deliberations and may enhance the process.

Marder also conducted a study of mixed juries, exploring the impact of diversity on jurors' perceptions of deliberations (2002). Marder used post-deliberation questionnaires to examine the effects of age, race, and gender on deliberations. Unlike Cowan et al., Marder's study focused on actual jurors who had previously taken part in jury service. Exploring several aspects of deliberations, Marder found that gender diverse juries reported a higher level of satisfaction with deliberations (2002). Subjects on juries that included both men and women reported that deliberations were "less hostile and more supportive" (Marder 2002 p. 688). Gender diverse juries also felt as though jury deliberations were more thorough. This finding is likely attributable to jurors differing backgrounds and life experiences different backgrounds. Marder notes that different perspectives "provide a greater array of ideas for group consideration, and this… lead[s] to more thorough deliberations…male and female jurors…enter the deliberations with different ways of seeing the case, and therefore…challenge each other's assumptions, and that this too…lead[s] to more thorough deliberations" (2002 p. 700).

In the most recent study of mixed juries, Sommers compared homogenous jurors comprised of all white jurors to racially mixed juries that included both white and African-American jurors (2006). Sommers found that several aspects of deliberations were enhanced by diversity. For example, racially diverse juries deliberated longer M = 50.7 min, SD = 16.8 [heterogeneous] M = 38.5 min, SD = 19.1 [homogenous] p = .07). Sommers also discovered that heterogeneous juries covered more case facts during deliberations than did homogenous juries (M = 30.5, SD = 4.87 [heterogeneous] (M = 25.9, SD = 6.08) [homogenous] p = .04). Notably, Sommers' research revealed that differences in deliberation durations and coverage of case facts between heterogeneous and homogenous

juries were not solely the product of African-American jurors "adding unique perspectives to the discussion" (2006 p. 606). Instead, Sommers found that White jurors raised more case facts and contributed to longer deliberation durations. This finding suggests that diversity may bolster deliberations through a number of mechanisms, including but not limited to the addition of a different or unique perspective.

Taken together, prior research on deliberation quality and mixed juries suggests that diverse juries may engage in more thorough, longer deliberations than will homogenous juries. Findings also seem to indicate that mixed juries will perform better than homogenous juries on measures of deliberation quality, such as fact recall. The present study builds on these lines of research by comparing homogenous juries to heterogeneous juries that differ only in terms of the criminal records of individual jurors. The justifications for felon jury exclusion suggest that rather than enhance deliberations; convicted felons will reduce the quality of the process.

Methods

The present study examines how jurors with a felony criminal record may shape the deliberation process. To do so, I conducted a mock-jury experiment in a large county in Southern California over the course of six months in 2013-2014. The design of this study draws from prior mock-jury experimental research comparing mixed juries (Cowan, Ellsworth, and Thompson 1984; Sommers 2006).

Participants and Research Site

This study includes 101 participants that divide into two groups: otherwise eligible jurors with a felony criminal record (felon jurors) and eligible jurors without a felony criminal record (non-felon jurors). In an effort to preserve the ecological validity of this

study and because this study took place in California, I used California's juror eligibility guidelines as exclusionary criteria and prescreened all prospective participants (Cal. Civ. Proc. Code § 203(a) 2010).

To obtain an adequate number of juror-eligible participants, I used a multi-pronged recruitment effort. I recruited felon jurors using in-person solicitation at Parole and Community Team (PACT) meetings in the host county. The California Department of Corrections and Rehabilitation (CDCR) requires all newly released prisoners to attend a PACT meeting within thirty days of their release from prison.[28] Over the course of the study (6 months), as I did in my study of the inherent bias rational (Chapter 1), I attended 1 PACT meeting per week in the host county, recruiting participants at a total of 25 meetings at which attendance ranged from ten to fifty convicted felons. All felon jurors were active state parolees.[29] In-person recruitment of prospective participants included a brief description of the study, available study sessions, and a promise to compensate participants $50.00 for 3-4 hours of their time. Interested participants were provided a local telephone number and email address (both dedicated only to participant recruitment) and instructed to call or email to schedule their mock-jury session.

To recruit non-felon jurors, I relied on written advertisements at all courthouses (9) in the host county. At each location, an advertisement was posted in the central lobby and when permission was granted (5 courthouses) in the jury lounge. Advertisements gave a brief description of the mock-jury study, listed the available times and dates, and promised

[28] The CDCR conducts five PACT meetings per month in the host county.

[29] Again, as I did in my study of the inherent bias rationale, I chose to recruit active parolees rather than former offenders who had completed their term of supervision. I hypothesized that biases and character defects threatening to the jury process, if they exist, would likely present most regularly and strongly in convicted felons who had recently completed a term of incarceration.

participants $50.00 compensation for 3-4 hours of their time. The advertisements also listed the study telephone number and email address. Interested participants were instructed to call or email the study organizers. Advertisements were maintained for the duration of the study.

Participants who called or emailed in response to in-person and written solicitations were pre-screened by research assistants to ensure that they met California's juror eligibility criteria.[30] For felon jurors, prescreening did not include California's juror eligibility criterion excluding convicted felons from jury service (Cal. Civ. Proc. Code § 203(a)(5) 2010). I also took additional steps to ensure the ecological validity of the present study. Because California's juror rolls are derived from voter registration lists and driver's license records, participants were also excluded 1) if they were not a registered voter in the State of California or 2) if they did not possess a valid California's driver's license.

Using these recruitment methods, I was able to compile a demographically diverse participant pool. Of the 101 participants, 65 are men (64.36 percent), 35 are women (34.65 percent), and 1 is transgender (.99 percent). Participant ages range from 19 to 80, with a mean age of 39.4 (SD=8.88). The participants were also diverse in racial and ethnic identity. Approximately 52 percent of participants identify as white, 21 percent identify as African-American, 18 percent identify as Latino/a, and 9 percent indicated they are some other ethnicity.[31]

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[30] The criteria requires that a prospective juror 1) must be a citizen of the United States, 2) must be 18 years of age, 3) must be domiciliaries of the State of California, 4) must be residents of the jurisdiction they are summoned to serve, 5) must not have been convicted of malfeasance in office or a felony, 6) must possess sufficient knowledge of the English language (sufficient to understand court proceedings), 7) must not be already serving as grand or trial jurors in any court in the State, and 8) must not be the subject of a conservatorship (Cal. Civ. Proc. Code § 203(a)(1)-(8) 2010).

[31] For 2010, the United States Census reported that the host county was approximately 49.8 percent female and 50.2 percent male. Roughly 48.5 percent of the residents in the host county are White, 4.7 percent are

The felon juror population differed somewhat from the non-felon juror population.[32] Of the 21 felon jurors in the study, 16 are men (76.19 percent) and 5 are women (23.81 percent). Non-felon jurors consisted of 49 men (61.25 percent), 30 women (37.5 percent), and 1 transgendered person (1.25 percent). The age of the participant groups also differed. Felon jurors' average age is 41, while the average age of non-felon jurors is 30. Additionally, there are some differences with respect to ethnicity. Approximately, 38 percent of the felon jurors identified as white, 33 percent identified as African-American, 24 percent identified as Latino/a, and 5 percent indicated they were some other ethnicity. In contrast, 45 percent of the non-felon jurors identified as white, 14 percent as African-American, 13 percent as Latino/a, and 8 percent as some other ethnicity.

Once research assistants verified a participant's eligibility, a mock-jury session was scheduled. To maximize the number of participants, I chose a centrally located research site – a local law school – that was accessible via public transportation and maintained a private, free parking structure. In addition, I held study sessions four weeknights and four weekend days per month for the duration of the study. This flexible schedule allowed participants with full-time employment to take part.

I also chose the research site because of its technological and spatial features. The

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African-American, 32 percent are Latino/a, and 14.8 percent are of some other ethnicity. Thus, in the present study and as compared to the host county, men and African-Americans are overrepresented, while Latino/a's are underrepresented (United States Census Bureau, 2010; Appendix C).

[32] As of December 31, 2011, California's parolee population consisted of 10 percent females and 90 percent males. In the present study, 24 percent of felon jurors are women and 76 percent are men. Thus, women are overrepresented as compared to California's parolee population (Parole Census Data as of December 11, 2012; Appendix C).

The racial composition of convicted felons in this study also differs slightly from California's parolee population. Of parolees in California, 29.9 percent are White, 27.9 percent are Black, 36.7 percent are Latino/a, and 5.5 percent are some other race. In the present study, 38 percent of convicted felons are White, 33 percent are African-American, 24 percent are Latino/a, and 5 percent are some other race. Thus, as compared to California's parolee population, white felon jurors are overrepresented in the present study, while Latino/a felon jurors are underrepresented (Parole Census Data as of December 11, 2012; Appendix C).

study site at the local law school was equipped with a large oval conference table that accommodated 10-15 people comfortably. Also at that site were a 60-inch video monitor and video recording capabilities. These features and the layout of the site made it optimal for showing the trial reenactment and recording deliberations.

Procedures

The 101 participants who took part in the present study comprised 19 mock juries. I attempted to schedule 7 participants for each mock jury. For a number of sessions, fewer than 7 participants were available or actually appeared for the session. In these instances, in line with prior research, a session was cancelled if fewer than 4 participants attended (Lynch and Haney 2009). When such situations arose, those participants who did attend were compensated and given the chance to reschedule.

I constructed juries of three types: juries comprised exclusively of non-felons (N = 5), juries including a single felon juror (N = 8), and juries including multiple felon jurors (N = 6) (See Table 3.1 for a complete description of jury composition). Though minorities of 1 do create unique deliberation dynamics (Sommers 2006), I chose to include mixed juries (those consisting of felon and non-felon jurors) of single felon jurors to preserve ecological validity. Prior research in jurisdictions that include convicted felons in the jury process reveals that the number of convicted felons likely present in any jury pool coupled with the for-cause challenges and peremptory strikes make it is unlikely that any single jury will include more than 1 or 2 convicted felons (Binnall forthcoming). To approximate this reality, I constructed juries of similar character.

Once I assembled a viable (4+ persons) mock jury, I brought participants into the study site and seated them at the large conference table. I then placed a placard with an

identification number in front of each participant, positioned such that the numbers were visible for video recording. After arranging a mock jury, I read participants a study information sheet and asked each to provide written consent to be filmed.

Table 3.1. Mock Jury Composition

Jury Identification Number	Number of Non-Felon Jurors	Number of Felon Jurors
Jury 1	4	2
Jury 2	3	1
Jury 3	5	1
Jury 4	5	1
Jury 5	4	0
Jury 6	3	1
Jury 7	5	0
Jury 8	5	0
Jury 9	5	0
Jury 10	3	2
Jury 11	3	3
Jury 12	2	2
Jury 13	5	1
Jury 14	4	1
Jury 15	5	1
Jury 16	4	1
Jury 17	5	2
Jury 18	3	2
Jury 19	6	0

Note: Total Participants (N = 101)

Participants then watched a video reenactment of an actual criminal trial. Since the goal of this study was to analyze deliberations of mixed juries comprised of felon jurors and non-felon jurors, I sought to reenact a criminal case that 1) involved the commission of a crime by a former offender and 2) did not give rise to a clear verdict (See Kalven and Zeisel 1968 discussing the "liberation hypothesis"). To find a case that met these criteria, I pretested five criminal trial transcripts involving defendants with prior felony convictions.

To do so, I used focus groups of attorneys and eligible jurors in the host county. The chosen transcript was decidedly the most neutral.

The reenactment that served as the experimental stimulus involved the robbery of bank (18 U.S.C. § 2113) by a defendant who was on parole at the time of the alleged crime. I created the reenactment using lawyers, law students, and professional actors. The edited reenactment was 94 minutes in length. The reenactment included opening statements, the testimony of two prosecution and two defense witnesses, and highlights from closing arguments. The prosecution argued that the eyewitness account of the bank teller and the testimony of an FBI agent that investigated the incident proved beyond a reasonable doubt that the defendant committed the crime in question. They also presented evidence demonstrating that the defendant's driver's license was found at the scene of the crime. The defense contended that the eyewitness account was flawed, as was the FBI investigation, which did not include video surveillance or physical evidence. The defense called the defendant and a tow-truck driver as witnesses. That testimony suggested that the defendant was having car trouble in a location that would have made the robbery very difficult logistically.

After participants had finished viewing the experimental stimulus, they were read the Ninth Circuit model federal jury instructions for bank robbery (Jury Instructions Committee – Ninth Circuit 2010). The instructions contained a description of the legal elements of bank robbery (18 U.S.C. § 2113), a legal definition of reasonable doubt, and general guidelines for deliberations. As part of jury instructions, participants were instructed to select a foreperson, but were not given any further details about how to conduct that process.

After each jury had reached a verdict, participants were asked to complete a juror questionnaire. The questionnaire asked a number of forced choice questions that dealt with jurors' attitudes towards the law, legal processes, and criminal offenders. As part of the questionnaire, jurors answered a series of demographic questions that included inquiries bearing on felon jurors' criminal histories. Once jurors had completed both questionnaires, they were compensated $50.00 for their participation and asked not to discuss the experiment with others in the community.

Measures

There are generally two approaches to the study of the quality of deliberations (Cowan, Thompson, and Ellsworth 1984). The first approach involves content analyses of deliberations in a mock jury setting (Ellsworth 1989; Sommers 2006). The second assesses deliberations using post-deliberation questionnaires that poll participants about their impressions of the deliberation experience in either a mock jury setting or in as a follow up to actual deliberations (Cowan, Thompson, and Ellsworth 1984; Devine et al. 2007). The present study draws on each of these approaches utilizing measures: 1) derived from an analysis of videotaped deliberations and 2) those that were included in the post-deliberation questionnaire.

For measures derived from content coding of videotaped deliberations, I employed three coders who, at the same time, coded six deliberation transcripts. Those transcripts were then compared to assess the reliability of each coder. I then randomly reassigned each coder a second set of 6 jury deliberations (because my sample involved 19 juries, one research assistant coded an extra transcript). Like prior studies of mixed juries (Sommers 2006), I then conducted a comparison of pairwise kappas for each of the following

variables: novel facts raised, novel law raised, productive conflicts, and stories told. As did Sommers (2006), I compared each coder on individual level juror coding. Values of the pairwise kappas ranged from .72 to .83 (higher than the generally accepted .70 level of reliability) (Stangor 1998).[33]

I also utilized a post-deliberation questionnaire focused on deliberation satisfaction, attorney assessments, and witness credibility. The post-deliberation questionnaire contained a 9-question scale assessing a juror's satisfaction with the deliberation process and a 6-question scale focused on the performance/likability of counsel and the credibility of witnesses in the case. Each scale was scored on a 7-point likert scale. Respectively, higher scores suggested greater satisfaction with the deliberation process and a more favorable opinion of counsel/witnesses.

Analytic Strategy and Study Limitations

This study includes only 101 participants divided into 19 juries. Given the relatively small size of the study, statistical analyses are limited and any findings derived from such analyses are suggestive only. At the jury level, comparisons between mixed juries and homogenous juries do allow for tentative inferences about how felon jurors may influence the deliberation process. At the juror level, the analyses are plagued by challenges. For example, for post-deliberation questionnaires measuring deliberation satisfaction, jury diversity may not influence deliberations or juror experiences, rather, the average responses of felon jurors on mixed juries may differ from those of non-felon jurors on

[33] See Carletta, 2008, p. 4: "The kappa coefficient (K) measures pairwise agreement among a set of coders making category judgments, correcting for expected chance agreement. K = P(A) – P(E)/1 – P(E), where P(A) is the number of times the coders agree and P(E) is the number of times we would expect them to agree by chance…When there is no agreement other than that which would be expected by chance K is zero. When there is total agreement, K is one. When it is useful to do so, it is possible to test whether or not K is significantly different from chance, but more importantly, interpretation of the scale of agreement is possible."

homogeneous juries only because the differing responses of felon-jurors are part of the average. Moreover, felon jurors may respond differently from non-felon jurors because their deliberation experience was confined to the mixed jury setting (Cowan, Thompson, and Ellsworth 1984).

Typically mock jury studies that focus entirely or in part on individual measures utilize a multi-level or nested study design (Lynch and Haney 2009), to account for the impact of jury level influence on juror level analyses. In the present study, the size of the second level of analyses (jury level) included only 19 units, far fewer than needed to employ a multi-level model.

In an attempt to address these study weaknesses, I performed analyses at the juror level by employing statistical techniques used by Cowan, Thompson, and Ellsworth (1984). Specifically, using mean as a measure of central tendency, I compared responses of the non-felon jurors who served on homogeneous juries with those of the non-felon jurors who served on mixed juries and then compared those results to general comparisons of homogenous and mixed juries. Results of this technique roughly indicate whether diversity has an impact on measures of deliberation quality at the jury level.

At the juror level, I compared non-felon jurors on mixed juries to felon jurors on mixed juries and then compared these results to overall comparisons of felon jurors and non-felon jurors. This technique approximates whether felon jurors and non-felon jurors differ to a degree not accounted for by their experiences on mixed juries (Cowan, Thompson, and Ellsworth 1984).

Finally, for one deliberation content measure – stories or narratives offered – I utilized qualitative data analysis techniques and a thematic approach to data coding (Braun and Clark 2006).

Results

This study examines how felon jurors may influence the deliberation process. Accordingly, as to measures of deliberation quality, I ask two interrelated, but distinct questions. First, how do homogenous juries comprised entirely of non-felon jurors compare to heterogeneous juries comprised of non-felon jurors and felon jurors (jury level analyses)? Second, how do felon jurors compare to non-felon jurors (juror level analyses)? The proffered justifications for felon jury exclusion predict that on measures of deliberation quality non-felon jurors will outperform felon jurors and homogenous juries will outperform heterogeneous juries. Those justifications also predict that non-felon jurors on mixed juries will find deliberations less satisfying and felon jurors will disproportionately favor defense counsel and witnesses. I divide my findings by measure, including measures of deliberation structure, content, and perceptions at the jury and juror level where appropriate.

Deliberation Structure

Foreperson Selection

At the start of each deliberation, juries selected a foreperson. Most juries (16) relied on a volunteer foreperson. The remaining 3 juries voted to elect a foreperson. In all homogenous juries, forepersons volunteered. Of the 3 juries that voted to elect a foreperson, 2 included a single felon juror and 1 included multiple felon jurors. Notably, in

roughly 20 percent of juries (4 out of 19), felon-jurors served as the foreperson. In those instances, felon jurors volunteered to serve as the foreperson (Table 3.2).

Table 3.2. Foreperson by Selection Type

	Non-Felon Jurors	Felon Jurors
Elected	3	0
Volunteer	12	4

Deliberation Style

Deliberation styles varied across jury types. Nine juries took an initial vote prior to discussing the trial stimulus (verdict driven). The remaining 10 juries engaged in a discussion about the case at hand before polling jurors (evidence driven). Homogenous juries tended to favor an evidence-driven deliberation style (80 percent) while the majority of mixed juries tended to employ a verdict-driven deliberation style (57 percent). Single felon juries were evenly split with respect to deliberation style (50 percent) and multiple felon juries favored a verdict driven deliberation style (66 percent). Table 3.3 indicates deliberation style by jury type.

Table 3.3. Deliberation Style by Jury Type

	Homogenous Juries	Single Felon Juries	Multiple Felon Juries
Evidence-Based	4	4	2
Verdict-Based	1	4	4

Deliberation Content

Deliberation Duration

Overall, deliberation durations range from 10.3 to 37.4 minutes with an average deliberation time of 24.62 minutes (*SD* = 8.17). Using mean as the measure of central tendency, I then compare group deliberation times of mixed and homogenous juries.[34] The average length of mixed juries' deliberations (*M* = 24.9 minutes, *SD* = 7.9) exceeded the average length of homogenous juries deliberations (*M* = 23.8 minutes, *SD* = 9.7), but that difference was not statistically significant, $F(1, 17) = .06$, $p = .81$. Similarly, a test of all intergroup mean deliberation durations yielded no statistically significant differences ($p = .12$). These findings suggest that the presence of felon-jurors did little to change the overall length of deliberations.

Table 3.4. Deliberation Durations by Jury Type

	Homogenous Juries	Single Felon Juries	Multiple Felon Juries
N	5	8	6
Mean (24.6)	23.8	28.7	19.8
Median (26.4)	22.1	29.3	20
Std. Deviation (7.3)	9.7	5.6	8.2
Range (10.3 – 37.4)	10.6 – 37.4	19.2 – 36.2	10.3 – 27.9

Note: Parentheses indicate deliberation duration values across juries (N=19). Across all jury types the mean deliberation duration is 24.6, median is 26.4, and range is 10.3 – 37.4.

[34] The Shapiro-Wilk test of normality, which can be used with $4 \leq n \leq 2000$, reveals that deliberation durations of homogenous and mixed juries are normally distributed ($p = .83$, $p = .24$) (Shapiro and Wilk 1965; Shapiro and Francia, 1972). Sensitive to departures from normality, Barlett's test of group heteroskedasticity is optimal when the variable of interest is normally distributed. Bartlett's test of group-wise heteroskedasticity reveals that variances are equal across mixed and homogenous juries ($p = .62$) (Box, 1953; Brown and Forsythe 1974).

Time Spoken

Along with measures of duration, I also conducted an analysis of individual level juror participation: time spoken. I analyzed time spoken by comparing felons' time spoken to that of non-felon jurors. Overall, felon jurors spoke for longer than their non-felon juror counterparts. Felon jurors spoke for an average of 5.4 minutes each (*SD* = 3.27) while non-felon jurors spoke for an average of 4.20 minutes each (*SD* = 2.97). The difference in average time spoken for felon jurors and non-felon jurors is not statistically significant (t = 1.6, p = .09).[35]

As a proportion of total duration time, felon jurors spoke for longer than non-felons jurors. Felon jurors spoke for an average of 24 percent (*SD* = 12 percent) of their jury's total deliberation time, while non-felons spoke for an average of 17 percent (*SD* = 10 percent) of their individual jury's deliberations. This difference in proportion of time spoken, as it relates to each juror's individual deliberations, is statistically significant (t = 2.68, p = .008).[36] In sum, these results suggest that though average time spoken for felon jurors and non-felon jurors did not differ significantly, felon jurors did contribute more to their jury's deliberations than did non-felon jurors.

Coverage of Facts and Law

In another set of analyses, I compare the number of "novel"[37] case facts and legal concepts raised/covered by homogenous and mixed juries. The trial tape stimulus

[35] This result may be due to a lack of power in the sample, this analysis compares only 21 felon jurors to 80 non-felon jurors.

[36] A nonparametric comparison (Kruskal-Wallis) using median as the measure of central tendency revealed similar results (p = .0209).

[37] "Novel" refers to case facts and legal concepts raised by a particular juror for the first time during deliberations. Subsequent mentions of the same case fact or legal concept are not coded or credited to any

contained 10 relevant case facts and the jury instructions contained 8 legal concepts (definitions/principles) (Appendix E).

Overall, across juries, the number of novel case facts covered ranged from 7 - 10 (*M* = 8.37, *SD* = 1.07). Homogenous juries (N = 5) covered an average of 8.6 case facts (*SD* = 1.14), while mixed juries (N = 14) covered an average of 8.29 case facts (*SD* = 1.07). This difference is not statistically significant ($t = 0.56$, $p = 0.59$). Among mixed juries, multiple felon juries raised the most case facts (Table 3.5). Multiple felon juries covered an average of 8.67 case facts (*SD* = 1.21), while single felon juries covered an average of 8.00 (*SD* = 0.93). Yet, a series of t-tests revealed no statistically significant difference between mean novel case facts for any jury type.[38] These findings suggest that the juries in the present study recalled and discussed most relevant case facts and that convicted felons did not detract from that process.

Table 3.5. Case Facts Covered by Jury Type – Descriptive Statistics

	Homogenous Juries	Single Felon Juries	Multiple Felon Juries
N (19)	5	8	6
Mean (8.37)	8.6	8	8.67
Median (8)	9	8	8.5
Std. Deviation (1.07)	1.14	0.93	1.21
Range (7 - 10)	7 - 9	7 – 9	7 – 10

Note: Parentheses indicate average novel case facts across juries (N=19). Across all jury types the mean number of novel case facts discussed is 8.37, median is 8, standard deviation is 1.07, and range is 7 - 10.

juror, as jurors may, to avoid repetition, refrain from mentioning a case fact or legal concept already cited by another juror (Sommers 2006).

[38] All probability scores: no felon/single felon ($t = 1.04$, $p = 0.31$); no felon/multiple felon ($t = 0.09$, $p = 0.93$); and single felon/multiple felon ($t = 1.17$, $p = 0.26$).

A one way analysis of variance (ANOVA) ($p = 0.48$) and a non-parametric comparison of juries (Kruskal-Wallis) ($p = 0.49$) also revealed no statistically significant differences between jury types.

I also explored the number of novel legal concepts raised by each jury type. In general, of 8 total legal concepts, juries raised an average of only 2.5 (*SD* = 1.30). Among all juries, the number of legal concepts raised ranged from 0 - 5. Mixed juries (*M* = 2.5, *SD* = 1.22) and homogenous juries (*M* = 2.4, *SD* = 1.67) raised roughly the same average number of novel legal concepts (Table 3.6), and a comparison of means revealed no statistically significant difference between homogenous juries and mixed juries (*t* = 0.14, *p* = 0.88).

Of mixed juries, those including only a single felon (*M* = 3.12, *SD* = 1.07) outperformed those including multiple felons (*M* = 1.67, *SD* = 1.21). Means comparisons among all juries demonstrated a statistically significant difference only between the mean number of legal concepts raised for single felon juries and that of multiple felon juries (*t* = 0.14, *p* = .02).[39]

Overall, these results tend to show that, unlike juries' coverage of case facts, juries performed poorly with respect to their tendency to raise legal concepts during deliberations. Yet, like juries' tendency to raise case facts, juries' tendency to raise legal concepts is seemingly unhindered by the inclusion of felon jurors. There is some evidence, however, that the inclusion of multiple felon jurors, did tend to diminish a jury's coverage of legal concepts in the present study.

[39] All probability scores: no felon/single felon (*t* = 1.05, *p* = 0.31); no felon/multiple felon (*t* = 0.84, *p* = 0.42); and single felon/multiple felon (*t* = 2.68, *p* = 0.02).

Though a paired t-test comparing mean legal concepts of single felon juries to multiple felon juries revealed a statistically significant difference, a one way analysis of variance (ANOVA) (*F* = 2.50, *p* = 0.11) and a non-parametric comparison of juries (Kruskal-Wallis) (*p* = 0.12) indicated no statistically significant differences between jury types.

Table 3.6. Legal Concepts Covered by Jury Type – Descriptive Statistics

	Homogenous Juries	Single Felon Juries	Multiple Felon Juries
N (19)	5	8	6
Mean (2.47)	2.4	3.12	1.67
Median (9)	2	3	1.5
Std. Deviation (1.30)	1.67	0.83	1.21
Range (7 - 10)	1 – 5	2 – 4	1 – 3

Note: Parentheses indicate average novel case facts across juries (N=19). Across all jury types the mean number of novel case facts discussed is 8.42, median is 9, standard deviation is 1.30, and range is 7 - 10.

I also analyzed case facts and legal concepts covered at the individual or juror level. Overall, felon jurors raised an average of 3.43 novel case facts (*SD* = 1.91), while non-felon jurors raised an average of 1.09 novel case facts (*SD* = 1.19). A comparison of group means revealed a statistically significant difference between number of novel case facts raised by felon jurors and non-felon jurors ($t = 5.34$, $p < .00$).[40] In an effort to determine whether this difference is wholly attributable to differences at the juror level, I conducted two additional analyses.

First, I compared average case facts raised by non-felon jurors on mixed juries to that of non-felon jurors on homogenous juries. On average, non-felons on mixed juries raised fewer novel case facts than did non-felons on homogenous juries (mixed: *M* = .8, *SD* = 1.04, homogenous: *M* = 1.72, *SD* = 1.28), a statistically significant difference ($t = 3.40$, $p = .001$). Yet, in a comparison of mixed juries and homogenous juries generally ($t = 0.14$, $p = 0.88$), no statistically significant difference presented. The significant difference between

[40] For this comparison I used an unequal variance t-test. Barlett's test of group heteroskedasticity indicated that variances were not distributed equally across groups ($p = .004$). Levene's test for equality of variances also suggested heteroskedasticity ($p = .0014$).

A nonparametric comparison (Kruskal-Wallis) using median as the measure of central tendency revealed similar results ($p = .0001$).

non-felon jurors serving on mixed juries and those serving on homogenous juries disappears when felon jurors' case fact data is included.

Second, I compared coverage of novel case facts for non-felon jurors and felon jurors for only those jurors serving on mixed juries. Felon jurors serving on mixed juries cited an average of 3.43 case facts (*SD* = 1.91), while non-felon jurors serving on mixed juries cited an average of .8 case facts (*SD* = 1.04). This difference was significant ($t = 5.97$, $p < .00$).[41] This result mirrors that of the comparison between felon jurors and non-felon jurors generally ($t = 5.34$, $p < .00$), suggesting that, apart from the effects associated with jury structure, felon jurors and non-felon jurors differ significantly and that in the present study, felon jurors were more likely to raise a novel case fact.

An analysis of novel legal concepts showed that felon jurors raised an average of .71 novel legal concepts (*SD* = .96), while non-felon jurors raised an average of .41 novel legal concepts (*SD* = .71). Yet, a comparison of means revealed no statistically significant difference between felon jurors and non-felon jurors ($t = 1.61$, $p < .11$).

Accuracy of Facts and Law

Virtually all jurors who raised novel case facts and legal concepts did so accurately. Only 2 jurors (both non-felon jurors) inaccurately cited a case fact and only 4 jurors (2 felon jurors and 2 non-felon jurors) raised an inaccurate legal concept (1 felon juror incorrectly stated 2 legal concepts). These results are likely the product of the relative simplicity of the trial stimulus. The trial stimulus involved a limited number of facts

[41] For this comparison I used an unequal variance t-test. Barlett's test of group heteroskedasticity indicated that variances were not distributed equally across groups ($p = .001$). Levene's test for equality of variances also suggested heteroskedasticity ($p = .0002$).

A nonparametric comparison (Kruskal-Wallis) using median as the measure of central tendency revealed similar results ($p = .0001$).

offered into evidence through only four witnesses: two for the defense and two for the prosecution. The applicable law included only four elements and four legal principles/definitions. Still, these results offer some insights into participants' comparative ability to recall points of fact and law.

Productive Conflict

As part of an analysis of the participation of felon jurors, I also examined the number of "productive" conflicts in which jurors engaged. I define "productive" as a type of conflict that involves interpretation or opinion, not those centered on a dispute about the accuracy of a recalled case fact or legal concept. In sum, mixed juries yielded 9 productive conflicts and homogenous juries yielded 4 conflicts. A total of 13 jurors engaged in productive conflicts (4 felon jurors and 9 non-felon jurors). In all instances, conflicts centered on an interpretation of the case timeline and the credibility of witnesses. Given the limited number of productive conflicts that arose, little can be gleaned from this analysis.

Stories/Narratives

Along with deliberation style, I also examined how jurors discussed the facts and legal concepts associated with the case. I focused this section of my analysis on stories or alternative explanations proffered by jurors during deliberations. In line with prior research (Holstein 1985), I defined stories as any "attempt to specify what he or she thought was happening in the situation in question" (Holstein 1985 p. 88). Mixed juries produced an average of 8.14 (SD = 4.80) stories, while homogenous juries produced an average of 7 (SD = 2.82) stories. This difference was not statistically significant (t = .49, p =

.63).[42] At the juror level, felon jurors (M = 1.76, SD = 1.73) offered more stories or explanations for the case scenario than did their non-felon counterparts (M = 1.44, SD = 1.38). Yet again, that difference is not statistically significant (t = .91, p = .37)

As to the types of stories tendered by participants, a closer analysis of deliberation transcripts reveals that felon jurors' and non-felon jurors' stories were similar and generally focused on how the defendant's identification ended up in the bank teller's drawer. Virtually every participant who proposed a narrative surmised that robbing a bank with an identification card on one's person seemed illogical and suggested a "set up." As non-felon juror 2 on jury 19, a homogenous jury, explained:

> Why would he have it out? Why would he have it out anyway? So it becomes – I don't know. It just becomes less compelling, you know. How would it show up there? How – what's more likely? Would you accidentally carry your ID into a bank robbery and then accidentally leave it or is it more likely that in a bad neighborhood (where the defendant left his car), a criminal was attempting to steal a car – you know, see an ID, and say well fuck, you know what, I'm going to fucking rob a store or a bank – this guy looks like me – you know?

Similarly, juror 7 on jury 17, a mixed jury, offered this narrative:

> How smart do you have to be to see an ID, grab it out of a car and when you're at the scene of a crime, throw that ID down? I mean, I don't think it's unreasonable to think that – it's not somebody framing him particularly, somebody want[ing] to get back at him, but if he threw his ID in the car – it is a possibility.

Non-felon juror 1 on jury 18, a mixed jury, also felt as though a "set up" was a logical possibility:

[42] A one way analysis of variance (ANOVA) (p = 0.80) and a non-parametric comparison of juries (Kruskal-Wallis) (p = 0.91) also revealed no statistically significant differences between jury types.

> Here's the thing. This is the only scenario that came into my head as like a possible reason (the ID was found in the bank), is his card was left – if we're listening to what he said and he said that he threw his driver's license and his auto card back in his car okay – his car is in an unsafe area...the St. Peter area was said by both sides as not a safe area. Okay, somebody is planning to – they are not stupid – rob a bank. They're going to try to pin it on somebody else. And what's the best way to do it? Steal somebody's ID.

Felon jurors also felt as though the identification found in the bank could not possibly have been from the robbery. Consider the story offered by felon juror 6, jury 4, a mixed jury:

> You know what I think might have happened with the ID thing was that somebody found it laying on the ground. Maybe he missed when he threw it in the backseat, maybe he flung it to one side and it fell on the curb or something, somebody picked it up and turned it in to the bank, oh, somebody must have lost their ID, and then they put it in the teller's drawer.

Other felon jurors seemingly drew on their experiences with crime and the criminal justice system; expressing skepticism that someone planning to commit a robbery would carry identification that may prove to tie them to the crime. As felon juror 1 on jury 6, a mixed jury, explains:

> But you just don't go to a bank robbery with your ID in your front pocket…it could be a set up…somebody could have been working with one of the tellers. The teller could have dropped it in there anytime…he could have been set up by her…or by somebody who knew him, or by somebody who drove by the car and took the ID out of there.

Non-felon juror 2 on jury 2, a mixed jury, echoed these sentiments:

> Well you have to think, during a robbery, when you're moving so fast, you're not going to have time to pull out your ID and drop it. Especially if it is in your back pocket. It's not like it's in his hand with his gun and he's like give me the money, and dropped it – so how did it get there?

In sum, many participants offered alternative explanations for how the defendant's identification ended up in the bank teller's drawer. Notably, most participants – both non-felon jurors and felon jurors alike – suggested that committing a bank robbery while

carrying identification was illogical and that another person acquiring the identification and robbing the bank was more plausible. This result seems to suggest that felon-jurors and non-felon jurors interpreted evidence in much the same way. Felon jurors did not disproportionately assert the defendant's innocence. Instead, in terms of alternative narratives, both felon jurors and non-felon jurors proffered almost identical possibilities.

Post-Deliberation Measures

As part of the present study, I also collected data from each juror through the use of a post-deliberation questionnaire. In particular, I collected data on deliberation satisfaction, attorney assessment, and witness credibility. Given the rationales for felon jury exclusion, I hypothesized that: 1) felon jurors and non-felon jurors on mixed juries would express less satisfaction with deliberations than would non-felon jurors on homogenous juries and 2) felon-jurors, as compared to non-felon jurors, would disproportionately favor defense counsel, defense witnesses, and the defendant.

Deliberation Satisfaction

In general, deliberation satisfaction was not impacted by jury or juror type. Felon jurors' average score on a measure of deliberation satisfaction (M = 49.86, SD = 7.36) was slightly higher that that of non-felon jurors (M = 46.91, SD = 6.59). This difference, however, was not statistically significant (t = 1.78, p = .078). A comparison of non-felon jurors who served on mixed juries to those who served on homogenous juries yielded similar results. The average deliberation satisfaction score for non-felon mixed jury jurors' (M = 46.96, SD = 5.96) was roughly the same as that of non-felon jurors who served on homogenous juries (M = 46.8, SD = 7.94). Again, this difference was not statistically significant (t = .10, p = .92).

Perceptions of Attorneys and Witness Credibility

Felon jurors and non-felon jurors did not differ in their assessment of defense attorney competence (t = 1.11, p = .27) or likability (t = .29, p = .77). Additionally, on measures of the prosecution counsel's competence and likability, non-felon jurors and felon jurors did not differ (competence: t = 1.05, p = .29) (likability: t = .61, p = .54). I also tested jurors' assessments of witness credibility. For both prosecution and defense witnesses, felon jurors and non-felon jurors did not differ (prosecution: t = 1.16, p = .25) (defense: t = .21, p = .83). As part of my analysis of witness credibility, I also asked participants to rate the importance of the defendant's prior criminal history when deciding guilt or innocence and when assessing credibility. On both measures, felon jurors did not differ from non-felon jurors (guilt or innocence: t = .28, p = .78) (believability: t = .46, p = .64).

Discussion

*Do Felon Jurors Taint the Deliberation Process***?**

Few prior studies have explored how the jury diversity may influence the quality of deliberations (Cowan, Thompson, and Ellsworth 1984; Marder 2002; Sommers 2006). Instead, most scholars and courts simply assume that an array of opinions, biases, and perspectives will necessarily yield richer, more robust deliberations (see e.g. Peters v. Kiff 1972). Yet, some scholars (Travis 2002) and most courts (see e.g. People v. Miller; Rubio v. The Superior Court of San Joaquin County) also assume that a juror with a felony criminal record lacks character and will somehow taint the deliberations process. Findings from the present study tend to demonstrate that diversity, in the form of the inclusion of felon

jurors, does little to diminish – and may enhance – deliberation quality. Accordingly, findings also suggest that the character rationale for felon jury exclusion may lack empirical support.

In the present study, the structure of deliberations is consistent with prior research. Previous studies reveal that a foreperson is selected early in the deliberation process (Diamond and Casper 1992) and is usually selected via vote, nomination, or volunteer (Devine et al. 2004; Bridgeman and Marlow 1979; Ellsworth 1989). For all juries in the present study, foreperson selection took place early in the deliberation process, in all instances it was the first task the jury undertook. Notably, in 4 of the 14 mixed mock juries, a felon juror served as the foreperson and for all juries, felon juror forepersons volunteered for the position. This seems to cut against the categorical presumption that those with a felony criminal history are less likely to take their role as a juror seriously. Instead, while suggestive only, this result tends to show that convicted felons serve conscientiously.

The deliberation style (Hastie, Penrod, and Pennington 1983) of the mock juries in the present study also fell in line with prior research. Though studies of deliberation style are far from consistent, most suggest an even split between evidence-driven and verdict-driven approach to deliberations (Ellsworth 1989; Devine et al. 2007; Sandys and Dillehay 1995). Overall, roughly half of the juries in the present study engaged in each deliberation style (9 verdict driven and 10 evidence driven), and of the 14 mixed juries in the present study, 6 took an evidence-driven approach to deliberations, while 8 took a verdict-driven approach. Given prior research that suggests that the evidence-driven deliberation style yields higher quality deliberations (Hastie, Penrod, and Pennington 1983), this result, again

while suggestive only, tends to show that felon jurors did not negatively impact how a jury deliberated.

Unlike deliberation structure, deliberation content was somewhat influenced by the presence of felon jurors. While novel legal concepts raised, accuracy of novel facts and legal concepts raised, productive conflicts, and schematic interpretations did not differ by jury or juror type, time spoken as a percentage of total deliberation time was higher for felon jurors and felon jurors raised more novel case facts. Again, these results suggest that felon jurors do little to diminish deliberation quality and may enhance the process.

As to the duration of deliberations, while felon jurors did not add to the overall duration time of their respective juries, they were responsible for a greater percentage of their juries total deliberation time than were their non-felon counterparts. In all, felon jurors were responsible for 24 percent of their juries' deliberation time, while non-felon jurors only accounted for 17 percent of total deliberation time – a statistically significant result (p = .008). This result seems to suggest that felon jurors engaged the deliberation process to a greater extent than non-felon jurors. These contributions, while they have the potential to override non-felon contributions and detract from the deliberation process, appear to have been positive, as felon-jurors were also responsible for raising more novel case facts than jurors without a felony criminal history. At the jury level, mixed juries and homogenous juries did not differ significantly with respect to novel case facts raised. Yet, at the juror level, felon jurors raised an average of 3.43 novel case facts, while non-felon jurors raised an average of 1.09 novel case facts. This difference is statistically significant (p = < .00).

Taken together, these results suggest that convicted felons took an active, productive role in deliberations. While the character rationale for the categorical exclusion of convicted felons from jury service assumes that all convicted felons will fail to take their tasks as jurors seriously or, in the alternative, will actively sabotage deliberations, the present study does not support those presumptions. Instead, in line with research by Cowan, Thompson, and Ellsworth (1984) and Sommers (2006), this study supports the proposition that felon jurors can add value to the jury process, by engaging in deliberations in a meaningful way.

In the present study, impressions of jury service, counsel, and witnesses was not impacted by the presence of felon jurors. Though the character rationale seemingly assumes that the inclusion of felon jurors will reduce non-felon jurors' overall satisfaction with jury service and that felon jurors will disproportionately favor defense counsel and defendants, again, the present study does not support those presumptions. Rather, no difference in measures of deliberation satisfaction, counsel evaluation, or witness believability presented. Felon jurors and non-felon jurors expressed similar levels of satisfaction with deliberations and rated attorneys and witnesses similarly. This result tends to show that felon jurors and non-felon jurors may not differ as much as the law assumes.

As was the case when African-Americans and women were excluded from jury service, the exclusion of convicted felons from the jury process likely hamstrings deliberations. Though limited and suggestive only, the present study tends to demonstrate that felon jurors contribute and do so in constructive ways. Apart from removing a unique perspective from the deliberation room, felon jury exclusion statutes seemingly curtail the

potential of the collaborative deliberative process. The open exchange of ideas and the careful adherence to jury instructions are the cornerstones of effective deliberations. This study suggests that felon jurors perform admirably in both areas. To banish a population from that process based only on speculation and conjecture denigrates the vision of the jury and its quest for justice. This study marks a starting point for potential future projects that may shed additional light on how the inclusion of felon jurors enhances deliberations and, though otherwise assumed, does little to diminish the quality of the jury process.

CHAPTER 3

Exploring the Impact of Felon Jury Exclusion on Reentry

> To regard the jury simply as a judicial institution would be taking a notably narrow view, for if the jury has a great influence on the outcome of a trial, it has an even greater influence on the fate of society itself (Toqueville 1835, 313).

Forty-nine states, the federal government, and the District of Columbia statutorily limit a convicted felon's eligibility for jury service (Figure 1). Maine is the only jurisdiction that does not restrict a convicted felon's opportunity to serve as a juror (M.E. Rev. Stat. Ann. tit. 14, § 1211).

In his study of American democracy, Tocqueville recognized that the jury process could be transformative. He noted that the jury "vests each citizen with a kind of magistracy" and "teaches everyone that they have duties toward society and a role in its government" (Tocqueville 1835, 316). Nearly two centuries later, research supports Tocqueville's observations. The jury process can alter participants' attitudes, fostering a sense of social inclusion and enhanced self-worth (Consolini 1992). Jury service may also influence subsequent behavior, prompting other forms of civic engagement (Gastil et al. 2008; Gastil et al. 2010). Still, while research indicates that jury participation can play an essential role in the formation or reformation of citizens' perspectives (Consolini 1992; Gastil et al. 2012), no study has assessed how inclusion in the jury process may impact those with a felonious criminal history.

In recent years, voter disenfranchisement has dominated research on the civic marginalization of convicted felons (for literature reviews see Pettus 2013; Manza and Uggen 2006; Uggen and Manza 2005). As part of that research, scholars have examined

how civic participation shapes the criminal desistance process (Uggen et al. 2004; Manza et al. 2005; Miller and Spillane 2012). Studies suggest that inclusion in the electorate can promote criminal desistance by encouraging former offenders to take on and conform to a "citizen role" (Uggen et al. 2004). Voting eligibility may also facilitate desistance by helping a former offender construct and maintain a "desistance narrative" (Maruna 2001), moving beyond a criminal past to develop a new, law-abiding identity (Miller and Spillane 2012). Conversely, civic exclusion disrupts the criminal desistance process by blocking convicted felons' access to conventional roles and perpetually tying them to their criminal identities (Uggen et al. 2004; Miller and Spillane 2012). Notably, research on the nexus between civic participation and criminal desistence has never focused on the jury process.

This study is the first to examine a jury system that fully includes convicted felons. Through thirty-two in-depth, semi-structured interviews with former and prospective felonious jurors in Maine, I explore convicted felons' perceptions of the jury process and their role in that process. Though inductive, this study draws on theories of criminal desistance and for the first time, provides data on how felon jury inclusion may influence former offenders' efforts to refrain from criminality. To that end, I first describe the practice of felon jury exclusion in the United States and detail prior research on criminal desistance, focusing on studies that assess the possible link between civic participation and the cessation of criminal activity. I next describe the methods and findings of the present study, highlighting themes that emerge from the data. Finally, I discuss my results, suggesting that a policy of including convicted felons in the jury pool may promote criminal desistance and foster successful reintegration.

Criminal Desistance and Civic Participation

What does it mean to desist from criminal activity? Does a prolonged period of law-abiding behavior amount to criminal desistance? If not, can a former offender ever truly achieve criminal desistance? For scholars, practitioners, and former offenders, these basic inquiries are often a source of tension and have given rise to multiple, sometimes competing conceptualizations of criminal desistance (King 2013a; Bottoms et al. 2004; Bushway et al. 2001).

Drawing from Edwin Lemert's theory of deviance (1951), Maruna et al. (2004) clarify the notion of criminal desistance. They propose that criminal desistance divides into two phases: primary desistance and secondary desistance (Maruna et al. 2004). Under this framework, primary desistance refers to a "lull or crime-free gap in the course of a criminal career" (Maruna et al. 2004, 19), while secondary desistance is the cessation of criminal activity coupled with a prosocial change in a former offender's self-concept (Maruna et al. 2004; see also Shover 1996; Maruna 2001; Giordano et al. 2002; Vaughan 2007). Thus, the key distinction between primary and secondary desistance are "identifiable and measurable changes at the level of personal identity or the 'me' of the individual" (Maruna et al. 2004, 19).

The impetus of such changes, however, has been the topic of some debate (LeBel et al. 2008; Vaughn 2001). Structure-centric views of criminal desistance suggest that life-course "turning points" (Laub and Sampson 1993; Sampson and Laub 1993, 2005), such as marriage (Laub et al. 1998) and employment (Sampson and Laub 1990), serve as "triggering events" (Sampson and Laub 1993, 225) that prompt identity shifts by thrusting former offenders into conventional adult roles (Matsueda 1992; Matsueda and Heimer

1997; Sampson and Laub 1993; Laub and Sampson 2003).[43] Exposed to prosocial interactions, former offenders who commit to conventional roles undergo a change in their sense of self.[44] Role commitment also gives rise to informal social controls, isolating former offenders and discouraging criminal activity (Heimer and Matsueda 1994; Laub and Sampson 2001, 2003). In these ways, conventional role commitment facilitates identity transformations by providing former offenders a template for individualized change (Rumgay 2004 ["skeleton scripts"]; Giordano et al. 2002, 1035 ["cognitive blueprint"]) while "knifing them off" from criminogenic situations and influences (Laub and Sampson 2001, 2003; but see Maruna and Roy 2007).

Focusing exclusively on felon voter disenfranchisement, two prior studies explore the potential link between civic participation and criminal desistance (Uggen et al. 2004; Miller and Spillane 2012). In the first, Uggen et al. (2004) interviewed thirty-three prisoners, parolees, and probationers in Minnesota.[45] In line with Matsueda and Heimer's (1997) research, Uggen et al. found that convicted felons "link successful adult role transition to desistance from crime" (Uggen et al. 2004, 286) and that former offenders' civic role commitments contribute to the development and maintenance of a law-abiding identity (Uggen et al. 2004). Noting that their results were suggestive only, Uggen et al. surmise "civic reintegration and establishing an identity as a law-abiding citizen are central

[43] Though Laub and Sampson state that life-course turning points facilitate criminal desistance by "provid[ing] an opportunity for identity transformation" (2003, 148-149), Paternoster and Bushway argue "Sampson and Laub take deliberate steps to separate themselves from any suggestion that identity change is necessary for desistance to occur" (2009, 1108).

[44] As Matsueda and Heimer explain, "Commitment to roles is linked to the self through identities, an important feature of the stable self. Here, the self is viewed as a system of hierarchically organized role-identities. The most important, salient, or prominent identities are those that correspond to roles that have received greater investments by the individual. These identities are built up fundamentally through ongoing processes of interaction: through participation in organized groups leading to recurrent role-taking involving those groups, commitments to group roles are built up, and corresponding identities established." (1997, 171 citing Stryker 1968, 1980; McCall and Simmons 1978).

[45] Data for this study was collected in 2001 (Manza et al. 2006, 137).

to the process of desistance from crime" (Uggen et al. 2004, 290). Drawing on the same data, Manza et al. found that former offenders "think of themselves as citizens" and desire to fulfill civic roles (Manza et al. 2005 p. 163). Also emphasizing role commitments, Manza et al. explain "to the extent that felons begin to vote and participate as citizens in their communities, there is some evidence that they will bring their behavior in line with the citizen role, avoiding further contact with the criminal justice system" (2006 p. 163).

Yet, some scholars question structure-centric views of identity change and criminal desistance, arguing that such perspectives undervalue the role of agency, conceiving of former offenders as passive, malleable entities shaped by the world around them and desistance as a somewhat random occurrence (Paternoster and Bushway 2009; Vaughan 2007; Maruna 2001). Critics contend that former offenders are active participants in their own reform, contemplating their future and often devising a plan to achieve their goals (Paternoster and Bushway 2009; Giordano et al. 2002; Maruna 2001). Taking this view, turning points and conventional roles are merely "structural supports" (Kiecolt 1994, 51) or "hooks for change" (Giordano et al. 2002, 992) that are effectual only when a former offender has done the "upfront work" (Paternoster and Bushway 2009, 1157) of personal transformation (King 2013b; LeBel et al. 2008).

Emphasizing the former offender's part in the desistance process, a number of scholars note the importance of a desistance "narrative" (Maruna 2001; Giordano 2002; Vaughn 2007; Paternoster and Bushway 2009; King 2013a). As King explains, "it is the building of a desistance narrative which underpins the development of new identities (King 2013a, 152). For example, Maruna's research tends to show that former offenders alter their self-images through the use of "redemption scripts" (Maruna 2001). These scripts

give former offenders "a believable story of why they are going straight to convince *themselves* that this is a real change" (Maruna 2001, 86). Engaging narratives to re-conceptualize their criminal pasts, former offenders are able to account for prior criminality while emphasizing a new, reformed identity (Maruna 2001). Similarly, Paternoster and Bushway suggest that a shift in self-image requires an offender to actively "cast-off" a criminal identity and embrace a new, law-abiding persona (Paternoster and Bushway 2009, 1107). In both instances, the "agentic moves" (Giordano et al. 2002, 902) of the former offender are crucial to the construction of the narrative and the formation of a new self-concept.

In 2012, Miller and Spillane conducted the second study exploring the possible effects of record-based voting restrictions on criminal desistance and reintegration. Employing semi-structured interviews with fifty-four disenfranchised convicted felons, they found that thirty-nine percent of participants viewed felon voter disenfranchisement statutes as "limiting, psychologically harmful, and stigmatizing," perceiving them to have an indirect impact on their ability to successfully reintegrate (Miller and Spillane 2012, 423). Their data suggest that disenfranchisement negatively impacts the criminal desistance process by tying former offenders to their criminal pasts, making the reconceptualization or abandonment of a criminal identity nearly impossible (Miller and Spillane 2012). Highlighting the importance of a former offender's ability to construct a plausible desistance narrative, Miller and Spillane warn, "scholars should remain alert to the manner in which long-term forms of invisible punishments impact ex-offenders' ability to sustain the work of developing 'a coherent prosocial identity for themselves'" (2012, 423 citing Maruna 2001 p. 7).

Though the structure/agency debate colors criminal desistance research, most scholars agree that desistance involves not merely social forces or intrinsic motivations (Vaughn 2007, 390; see also Farrell 2002; Maruna et al. 2004; LeBel et al. 2008; Farrall et al. 2011). Rather, the criminal desistance process is reflexive, combining environmental and individual elements of varying intensities at various times (Weaver 2012; see also LeBel et al. 2008). For instance, Maruna et al. propose a labeling theory of criminal desistance (2004).[46] They suggest that structural factors can shape a former offender's self-concept and that "successful desistance from crime might involve the *negotiation* of a reformed identity through a process of prosocial labeling" (Maruna et al. 2004, 279 see also Maruna, 2001, 158 for a discussion of "looking glass rehabilitation"). Yet, Maruna et al. (2004) point out that former offenders actively participate in their identity transformations by interpreting others' perceptions and engaging in intrinsically motivated prosocial behaviors that contribute to identity reformation. In this way, their integrated labeling theory of criminal desistance accounts for both structure and agency.

While no study has assessed how felonious jurors experience the jury process, research on non-felon jurors suggests that the jury process can prompt positive attitudinal and behavioral changes (Gastil et al. 2012; Gastil et al. 2008; Gastil and Weiser 2006; Cutler and Hughes 2001; Gastil et al. 2000; Freie 1997; Consolini 1992; Shuman and Hamilton 1992; Finkel 1985; Barber 1984; Durand et al. 1978; Allen 1977; Richert 1977; Pabst Jr. et al. 1976, 1977; Pateman 1970). The "deliberative participation hypothesis" holds that citizen deliberation fosters civic activity by promoting political efficacy among participants (Gastil et al. 2002; see also Button and Mattson 1999; Matthews 1994). Studies of the

[46] Maruna et al. point out that they endorse a modified version of labeling theory that emphasizes agency (2004; citing Gecas and Schwalbe 1983).

effects of jury service on non-felons support this hypothesis. Consolini found that jurors, especially first-time trial jurors, reported feeling more politically efficacious and community-oriented following jury service (Consolini 1992). Similarly, Gastil and Weiser discovered that jury service fosters a general sense of empowerment that frequently leads to other forms of civic engagement (Gastil et al. 2000; Gastil et al. 2008). Studies reveal a four to ten percent increase in voting rates among former jurors (Gastil et al. 2002; Gastil et al. 2008) and a positive correlation between jury service and higher levels of involvement in civic and political activities (Gastil and Weiser 2006). This "participation effect" is most prominent for citizens who – like many convicted felons – were less civically or politically engaged prior to jury service (Gastil et al. 2008).

Commentators and courts consistently laud the jury as a crucial, educative form of civic inclusion (Amar 1995). Thomas M. Cooley once described the jury as "an educator of the people, and…a means of making them feel their responsibility in government" (Thomas J. Cooley 1895). Likewise, the Supreme Court has noted, "[t]he opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system" (*Powers v. Ohio* 1991, 406). Still, virtually all U.S. jurisdictions restrict convicted felons' access to the jury pool. The present study focuses on the only working jury system in the U.S. where convicted felons serve side-by-side with their non-felon counterparts without restriction. This study is the first to assess the impact of actualized and anticipated jury service on the views and attitudes of convicted felons. Accordingly, like prior research on record-based voting restrictions, this study explores the possible connections between civic inclusion and criminal desistance.

Methods

This study consists of thirty-two in-depth, semi-structured interviews with convicted felons in Maine. All participants met Maine's juror eligibility criteria (Me. Rev. Stat. Ann. tit. 14, § 1211). Because the goal of this study is to explore former offenders' views of actual and anticipated jury service, it includes convicted felons who have served as a juror (seven), convicted felons who were summonsed for jury service but were not selected (six), and convicted felons who are eligible for jury service but have not been summonsed (nineteen). I recruited former offenders using in-person solicitation and advertisements at probation offices throughout Maine over a period of six months in 2012.[47]

The gender, age, ethnicity, and education level of participants approximates Maine's probation population.[48] This study includes eight women (twenty-five percent) and twenty-four men (seventy-five percent). Participants' ages range from twenty-two to fifty-five, with a mean age of thirty-eight. Of the thirty-two participants who took part in this study, ninety-four percent self-identified as "White," while six percent self-identified as "non-White." Participants possessed varying levels of education. Twenty-five percent had not attained a GED/High School Diploma, fifty percent possessed a GED/High School Diploma, and twenty-five percent had some college courses or more.

Among the participant group, the type and number of felony convictions also varied. Only five participants were first-time offenders. Twenty-seven participants had multiple

[47] Probation is Maine's only form of post-incarceration supervision.
[48] Between 2004-2011, Maine' probation population was 91.9 percent white and 8.1 percent non-white. During that same time period, 81.7 percent of Maine's probationers were male while 18.2 percent were female. The mean age of all probationers was 33.3. Education levels also varied, 47.6 percent did not attain a GED/High School Diploma, 45.8 percent attained a GED/High School Diploma, and 6.6 percent had some college courses or more (Maine Statistical Analysis Center 2013).

felony convictions with totals ranging from two to over ten, and two former offenders had over twenty-five felony convictions. Nineteen participants had committed a crime involving drugs or alcohol, thirteen had committed a property offense, seven had committed a violent offense, two had committed a sexual offense, and three had committed multiple driving infractions that resulted in a felony conviction. Lifetime incarceration totals also varied, ranging from one to twenty-three years. Similarly, longest single incarceration period ranged from one to eight years.

Once a participant agreed to take part in the study, we arranged an interview time. Participants had the option of conducting their interview via telephone or in-person. Twenty-seven participants engaged in an in-person, recorded interview. The locations of the interviews varied, but, in all instances, were private locations where responses were not overheard. The remaining five participants took part in a recorded phone interview. Interviews ranged from thirty to ninety-six minutes and were fully transcribed for analysis. I analyzed data using a sequential process of open coding, theme construction, and focused coding (Esterberg 2002; Braun and Clark 2006 for a discussion of the "thematic approach" to analysis).

Though the topics of interviews varied by participant, I initially asked all interviewees to describe their post-release reintegration and dealings with the criminal justice system. For those who had previously served as jurors or who had been summonsed but did not serve, I inquired about their experiences during those processes. For prospective jurors who had never been called, I asked their opinions about jury service, and how they might approach the process were they to receive a summons. At the close of each interview, interviewees were provided thirty dollars for their participation.

Since this study explores how convicted felons experience the jury system and their role in that system, I sought out and utilized methods that gave participants the freedom to provide detailed descriptions and complete accounts. In keeping with prior research on civic participation and criminal desistance (Uggen et al. 2004; Manza et al. 2005; Miller and Spillane 2012; see also King 2013a; King 2013b; Farrall 2002; Giordano et al. 2002; Maruna 2001), I chose to employ in-depth, semi-structured interviews. Common in exploratory studies (King 2013b), such interviews allow participants to fully describe their reintegration efforts and their interactions with the jury process.

While methodologically consistent with prior research on the civic marginalization of convicted felons, the design of this study is limited. When assessing the views of former and prospective jurors with a felony criminal history, I relied on volunteer participants. This recruitment method likely introduced a measure of selection bias restricting generalizability. This study is also limited by its lack of a control group. To adequately assess the impacts of jury *inclusion*, research exploring the effects of jury *exclusion* is also necessary. A final limitation involves the veracity of participants' accounts. Throughout this study, I accepted the truth of participants' unverifiable statements regarding incidents and feelings. Yet, such a limitation is implicit in all qualitative fieldwork and does not undermine this important first step in exploring the potential benefits of including convicted felons in the jury process.

Findings

A number of themes emerged from my interviews with former offenders in Maine. Central to participants' descriptions of their experiences with reintegration and the jury process is the notion that others' perceptions of them matter a great deal. Often

internalized, these perceptions, when negative, led to feelings of hopelessness and defeat. Yet, when positive, the views of others – including those of the State – seemed to empower participants. Overall, participants saw their inclusion in the jury process as an indication that the State recognizes their social and civic reinstatement. For most, this perception gave rise to feelings of worth that were later incorporated into desistance narratives. Participants also emphasized the significance of jury service, typically bringing their behaviors and anticipated behaviors in line with those expected of what they perceived to be an "ideal juror."

Convicted Felons and the Significance of the "Looking Glass"

The "looking glass" hypothesis holds that an individual's self-concept is derived, in large part, from others' evaluations and assessments (Cooley 1902; Mead 1934; Sullivan 1947). Through "reflected appraisals," an individual first interprets how others perceive them and then incorporates those interpretations into his or her own self-image (Kinch 1963). Similarly, labeling theory suggests that the labeling experience "recast[s] individuals in their own eyes" (Paternoster and Iovanni 1989, 378).

For convicted felons, the labeling process involves both formal and informal exclusions (O'Brien 2001; Pager 2007; Weaver and Lerman 2010). A felony conviction gives rise to a multitude of legal and regulatory "structural impediments" (Chiricos et al. 2007, 548) restricting convicted felons' access to many facets of civic and social life (Love 2007; Mauer and Chesney-Lind 2003; Travis 2005). Convicted felons also face informal, interpersonal stigmatization (Aresti, Eatough, and Brooks-Gordon 2010; Goffman 1963; Irwin 1970). In response to these "cumulative disadvantages" (Samson and Laub 1997), many convicted felons internalize their legal status (Matsueda 1992). Often, the "felon"

label and all its pejorative accompaniments *become* a former offender's identity (Becker 1963; Braithwaite 1989), resulting in a lack of confidence and negative self-esteem (Aresti, Eatough, and Brooks-Gordon 2010; Major and O'Brian 2005; Tajfel and Turner 1986). In this way, a felony conviction can profoundly impact self-concept (Rasmussen 1996; Pager and Quillian 2005; Aresti, Eatough, and Brooks-Gordon 2010).

When describing their reintegration (and for some, their prior attempts at reintegration), participants consistently suggested that the "felon" label hindered their efforts to rebuild their lives. Yet, participants rarely mentioned formal legal barriers to reintegration. Instead, for most, how others "looked at them" stood as their most significant reentry hurdle. John, a twenty-six-year-old man who pled guilty to breaking and entering, had underestimated the significance of a felony conviction: "I didn't think [the felon label] was this bad. I was unaware of the consequences…when I said okay to the deal of being a felon."

In line with previous studies (Pager 2007; Harding 2003; Travis 2005; Petersilia 2005), participants emphasized their struggles to find a job and stable living arrangements. Virtually every participant, at some point, had been denied employment as a result of a criminal past. Tyler, a thirty-year-old college graduate described how his felony conviction often overshadows his otherwise marketable skillset in the eyes of potential employers:

> It's just the same story with everybody. They seemed so interested until they read down your application and got to that question. You know? They were all smiles, and then you could kind of see the smile go away. You know what I mean? It's just all kinds of different. *The way they look at you*.

Participants also reported difficulties obtaining housing. Several individuals were homeless and described how their living situations affected their ability to "make it." Jen, a woman who had difficulty finding housing because of her felony conviction, indicated that

those concerns made it difficult for her to "get her act together." "The biggest thing right now for me is being homeless. Without a common ground, without a place to put all my stuff, I can't get my head together to do anything. Um, so for the future – I have my hopeless days. Yeah, I do."

As they discussed their struggles to readjust post-conviction, participants expressed frustration with the perpetual nature of the "felon" label. As Lisa noted: "They don't take the time to ask, like, you know what I mean? Like what was your crime? And how long ago was it? You know what I mean? Like I'm thirty-five. It happened when I was twenty-five, twenty-six years old." Similarly, Danielle, a forty-four-year-old woman who spent five and a half years in federal custody for drug trafficking charges found it inexplicable that her ten-year-old conviction still prevents her from finding a stable home or a steady job:

> You know, it's like even nowadays you can't even get an apartment because you're a felon. Or it takes you forever now half the people don't want to rent to you. Or give you a job because you're a felon. Your past could be ten years from then and you still can't… I was homeless twice in one year.

Participants also demonstrated a level of hopelessness and questioned their own ability to succeed (see Maruna 2001 describing a "condemnation script"). "At first, when I first got out it was like, 'You know, what's the fuckin' purpose? You might as well just put me back in fuckin' jail 'cause I'm better off there'" (Jack).

In virtually all cases, participants' hopelessness and despair was tied to their perception that they are outcasts in the eyes of others:

> It really sucks because I feel that, you know, people look at you differently. Just because I have a felony, you know. Just because I did time in prison. They look at me as like, you know, a bad person…*And when they look at somebody that has a felony, you know, they try to steer away from them. They don't want anything to do with them*….Um, I don't know. It just really sucks (Tom).

For most participants, the negative perceptions of others consistently manifested as negative self-images. Dawn, a forty-five-year-old woman who lost her children as the result of a robbery conviction flatly stated: "I feel like a piece of shit most times." Another participant, Tyler, ostensibly measured his value by his incarceration number and the rights and privileges he had lost. "I mean, to me, I'm more or less just a number. You know? I mean I can't do half of what a normal citizen can."

Another source of despair that seemed to chip away at participants' self-esteem were feelings that they failed to attain certain "life-course markers" (Uggen et al. 2004; Sampson and Laub 1997) and that others judged them for failing to succeed. For instance, Carla, a thirty-year-old woman who had her three children removed from her because of her drug convictions explained how she viewed herself in relation to "upstanding" people:

> [W]ell, let me give you an example. Like when I go back home and I see my high school friends or my school friends. They all have their own houses already. They have their own vehicles that are, you know, nice. They have a really good job to where they can do that, you know. And I come back home, I don't have any of that because I've had a rough life, you know, in and out of prison and whatnot. So when I'm around people like that I feel unaccepted.

For all participants, their reentry struggles, and, in particular, others' negative perceptions of convicted felons prompted them to reassess their own value. In this way, each participant's self-image was shaped by their respective reintegration difficulties and the stigmatization they endured as the result of the "felon" label (LeBel 2012). These results highlight the importance of the "looking glass" and "reflected appraisals" in the lived experiences of former offenders.

State Testimony: The Corroboration of Reformation

Maruna et al. (2004) suggest that under certain circumstances, the recognition of a former offender's reformed behavior can prompt long term criminal desistance. Drawing

on prior research, they propose that a "delabeling process" (Trice and Roman 1970) can facilitate identity shifts when affirmation of a former offender's change is part of an official, public ritual (Maruna et al. 2004; see also Maruna 2011).[49] As Maruna notes, "[u]ntil ex-offenders are formally and symbolically recognized as 'success stories,' their conversion may remain suspect to significant others, and most importantly to themselves" (2001, 158).

The delabeling process may also be moderated by the perceived status of the appraiser (Cast et al. 1999). Accordingly, Maruna et al. opine that the most influential assessments of a former offender's reformation may come from authorities in the criminal justice system (Maruna et al. 2004; see also Wexler 2001). "[I]f the delabeling were to be endorsed and supported by the same social control establishment involved in the 'status degradation' process of conviction and sentencing (e.g. judges or peer juries), this public redemption might carry considerable social and psychological weight for participants and observers" (Maruna et al. 2004, 275).

Participants in the present study described their inclusion in the jury process as official recognition of their reformation. Mike, a forty-year-old former juror who had spent over four years in prison explained that while jury service stood in stark contrast to his prior experiences with the criminal justice system, it represented a tangible, identifiable shift in his relationship with the State. "[Jury service] was kind of weird. I was always *facing* the judge, and you know doing jury duty you kind of like *working with* the judge and the lawyers. And they're not, you know, getting ready to send your ass to jail." Similarly, Mark, a forty-four-year-old former juror with over twenty felony convictions, described

[49] Maruna (2001) and Maruna et al. (2004) note that scholars describe the "delabeling process" using a host of monikers including: "certification process" or "destigmatization process" (Meisenhelder 1977, 1982), "elevation ceremony" (Lofland 1969), and "integration ceremony" (Braithwaite and Mugford 1994).

jury service as a type of social access. As he explains: "I was glad I was able to be involved with [jury service]. That I was able to do that…that the judicial system *let me in to do that*."

All former jurors indicated that the experience was uplifting, suggesting that taking part in the adjudicative process gave them a sense that had "paid their debt to society" and no longer bore the mark of a felony conviction. For most, their interactions with court personnel solidified this perception of themselves:

> It was like…I'd never had any problems. I was the same as everybody else in the room. Even…one of the courtroom marshals, who was in there when I got sentenced, he knew who I was. He was like, "I remember you." And then he got me coffee!! So that was pretty cool, I felt like the score had been…like evened out (Doug, a former juror).

Another juror expanded on this concept:

> I felt like…I wasn't trying to get away with something, it just felt like I was not judged by somebody. Because, I was there the whole time. Everybody, you know, all the guards treated me with respect like everybody else. They fed us. They, you know, it was just like a normal thing. You know, and, and I always try to do, now, anything that's normal; I go places just to be with people, to, so they're not lookin' at me, 'cause they don't know me. You know, if I go into a crowd of people, it's, I feel like, "Oh, you don't even know that I'm a felon." You know, then when you go around somebody that knows, then they're actin' like you're a bad person and you're not, you know? It's funny how – it really is funny – unless you're in that position, you don't know (Chris, a former juror).

Former jurors also described jury service as a symbolic show of trust by the State, characterizing jury service as a public proclamation that they were now "acceptable" (Lofland 1969). Mike, a former juror noted:

> I mean [felon jury inclusion] kinda sends a message that…the courts…won't always exclude you from…sitting on, you know, civic duty. They may not always select you and you may not always be needed, but…you can say you tried. You showed up when you got served. [T]his side, you know, always having, again, having looked at things from the unlawful side and then the court says, "*Well, we need you to, we need your help to make some of the right decisions*." And it's kinda cool… They said, "*We're gonna hand you this responsibility. Do you what you need to do with it*." You're not used to being,

> when you're not used to being given responsibility and always being left out because, "Oh, screw that guy. You know, he's got a record. We don't need his help. We'll find somebody…who obeys the law and always makes the right decisions." So it's like, wow. *They're gonna give me responsibility and, you know, try to get me to make the right decision*.

Jack, a former juror, also described jury service as a show of trust by the State. Comparing the stigma of a felony conviction to that associated with racial prejudice, Jack expounds on how jury inclusion helped temper his feelings of social exclusion.

> I mean, [jury service] gives you, [the State] *gives you a responsibility to do somethin'*. I mean, anywhere else you go, you can't do nothing,' you're like segregated from everybody else…Jury service made me feel better, because I mean, right now, as it stands, I mean, it feels like I'm being segregated from everybody else. I feel like…we're back in time where it was blacks against whites, and blacks couldn't go to white schools, blacks couldn't sit at the front of the bus. Now it's the same for convicted felons.

Like former jurors, participants who had taken part in the jury selection process, but who were ultimately not selected to hear a case, reported feeling "significant" and "valuable" when the State asked them to participate in the jury process. Keith, a fifty-three-year-old man who has spent approximately twenty-three years in prison explained that his jury summons seemed to mitigate the stigma of his criminal past:

> Well, [being a convicted felon] just makes, you know, it kind of makes you feel like you're lower…than the rest of the community…like you ain't no good or anything…It makes you feel kind of lower…like you're not human, you know, or somethin' like that. But, it was alright when I got that [jury summons]… Sometimes I feel really…ashamed that I've been in trouble, and when I was called to serve on a jury trial, it's more like, you know, it's more like, "Oh, yeah. I'm part of society."

Participants who had served as jurors or who had participated in jury selection also emphasized that felon juror eligibility represents the State's recognition that convicted felons' opinions matter and are as important as the perspectives of non-felons. "It makes you feel kind of good that they do actually give you the option [of serving on a jury]…that

they will allow you to speak as everybody else. I think that's a pro in my opinion" (Billy, a former juror). Jimmy, who answered a jury summons but was excused, explained that jury service reinforces the value of former offenders and their views: "I think [jury service] is a good thing. I mean, we're still people. It doesn't, I mean, just because we have a felony doesn't mean…our voice isn't important." Along the same lines, Danielle, a dismissed juror, tended to view jury service as a platform for expressing her thoughts and effectuating change:

> [Felon juror eligibility] makes me feel like I'm still part of society. Instead of just, because most of the people like to outcast… They have their little normal, you know, once you're stoned (fixated) on something that's pretty much what it is. They, that's all they're gonna look at you as… [jury service eligibility] means that I still have some kind of say in this world.

In general, participants who had experienced the jury process saw jury service as a welcomed task representing their social reinstatement:

> Now it's like, you know, I never really knew I could until, like I said, a few years after my conviction. But once I found out I could I cared. You know? And I wanted to. You know? [Laughing.] So it's like once I found out I could it was, "Oh, cool. You know, at least I have one more right." I can do *something* (Tyler, a dismissed juror).

Consistent with prior research, prospective jurors attitudes about jury service were more varied (Hannaford-Agor and Munsterman 2006). Some prospective jurors placed little value on their inclusion in the jury process, but emphasized that overall there are benefits to Maine's policy of allowing convicted felons to serve. As Jack explained:

> Like I could really care less if I called to jury or whatever… it's not really important to me to be selected for jury duty. Um, I mean I don't think it's really *important*, but it is good that they do [include convicted felons] because they've gone through the court system, they know what happens on the inside, and, you know, so they have a good understanding.

Most prospective jurors, however, spoke favorably about felon jury inclusion, suggesting that juror eligibility fosters a sense that former offenders are still part of society and worthy of the State's trust. Carla, a prospective juror explains:

> [Juror eligibility] is something that makes me feel like I'm still part of what everyone else is just because I got… in trouble and went to prison for it. I just feel like…in that aspect they're not *looking at me like that*. You know what I mean? Like if I was called to be on jury duty I'd feel good, you know what I mean? That I was able to get out there and do that. *Just, knowing that lawyers and judges and all that are still asking me to, you know, come up to help them if I can. And it just makes me feel good that I can do something like that*.

Other prospective jurors described jury service in much the same way, often discussing their eligibility as part of a broader framework of rights.

> [Felon juror eligibility] allows a person that's a felon to continue to have the same rights as other people. You know what I'm saying? Because most of the time when you're a convicted felon you lose a lot of rights (Henry, a prospective juror).

> I think [felon juror eligibility] is good. I don't think, I think that that's something that they should judge on an individual basis, whether or not they should allow you on a jury, and I don't think that because you're a convicted felon, I don't think you should lose all your rights (Jeff, a prospective juror).

Overall, participants who were jury eligible but had not been summonsed viewed their inclusion in the jury pool as a small measure of validation, assuring them that they were not outcasts. "Yeah, I think that [felon juror eligibility] is good. I mean… I believe that, you know, I mean truthfully yeah. It does make me feel a little better to know that, you know, that they haven't taken *everything* away" (James, a prospective juror).

> Like I said it just seems like, for me, it's knowing that, you know, I can do something that everyday people do, you know? Even though I'm a convicted felon, you know. I don't have that pressed against me (Bob, a prospective juror).

A common theme in former offenders' views of jury service and juror eligibility is

the idea that inclusion in the process changed how others, in particular the State, "looked at them." For some, the State's acceptance and show of trust manifested as cordial treatment by court personnel. For others, simply being part of the jury pool sent a symbolic, but nonetheless impactful message that they had moved past their criminal record. Most spoke of feeling equal to non-felons and feeling as though inclusion gave them an outlet through which to voice their opinions and concerns. In addition, the State's "testimony" (King, 2013a, 155) or "personal voucher" (Maruna 2001) seemed to prompt participants to find value in themselves and their new identity as jurors or prospective jurors.

Inclusion and the Discovery of Self-Worth

Research suggests that narratives are an important part of the criminal desistance process (Maruna 2001; Giordano 2002; Vaughn 2007; Paternoster and Bushway 2009; King 2013a, 2013b). Former offenders who successfully desist from criminal activity typically use narratives to cognitively rectify a criminal past with a new, lawful identity (Maruna and Copes 2005; see also Maruna 2001, 88-95 for a discussion of the "Real Me" and "The 'I,' The 'Me,' and The 'It'"). To do so, many former offenders re-conceptualize their criminal pasts, such that prior criminality becomes a necessary precursor to a law-abiding life (Maruna 2001, 87).

As Maruna notes, the "desistance self-narrative frequently involves reworking a delinquent history into a source of wisdom" (Maruna 2001, 117). In this way, part of narrative construction involves a former offender's ability to find a measure of self-worth, which is often prompted by the "certification" of their reformation (Meisenhelder 1982). Their value, many former offenders suggest, derives from the "experience of having 'been there and back'" which has provided them "an insight into life or how the world works"

(Maruna 2001, 98). Such reorganization allows former offenders to distance themselves from a criminal past while drawing on that past to explain how it makes one a better, more valuable person (Maruna 2001).[50]

In the present study, all participants offered some form of a desistance narrative and seemed to incorporate their worth as jurors into that narrative. For example, with respect to their fitness as jurors, participants in the present study found meaning and "literal value" in their criminal lifestyle (Maruna 2001, 98). Participants suggested that those with a felony conviction bring something unique and valuable to the jury process, characterizing a criminal conviction as a positive attribute.

> I think it's very valuable because you also see the other side of things, you know? If you've never been there you don't really see that side of it. But if you've already been there you can see both sides equally, rather than favoring to one side or the other. I think it makes almost like a fairer juror than, you know, somebody that doesn't know the experiences from the other side (Billy, a former juror).

Many participants highlighted the practical knowledge gained through experiences with the criminal justice system, opining that such knowledge made them more accurate judges of a criminal defendants' credibility. Jimmy, a thirty-four-year-old man called for jury service but dismissed, explained that a criminal lifestyle amounted to a type of informal juror training:

> We've had different life experiences, so we're trained without having official training to, to look at things differently, to not just take things for face value and to be able to look between the lines. It is more like having the street knowledge than book knowledge. There's definitely a difference there.

[50] As part of this process, many former offenders first attempt to justify or explain their criminal behavior through "neutralizations" (Sykes and Matza 1957; Maruna and Copes 2005).

Concisely articulating the perceived value of felonious jurors, Lisa, a thirty-six-year-old woman who committed a violent felony suggested that former offenders possessed a unique ability to accurately judge the credibility of witnesses and evidence:

> [Former offenders] have seen both sides. You know what I mean… you can't bullshit a bullshitter. You know what I mean? Like you know, been there, done that…. You can tell if someone's trying to bullshit you or someone, you know, you know the lies because you've said the lies. You've lived that life.

Participants also stressed the importance of empathy in the context of jury service. Many explained that their experiences give them the unique ability to understand the perspective of a criminal defendant. Participants saw empathy not as an indication of bias, but as a means of ensuring impartiality.[51]

> I understand because I know what it's like, you know? I can put myself in their shoes, you know? I mean maybe like our charges aren't the same. Our case ain't the same, but I know what it's like to be through the law system, you know? (Gary, a prospective juror).

Research tends to show that to find self-worth, former offenders often need confirmation of their reformation (Maruna 2001). In the present study, jury service and juror eligibility seemed to serve as a form of "certification" for former offenders (Meisenhelder 1982). Most saw themselves as assets to the criminal justice system because of, not despite their criminal backgrounds. Jeff, a forty-six-year-old violent offender who has spent over fifteen years in prison summed up a common view among participants, likening a former offender's fitness as a juror to a former addict's value as a drug and alcohol counselor:

> The best substance abuse counselors have abused substances. That's, you know, I mean it's fact of life. If somebody's lived it and been there, you know,

[51] Scholars suggest that empathy and sympathy are often incorrectly conflated, and that empathy does not threaten impartiality. Conversely, most scholars suggest that empathy is a necessary component of impartiality (Rackley 2005; West 1997, 2012; Lee 2014).

> they have sympathy and they will keep an open mind. That is why criminals make good jurors; they keep an open mind. And that is why I would be a good juror.[52]

Taking on the "Juror" Role

Certain structural theories of criminal desistance suggest that former offenders who take on conventional adult roles conform behaviorally to those roles, assuming role-related responsibilities and adhering to role-related constraints (Laub and Sampson 1993; Sampson and Laub 1993, 2005). Over time, some scholars argue, behavioral conformity leads to shift in how former offenders' view themselves (Matsueda 1992; Matsueda and Heimer 1997; Sampson and Laub 1993; Laub and Sampson 2003). In the present study, data tends to support this hypothesis, demonstrating that former offenders possess a high level of respect for the jury process, seek to conform to what they perceive to be the State's expectations of an exemplary juror, and ultimately incorporate the characteristics of the "juror" role into their own self-concepts.

One justification for felon jury exclusion statutes assumes that convicted felons lack the character to serve as responsible jurors, and would approach the task irresponsibly (Kalt 2003). As the Supreme Court of Arkansas has stated, "[u]nquestionably that exclusion is intended to bar from the jury box the one class of persons least likely to respect and give effect to the criminal laws" (*Rector v. State* 1983, 395). Yet, participants understood clearly the role of "juror," the weighty implications of the jury process, and the need to serve conscientiously and without bias. Jen, a prospective juror who indicated that she welcomed a jury summons, described a juror's responsibilities this way:

> If you're a juror and you're to do the job of a juror, in the state of Maine you have to prove without a reasonable doubt that the person's guilty or not

[52] Research tends to support this observation (Brown 1991).

> guilty. So if the facts don't back up what's being, you know, brought against them then no, they shouldn't go to jail. But I mean if everything's in black and white and they're guilty, then obviously they should be found guilty.

Contrary to the "probity rationale" (Kalt 2003) for felon jury exclusion, participants in the present study expressed an idealized view of the adjudicative process, typically stressing the significance of a jury trial and a juror's responsibilities. "When you're sitting on the legal side of it, you know, wow! It's like, I can't believe I was sitting on that side and now I'm over here, you know, deciding someone else's fate" (Mike, a former juror).

At times, the respect participants afforded the jury prompted an unwillingness to serve based on the perceived weight of a juror's task. "No. I wouldn't want to be judgmental. Period. No, no. I wouldn't want to period. I wouldn't want to…have that say" (Joe, a prospective juror). For Mark, a former juror who spent 1.5 years in prison, his inclusion in the jury process seemed at odds with other record-based restrictions impacting what he perceived to be less important behaviors: **"**I was…confused on the one hand…they would let me go in, be able to judge a person, okay. But on the other hand, I can't own a gun?"

While emphasizing the enormity of a juror's responsibility, most former jurors reported taking an active, productive role in deliberations:

> I just said…you gotta go from what you really see." 'Cause, there was like two ladies that had never been on a jury, and they were like, "We're not gonna make no decisions." And, I said, "You have to go with what you see. The evidence. Everything that you get, that we've already been through, you have to weigh that out. You can't just say yes or no…"… I even got up and put all this stuff on the chalkboard that, the pros and cons. (Chris, a former juror).

A second justification for excluding convicted felons from jury service presumes that felonious jurors would harbor resentment towards the state and an undue sympathy for criminal defendants (Kalt 2003). In the view of the Supreme Court of California, a felonious

juror "might well harbor a continuing resentment against 'the system' that punished him and equally unthinking bias in favor of the defendant on trial, who is seen as a fellow underdog caught in its toils" (Rubio v. The Superior Court of San Joaquin County 1979, 101).

Running counter to the assumption that convicted felons would sympathize unduly with criminal defendants, participants emphasized the importance of impartiality, even in cases similar to their own. Jimmy, who was excused during the jury selection process, explained that he has disassociated himself from his distant criminal past, such that his conviction would have no bearing on his role as juror:

> I don't think knowing I've done jail time and had the experiences I've had behind bars would impact how I would answer to somebody else in the same situation. I've been out; I've been away from it for so long, and like even, I've been off probation for four years now, it's just part of my life that I went through, and I've grown up. And, and I've separated myself from it. You know, it's not so fresh. So, I wouldn't, I wouldn't feel bad if someone, if that's the consequence and they were guilty, that would, that's what I would have to do.

Tom, a prospective juror, expressed similar sentiments with regards to his conviction for burglary of a motor vehicle, discounting the notion that he might exhibit leniency for a criminal defendant on trial for a similar offense:

> I think I would more take in… the facts that were presented to the jury and go from there because I've known people that have had the same charge as me, and, you know, they pretty much get away with it. Um, but, you know, there are some people that, you know, it depends on like why they did it. Like in my instance. I did it because I was homeless, I had no money, and I was trying to survive. But if it were somebody that was doing it, you know, just because, you know, just for the thrill of it, I would not be sympathetic whatsoever.

For most former jurors, failing to exercise care or approaching jury service with bias seemed to undermine the State's trust. Doug, a former juror described his jury service, noting:

> But, I sat right there, and you know, everything was pretty clear. And, then the way the, you know, the way the law was read, it was like, "He blew it"…. I figured, you know, *they gave me the trust enough to sit on this jury, to do what had to be done, whether it was guilty or not guilty*.

In stark contrast to the assumed leniency on the part of convicted felons, almost all participants compared their own circumstances to those of potential defendants and suggested an inclination to convict out of a sense of fair play and deservedness. Kevin, a forty-eight-year-old man who spent two years in prison for robbery explained succinctly:

> It could be the same crime that I got my felonies with [and] I'd have to be impartial. But that's just the way I am. I'd just be impartial. Now I wouldn't say, "Well, ahhh, ahhh, ahhh, I did two years for the same thing and this and that and no, not guilty." No, no. [T]hat's not me. I did mine; you do yours.

Several other participants echoed Kevin's sentiments. "I wouldn't have a problem saying somebody was guilty. Yeah, I mean if I believe that somebody was wrong at doing something then I believe that. I mean I was wrong at what I did. You know? (James, a prospective juror). "[I]f someone's guilty, they're guilty, I'm sorry. But, I mean, I was guilty for what I did, so I know I deserved to be in jail for a while" (Neil, a former juror).

Though the vast majority of participants felt confident in their abilities to approach a case responsibly and even-handedly, many suggested that they had the ability – and, perhaps more importantly, the duty – to discern their own shortcomings and partiality. For example, Anna, a prospective juror, explained that while she anticipates taking a thorough approach to jury service, she has never before considered both sides of a litigated matter. "Well, I'd want to know all of the evidence. I'd want to know, you know, the whole

side of each story. And that's where I *don't* have experience. I only have experience on my side, you know. I'm always the defendant."

Anna's insightful reflections on her own ability to serve impartially and considerately were not uncommon among participants. Most participants recognized their own limitations as jurors. Mary, a prospective juror who was the victim of domestic violence notes that her prior experiences would make her an unfit juror. "Yeah, I mean if it was a child molester or somebody that abused their wife I would tell them right out that I personally have experience and I wouldn't want anything to do with it. You know, like I wouldn't be a good [juror]."

In fact, many participants suggested that their fitness depends on the type of case at issue. Dave, another prospective juror, expressed a common sentiment with respect to crimes involving children and/or sexual offenses:

> If it was something like maybe, you know, an older man molesting a child or something I would not, I wouldn't be able to do that. You know what I mean? Because I would be -- what's the word I'm looking for? Like right off the gate, I would want to convict.

Nearly all participants view the jury process as an important civic tool with far reaching implications. Most spoke of jury service as a sobering experience during which one has another's life in one's hands. Notably, participants almost uniformly understood the legally mandated tasks of a juror: to act with care and impartiality. Perhaps not surprisingly, participants – both former jurors and anticipated jurors – also conformed or expressed the intention to conform to the "juror" role. For many, this conformity led to the internalization of characteristics of the ideal juror, such that almost all participants described themselves as an "impartial" and/or "neutral" *person*.

Discussion

Felon Jury Inclusion and Criminal Desistance: What Are Convicted Felons Telling Us?

Though exploratory, this study suggests that inclusion in the jury process may facilitate the criminal desistance process. Research demonstrates that a prosocial identity shift is a necessary precursor to successful, long-term desistance from crime. Data derived from the present study tends to show that felon jury inclusion promotes identity transformation by tempering the stigma of a felony conviction, prompting the discovery of self-worth, and providing access to/urging conformity with the "juror" role.

In line with labeling theory and the "looking glass" hypothesis, participants in the present study emphasized the significance of how others "look at them." Participants noted that the most formidable barriers to their reintegration stem not from legal or formal restrictions, but from others' negative perceptions of convicted felons. For example, all participants faced setbacks in the realms of employment and housing. Still, very few participants cited occupational licensing rules or housing regulations as the cause of their setbacks. Instead, participants stressed that their inability to find work and/or a stable residence resulted directly from the interpersonal stigmatization and discrimination associated with the "felon" label. For some, these experiences led to the internalization of stigma, which negatively altered their self-concept.

Similarly, participants seemed to view felon jury inclusion as an official, powerful referendum on their rehabilitation. Former jurors, dismissed jurors, and prospective jurors characterized their inclusion in the jury process as a show of trust by the State. For former jurors, cordial treatment by court personnel evidences the State's confidence in their transition from "criminal" to "non-criminal." For prospective jurors, felon jury

inclusion is primarily a symbolic gesture, reinforcing the notion that they are "normal" and "equal" to their non-felon counterparts. Overall, participants suggested that while it cannot entirely erase the stigma of a criminal past, felon jury inclusion confirms their personal change and dulls the attendant prejudice and ostracism of a felony criminal record.

Maruna et al.'s (2004) labeling theory of criminal desistance proposes that a "delabeling process" publicly recognizing a former offender's reformation may facilitate criminal desistance by prompting a prosocial identity shift. They further suggest that such recognition may be most potent when it comes from the criminal justice system (Maruna et al. 2004). The results of the present study tend to support these hypotheses. Seemingly responding to the State's "certification" (Meisenhelder 1982) of their transformation, participants exhibited feelings of particularized personal value that they then incorporated into existing desistance narratives (Maruna 2001). Most saw themselves as unique assets to the jury process, stressing that a criminal past has worth, as it makes one an appropriately empathetic and critical juror. In this way, findings suggest that inclusion in the jury process can alter a former offender's sense of self by shaping one's desistance narrative – evidence in-line with Miller and Spillane's research on civic participation and criminal desistance (2012).

How participants conceived of the "juror" role is also enlightening. Most possessed idealized views of the jury process and jury service. Participants repeatedly emphasized the significance of a juror's task, stressing the need to act with care and neutrality. When describing their own experiences with the jury process, former jurors detailed their attempts to "live up to" their conceptualization of the ideal juror. Likewise, prospective jurors noted their intention to approach jury service impartially and conscientiously. For

all participants, data tends to demonstrate a desire to conform to their image of the unbiased, careful juror. Evidence further suggests that for many, the "juror" role shapes how they view themselves. These findings support Uggen et al.'s (2004) exploratory study proposing that former offenders' identities are shaped by democratic participation and a commitment to conventional "citizen" roles.

Most scholars agree that the identity and self-image of a former offender are formed by both intrinsic motivations and structural influences (Vaughn 2007). The present study is consistent with this proposition. Inclusion in the jury process and the assumption of the "juror" role do not *define* a convicted felon's self-concept. Instead, inclusion seems to send former offenders a message – that the State recognizes and trusts them as contributing citizens. This message then becomes part of a negotiated process that also involves the "upfront work" (Paternoster and Bushway 2009, 1157) of identity transformation. Most participants expressed a willingness and desire to serve as jurors, engaged in the discovery of self-worth, and incorporated the characteristics of the "juror" role into their own desistance narratives.

Felon Jury Inclusion: A Strengths-Based Initiative?

To varying degrees, the State is often an active participant in a former offender's reentry.[53] Through post-incarceration supervision (e.g. parole, probation, etc.) and in many instances specialized reentry courts (Travis 2000; see also Travis 2005; Thompson 2008), the State frequently oversees a former offender's reintegration. Traditionally, state interventions in the reentry process divide into three models: risk-based, need-based, and risk/need-based (Maruna and LeBel 2003; see also Washington State Institute for Public

[53] Apart from the effectiveness of State interventions, some scholars suggest that the State is ill equipped to facilitate reentry (Scott-Hayward 2011).

Policy 2003; Andrews et al. 2006; Listwan et al. 2006; Cullen 2011; Petersilia 2011). Centered on the surveillance and/or treatment of former offenders, the risks/needs models have yielded only modest successes (Maruna and LeBel 2003).[54]

Maruna and LeBel suggest an alternative to risk/need paradigms (2003). They propose a "strengths-based" or "restorative" approach to reintegration services (Maruna and LeBel 2003, 97). Such an approach focuses on former offenders' potential contributions (Maruna and LeBel 2003). As Maruna and LeBel explain, the strength-based approach aptly assumes that reintegration failures link to the social exclusion and stigmatization of former offenders (2003). In response, the "strengths paradigm calls for opportunities for ex-convicts to make amends, demonstrate their value and potential, and make positive contributions to their communities" (Maruna and LeBel 2003, 97). At the core of the strengths-based approach is the notion of "reciprocity" (Maruna and LeBel 2003). Offenders must take an active role in the reintegration process by "giving back" to the community, while the community must recognize offenders' efforts and once again welcome them into the fold.

Along these lines, Bazemore and Stinchcomb have proposed a "civic engagement model of reentry" (Bazemore and Stinchcomb 2004a, 2004b). Derived from restorative justice principals, the civic engagement model holds that democratic participation (they

[54] Studies demonstrate that risk-based programs do little to deter criminal activity and often prompt an increase in technical violations of supervised release (Petersilia and Turner 1993 [intensive supervision]; Hamilton 2010 [reentry courts]). Need-based interventions fare slightly better. Studies tend to show that need-based models can aid in the reintegration process, but their success depends entirely on the precise matching of individualized services to particular former offenders – a difficult and costly task (Listwan et al. 2006). Finally, risk/need based models – or the "carrot and the stick" approach (Reno 2000) – have not yielded measurable advances in reentry success (Maruna and LeBel 2003). Instead, the model suffers from a conflict of identity – pitting control priorities against treatment priorities – typically resulting in supervision dominant systems with little capacity, or interest, to serve the true needs of former offenders (Cohen 1999; see also Maruna and LeBel 2003).

propose voting) demonstrates "commitment to the social contract" (2004a, 259) and "can be viewed as indicative of a commitment to the future, rather than a self-interested act" (2004a, 261). Under such a model, democratic participation is a way for former offenders to "earn redemption" (Bazemore and Stinchcomb 2004b; see also Bazemore 1998, 768) and is part of a necessary "exchange" between the former offender and the State. In return for contributions to democratic processes, former offenders are rewarded. In part, they receive endorsement of their reformation, the trust of the State, and a new positive public image (Bazemore and Stinchcomb 2004a). These rewards, Bazemore and Stinchcomb argue, will facilitate successful reintegration by: 1) helping former offenders develop a prosocial self-image, 2) providing former offenders continued access to roles that promote law-abiding behavior, and 3) cultivating a sense of trust and collective efficacy between former offenders and the community (Bazemore and Stinchcomb 2004a).

Maine's policy of felon jury inclusion ostensibly initiates a strengths-based or civic engagement approach to reintegration. By including convicted felons in the jury process, Maine officially recognizes former offenders' transition from criminal to citizen and provides them an avenue through which to give back to the community in a meaningful, productive way. In doing so, the State places the trust of the justice system in former offenders, unilaterally assigning them responsibilities and obligations.

In turn, as the present study tends to show, offenders seem to honor their obligations. Perhaps most importantly, this study's participants who were summonsed by the State, reported for jury service. Only three participants admitted to ignoring prior jury summonses and participants generally welcomed the opportunity to serve. As one former juror explained:

> I just kind of felt happy to do it because…. I really wanted to do it. I've been waitin' to do it. I don't know. I just…I don't know. I mean, I don't want to see anyone in trouble, but I've been waitin' to do somethin' like that, to help out you know? (Neil, a former juror).

Participants also fulfilled their commitment to the community by approaching the jury process conscientiously. The vast majority of U.S. jurisdictions exclude those with a felon conviction from the jury process because felons purportedly lack character and/or harbor a bias that would prompt undue sympathy for criminal defendants. Contrary to these assertions, the participants in the present study expressed a high level of respect for the jury process. Those who were former jurors – all of whom voted to convict criminal defendants in their prior service – emphasized their efforts to remain critical, impartial jurors. Similarly, prospective jurors expressed no reservation about convicting a fellow citizen, even when the charged crime was similar to that for which they had been imprisoned. Conversely, many participants exhibited a case-specific, pro-prosecution bias in matters involving children, sexual crimes, and domestic violence. This evidence is in line with prior empirical research calling into question the veracity of the rationales for felon jury exclusion (Binnall, 2014) and it contradicts popular suppositions about convicted felons' fitness for jury service.

This study suggests that felon jury inclusion is a policy of that may positively impact the reintegration of former offenders by taking advantage of their skills and ambitions with little risk to the State. Importantly, Maine takes the first step in the reintegration process, treating former offenders as assets rather than liabilities. For former offenders, the experience and prospect of serving as a juror seems to be a source of empowerment, helping them to see themselves as valuable members of the community.

Undoubtedly, felon jury inclusion alone will not result in long-term criminal desistance or successful reintegration. Yet, as this study suggests, inclusion in the jury process may positively impact the views, attitudes, and behaviors of convicted felons. Maine's inclusive juror eligibility criteria appear to reshape a former offender's relationship with the State, such that those who were once banished now feel embraced. For the convicted felons who took part in the present study, this new relationship mattered and seemed to prompt a level of self-esteem and self-confidence that may facilitate – not guarantee – their efforts to remain law-abiding, constructive citizens. Still, questions remain regarding the wisdom of including convicted felons in the jury pool. How do felonious jurors impact the functioning of Maine's jury system? How might convicted felons shape jury deliberations? To adequately assess the utility of felon jury inclusion, further research is necessary.

CONCLUSION

The Costs of Felon Jury Exclusion

Notwithstanding their proffered justifications for felon jury exclusion statutes, jurisdictions that bar convicted felons from the venire incur costs. Often lauded as a "transformative" experience (Haddon 1994), jury service can have tangible effects on jurors' attitudes and behaviors. Research demonstrates that serving on a jury fosters a positive view of the jury process and the law (e.g. Shuman and Hamilton 1992) while increasing the rate at which citizens engage in other civic and political activities. (e.g. Gastil et al. 2010). Nevertheless, a majority of jurisdictions overlook these benefits of jury service, choosing instead to rely on the inherent bias and character rationales and exclude

convicted felons from the jury system.

Research shows that jury service alters the perceptions and attitudes of those who take part (Consolini 1992). Former jurors tend to view the jury system far more favorably than non-jurors (Durand et al. 1978). Citizens who serve on juries are more likely to hold a positive view of the justice system after service rather than before (Pabst, Jr. et al. 1976-1977; Shuman and Hamilton 1992; Cutler and Hughes 2001). For example, Consolini found that among 201 respondents, 53.8 percent had a positive view of the court's fairness prior to service, while 70.1 percent of those same respondents viewed the court favorably after service (1992). She also discovered that of the first-time jurors and alternates who held a negative or neutral opinion about how well the jury system functions, 50 percent indicated that the jury system works well after serving on a jury (Consolini 1992).

By altering perceptions of the law, jury service may also impact behaviors. An extensive body of empirical research explores how individuals view the law and whether those views influence subsequent decisions to obey or discount the law's mandates (Paternoster et al. 1997; McIvor 1999; Taxman et al. 1999; Tyler 2006; Gottfredson et al. 2007). Tyler has found that when citizens view the law as legitimate, they are more likely to follow its directives (Tyler et al. 1989; Tyler 2007, 2009). In the context of recidivism, similar results exist. Research indicates that citizens who have committed criminal offenses and who have had prior negative experiences with the law, are more likely to subsequently comply with the law if they perceive the law to be fair and legitimate (McIvor 1999 [drug courts]; Taxman et al. 1999 [parolees and probationers]; Gottfredson et al. 2007 [perpetrators of domestic violence]).

Additionally, jury service may alter behaviors in other ways. The "participation

hypothesis" is a central feature of many participatory and deliberative democratic theories (Pateman 1970; Barber 1984; Finkel 1985; Freie 1997). Generally, the participation hypothesis holds that that when people take part in a civic activity, "they develop skills, attitudes, and habits that lead to deeper entry into the public life" (Gastil et al. 2008, p. 351). Tests of the participation hypothesis focusing on jury duty support this premise. Studies of jurors' subsequent electoral participation reveal a 4 to 10 percent increase in voting rates (Gastil et al. 2002; Gastil et al. 2008). Jury service also positively correlates with higher levels of general involvement in civic and political activities (Gastil and Weiser 2006). Notably, this "participation effect" is most pronounced for citizens who – like many convicted felons – were less civically or politically engaged prior to jury service (Gastil et al. 2008).

Like favorable perceptions of the law, civic participation may also foster compliance with the legal mandates. In their studies of felon voter disenfranchisement, Manza and Uggen found that voting indirectly correlates with arrest rates (2006). Using data from a panel study of former public school students, they compared those who had voted in the 1996 presidential election to those who had not. Manza and Uggen found that between 1997 and 2000, non-voters were arrested and incarcerated at higher rates than voters. They also discovered that non-voting subjects were more likely to report committing a range of property crimes and violent offenses (Manza and Uggen 2006).

Impacting millions of convicted felons and countless litigants, felon jury exclusion statutes remove from the justice system a unique and potentially valuable viewpoint and, as this research suggests, bar those who may positively add to the deliberation process. Perhaps more importantly, the practice of excluding convicted felons from jury service robs

prospective felon-jurors of a crucial lesson in what Justice Breyer terms "active liberty" (2005). Jury service enhances jurors' views of the justice system and encourages their future civic engagement, factors that may prompt legal compliance. Yet, felon jury exclusion statutes eliminate the possibility that jury service will effect change among convicted felons. By promulgating and authorizing record-based juror eligibility criteria, lawmakers and courts forsake an opportunity to nurture convicted felons' respect for and participation in the law. Moreover, research suggests they turn away citizens who could most benefit from inclusion (Gastil et al. 2008). To justify doing so, jurisdictions claim that felons pose a serious threat to the jury process.

The present research calls into question the premises of the inherent bias and character rationales and the wisdom of alienating those we profess to want to rehabilitate. Most of the nation struggles with recidivism rates hovering at or near 65 percent, yet most of the nation also ignores the jury as a potential tool with which to promote pro-social attitudes and behaviors. As it has been for over 200 years, the American jury is a powerful vehicle for change. The present research suggests that jurisdictions may face little risk if they choose to call on the jury as a means of promoting the successful reintegration of convicted felons. The present research also demonstrates how that may manifest, demonstrating that inclusion in the jury process empowers and can transform one's sense of self.

(De)Legitimizing the Jury

The jury brings citizens together to engage in a democratic decision-making process. In this way, the jury is a political institution embedded in a democracy (Amar 1995; Gobert 1998; Vidmar and Hans 2007). The normative legitimacy of democratic institutions is

linked to principals of democracy (Peter 2009, 2010; Tallise 2011). Once achieved, normative democratic legitimacy "gives people a binding reason to support or not to challenge democratic institutions and the resulting decisions" (Peter 2009, p. 56). Under all viable accounts of democracy, democratic legitimacy requires that democratic decision-making processes accommodate a host of viewpoints and provide a forum for the exchange of ideas and reasons relating to those viewpoints (Peter 2009; Tallise 2011). Decisions resulting from a process that does not adhere to these strictures are not normatively legitimate (Peter 2010; Tallise 2011).

Under this idealized framework of democratic legitimacy, excluding anyone from jury service would undermine the normative legitimacy of a jury system and its resulting decisions. Perhaps a jurisdiction could justify delegitimizing the jury, in an idealized sense, if it could justify the exclusion. But what if that exclusion rests on untenable presumptions? Could a jurisdiction still justify calling into question the verdicts juries render? Felon jury exclusion statutes purport to protect the jury by eliminating an insidious form of bias and a lack of character that would corrupt the justice system. Yet, the present research suggests that 1) such a bias exists in at least one other group of non-felon jurors and is already part of the jury process and 2) that a supposed lack of character does not translate into the denigration of the deliberation process. Therefore, by excluding convicted felons from jury service and allowing other groups of non-felons jurors who may harbor biases or lack character to take part, jurisdictions likely delegitimize the jury, and perhaps do so without justification.

Voter disenfranchisement often dominates discussions on the civic marginalization of convicted felons. Each election cycle, commentators debate the justifications for and the

appropriateness of precluding convicted felons from the electorate. Conversely, though they are far more pervasive than felon voter disenfranchisement laws, felon jury exclusion statutes receive little attention. Courts and scholars seldom question the proffered rationales for expelling convicted felons from the venire. This research calls into question the wisdom of that approach. The purposes for felon jury exclusion warrant clarification and debate. As this research suggests, the justifications may lack an empirical foundation and excluding felons from the venire may be a needless exercise that has the potential to stunt civic engagement and hinder reintegration.

Contributions to Existing Research

Taken together, the present research contributes to several areas of study. Chapter 1 of this dissertation adds to empirical research on juror's pre-trial attitudes and conceptions. Perhaps not surprisingly, given that most jurisdictions eliminate convicted felons from the jury pool, to date no study has assessed convicted felons' potential pre-trial biases. While a vast literature assesses the pre-trial biases of many different types of prospective jurors, no empirical research explores convicted felons' preconceptions that may bear directly on their ability to remain impartial and to perform appropriately as a juror. Chapter 1 provides the groundwork for additional research in this area. Chapter 1 also adds to research on convicted felons' views of the law and legal processes. Specifically, Chapter 1 bolsters prior research that reveals that convicted felons and other criminal defendants do not have an overwhelmingly negative view of the law.

Chapter 2 bears directly on research directed at deliberation processes and how diverse juries interact. A wealth of literature focuses on how diversity positively impacts decision-making processes. Chapter 2 adds to this literature by providing data, for the first

time, on how convicted felons may influence group deliberations. Chapter 2 is consistent with and supports prior research that suggests that diverse groups engage in more thorough decision-making processes.

Chapter 3 of this dissertation expands on the extensive research centered on the reintegration of former offenders. Chapter 3 is the first study to assess the value of jury service as an activity that may promote criminal desistance and successful reentry. Prior research suggests that voting and other forms of civic engagement can prompt a prosocial identity shift among former offenders, Chapter 3 supports this research by, for the first time, providing data that indicates that jury service is important to former offenders and may bolster their self-image – a critical part of the criminal desistance process.

In sum, the present research adds to multiple areas of study and may serve as a starting point for further research on the impact convicted felons may have on the jury process and the impact the jury process may have on former offenders.

Future Research

As noted above, the studies that comprise this dissertation are exploratory in nature – each has limitations. Still, the present research has value, in that it marks the beginning of a literature on a pervasive practice that has thus far, perhaps not surprisingly, received little attention from scholars or courts. Presently, convicted felons are not a population that can influence criminal or civil trials. Likely for this reason, their exclusion has largely gone unexplored. The goal of the present research is to alter that trend. By using empirical methods to examine the reasons for and consequences of felon jury exclusion, scholars, courts, and practitioners can better understand how an invisible yet pervasive legal policy has the potential to diminish the quality of deliberations and to stunt reintegration efforts.

Admittedly, former offenders do not mark jury service as their most pressing concern post-conviction, but as this research demonstrates, they do feel the stigmatization and ostracism that accompanies a criminal record. Learning how policies that exclude former offenders from social and civic realms influence their reentry struggles may give policymakers pause for thought and a chance to reassess the utility of traditional restrictions that – as this research tends to suggest – have little purpose today.

To accomplish this goal, additional research is needed. In line with research on felon voter disenfranchisement, an assessment of public opinion about felon jury exclusion is warranted. With regularity, the jury is called to task for a controversial verdict, leading many to question whether the jury actually represents the populous. A look at how citizens feel about convicted felons serving as jurors may offer insights into how the jury system can be altered to meet the calls of the public. Additionally, more research is needed on the justifications for felon jury exclusion. While this dissertation is a start, the inherent bias and character rationales warrant further research. If convicted felons pose little to no risk to the integrity of the jury, then policymakers and courts must consider the possibility that by excluding, jurisdictions are unnecessarily creating roadblocks to successful reentry.

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APPENDIX A

Felon Jury Exclusion Statutes by State

In his 2003 article *The Exclusion of Felons from Jury Service*, law professor Brian C. Kalt provides a jurisdictional breakdown of felon jury exclusion policy (2003). Kalt divides jurisdictions into a number of categories based on the duration of their record-based juror eligibility criteria. Specifically, Kalt classifies jurisdictions as: 1) life, 2) during sentence, 3) during supervision, 4) during incarceration, 5) hybrid (based on crime category, penal status, type of jury proceeding, and/or a term of years), 6) lifetime challenges for cause, and 7) no restriction.

Notably, some jurisdictions require the restoration of a convicted felon's civil rights prior to reinstating his or her juror eligibility. In those jurisdictions, restoration procedures can be automatic or may involve lengthy and often costly processes. Recognizing this practical distinction, Kalt classifies a jurisdiction as "life" if that jurisdiction mandates the restoration of civil rights prior to reinstating a convicted felon's juror eligibility, but has intricate restoration provisions.

Since 2003, a number of jurisdictions have altered their felon jury exclusion policies. Updating Kalt's research, this Appendix categorizes jurisdictions according to the duration of their record-based juror eligibility criteria. This Appendix generally adheres to Kalt's classification scheme, but where appropriate, re-categorizes jurisdictions that have modified their felon jury exclusion policies. This Appendix classifies jurisdictions as: 1) life, 2) during sentence, 3) hybrid (based on crime category, penal status, type of jury proceedings, and/or a term of years), 4) lifetime challenges for cause, and 5) no restrictions.

Jurisdiction	Duration of Restriction	Description (Hybrid Jurisdictions)
Federal	life[55]	
Alabama	life[56]	
Alaska	during sentence[57]	
Arizona	hybrid[58]	first-time offenders – during

[55] *See* 28 U.S.C. § 1865(b)(5) (2000) (disqualifying from petit and grand juries anyone who "has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored."). Restoration of federal civil rights are not automatic, even when a state automatically restores a convicted felon's civil rights following a state criminal conviction. *See e.g.* U.S. v. Hefner, 842 F.2d 731, 732 (1991) ("We hold that some affirmative act recognized in law must first take place to restore one's civil rights to meet the eligibility requirements of section 1865(b)(5).").

[56] ALA. CODE § 12-16-60(a) (2005) ("A prospective juror is qualified to serve on a jury if the juror is generally reputed to be honest and intelligent and is esteemed in the community for integrity, good character and sound judgment and also…[h]as not lost the right to vote by conviction for any offense involving moral turpitude."); Ala. Const. art. VIII ("No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability."); Chapman v. Gooden, 974 So.2d 972 (2007) (the Alabama Supreme Court listing a number of crimes that the judiciary have recognized as crimes of moral turpitude including sale of marijuana, aggravated assault, and transporting stolen vehicles across state lines"); Ala. Code § 12-16-150(3)-(5) (2005) ("It is good ground for challenge of a juror by either party…[t]hat he has been indicted within the last 12 months for felony or an offense of the same character as that with which the defendant is charged…[t]hat he has been convicted of a felony."). In Alabama, restoration of civil rights is not automatic. Convicted felons must apply for and receive a specific type of pardon issued by Alabama's Board of Pardons and Parole. *See* Margaret Colgate Love, *Relief from the Collateral Consequences of a Criminal Conviction* AL2-AL4 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Alabama.pdf (last viewed 2/28/12) ("A state pardon does not relieve civil and political disabilities 'unless specifically expressed in the pardon.'") (citing ALA. CODE § 15-22-36(c)).

[57] ALASKA STAT. § 09.20.020(2) (2002) ("A person is disqualified from serving as a juror if the person…has been convicted of a felony for which the person has not been unconditionally discharged; unconditional discharge has the meaning given in AS 12.55.185."); Alaska Stat. § 33.30.241 (2002) ("A person who is convicted of a felony is disqualified from serving as a juror until the person's unconditional discharge."); Alaska Stat. § 12.55.185(18) ("'[U]nconditional discharge' means that a defendant is released from all disability arising under a sentence, including probation and parole.")

[58] ARIZ. REV. STAT. ANN. § 13-904(A)(3) ("A conviction for a felony suspends the following civil rights of the person sentenced…[t]he right to serve as a juror."); Ariz. Rev. Stat. Ann. § 21-201(3) ("Every juror, grand and trial, shall be at least eighteen years of age and meet the following qualifications…[n]ever have been convicted of a felony, unless the juror's civil rights have been restored."); Ariz. Rev. Stat. Ann. § 13-912(A) ("Any person who has not previously been convicted of any other felony shall automatically be restored any civil rights that were lost or suspended by the conviction if the person both…[c]ompletes a term of probation or receives an absolute discharge from imprisonment…[p]ays any fine or restitution imposed."). In Arizona, the restoration of repeat offenders' civil rights is not automatic. To restore juror eligibility a repeat offender must apply for and receive a recommendation for pardon from the Executive Board of Clemency and gubernatorial authorization for the pardon or must apply for and receive a restoration of rights from his or her sentencing judge no earlier than two years after unconditional discharge from imprisonment. *See* Ariz. Const. art. 5, § 5; Ariz. Rev. Stat. §§ 31-402A, 13-906, 13-908. *See also* Love, *supra* note 17, at AZ1-AZ2 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Arizona.pdf (last viewed 2/28/12).

		sentence/repeat offenders – life
Arkansas	life[59]	
California	life[60]	
Colorado	hybrid[61]	grand juries – life/petit juries – no restriction
Connecticut	hybrid[62]	during incarceration or seven years from conviction (whichever is longer)
Delaware	life[63]	

[59] Ark. Code Ann. § 16-31-102(a)(4)-(5) ("The following persons are disqualified to act as grand or petit jurors…Persons who have been convicted of a felony and have not been pardoned…[p]ersons who are: [n]ot of good character or approved integrity; [l]acking in sound judgment or reasonable information; [i]ntemperate; or [n]ot of good behavior."). In Arkansas, restoration of civil rights is not automatic. To restore juror eligibility, a convicted felon must apply for and receive a gubernatorial pardon referred by the parole Board. See Ark. Const. art. VI, § 18; Ark. Code Ann. § 16-93-204(a)-(b). See also Love, supra note 17, at AR1-AR2 (2007), available at: http://sentencingproject.org/doc/File/Collateral%20Consequences/Arkansas.pdf.

[60] Cal. Const. art. VII, § 8(b) ("Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice."); Cal. Civ. Pro. Code § 203(a)(5) (All persons are eligible and qualified to be prospective trial jurors, except the following…[p]ersons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored."). In California, restoration of civil rights is not automatic. See U.S. v. Horodner, 91 F.3d 1317, 1319 (1996) ("In California, a felon released from prison for three or more years may petition for a certificate of rehabilitation. Such a certificate constitutes an application for a pardon, which the governor may grant without further investigation. Anyone granted a full and unconditional pardon based on a certificate of rehabilitation is entitled 'to exercise thereafter all civil and political rights of citizenship,' which would presumably include the right to serve on a jury.") (citing Cal. Penal Code §§4852.01, 4852.03, 4852.06, 4852.16, 4852.17).

[61] COLO. REV. STAT. § 13-71-105(3) ("A prospective grand juror shall be disqualified if he or she has previously been convicted of a felony in this state, any other state, the United States, or any territory under the jurisdiction of the United States."). Colorado petit jury juror eligibility criteria make no mention of prospective jurors with a felon conviction.

[62] CONN. GEN. STAT. ANN. § 51-217(a)(2) ("A person shall be disqualified to serve as a juror if such person… has been convicted of a felony within the past seven years or is a defendant in a pending felony case or is in the custody of the Commissioner of Correction.").

[63] DEL. CODE ANN. TIT. 10, § 4509(b)(6) ("All persons are qualified for jury service except those who are…[c]onvicted felons who have not had their civil rights restored."). In Delaware, restoration of civil rights is not automatic. Felons must apply for and receive a gubernatorial pardon or a Certificate of Discharge. But, only an unconditional gubernatorial pardon will restore juror eligibility and a Certificate of Discharge does not restore juror eligibility. *See* U.S. Dep't of Justice, *Civil Disabilities of Convicted Felons: A State-by-State Survey* 37-38 fn. 2 (Margaret Colgate Love & Susan Kuzma 1997) ("Persons convicted under Delaware law and sentenced to prison may receive a certificate of discharge issued by the Board of Parole one year after the date of release from confinement, or sooner if the sentence expires earlier. A discharge 'shall have the effect of restoring all civil rights lost by operation of law upon commitment.' The office of the Delaware Attorney General, however, advises that these 'civil rights' are limited to those 'commonly exercised in everyday life,'

District of Colombia	hybrid[64]	during sentence plus ten years
Florida	life[65]	
Georgia	life[66]	
Hawaii	life[67]	

and exclude firearms privileges and the rights to vote, to serve on a jury, and to hold public office.") (citing DEL. CODE ANN. TIT. 11, § 4347(i)).

[64] D.C. CODE § 11-1906(b)(2)(B) ("An individual shall not be qualified to serve as a juror… if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualified for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the jury system plan."); D.C. Code § 11-1904(a) ("The Board of Judges shall adopt, implement, and as necessary modify, a written jury system plan for the random selection and service of grand and petit jurors in the Superior Court consistent with the provisions of this chapter."); JURY PLAN FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA § 7(f) (convicted felons are ineligible for jury service "except that individuals disqualified for jury service by reason of a felony conviction are qualified for jury service ten years after the completion of their entire sentence, including incarceration, probation and parole, or at such time as their civil rights have been restored.").

[65] FLA. STAT. ANN. § 40.013(1) ("No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror."); In Florida, restoration of civil rights is not automatic. Convicted felons must apply for and receive either a gubernatorial pardon (which necessitates two additional cabinet votes) or a restoration of civil rights. But, a restoration of civil rights is only available for certain crimes and requires that a convicted felon meet a number of conditions, not the least of which is full payment of restitution. *See* FLA. STAT. ANN. § 944.292 (1) ("Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."); *see also* Rules of Executive Clemency of Florida, Rule 9(A)(3).

[66] Ga. Code Ann. § 15-12-60(b)(2) ("The following persons shall not be eligible to serve as grand jurors…[a]ny person who has been convicted of a felony and who has not been pardoned or had his or her civil rights restored."); Ga. Code Ann. § 15-12-120 ("At the same time and in the same manner that grand juries are drawn, the judge of the superior court shall draw names to serve as trial jurors for the trial of civil and criminal cases in the court."); Ga. Code Ann. § 15-12-163(b)(5) ("The state or the accused may make any of the following objections to the juror…[t]hat the juror has been convicted of a felony in a federal court or any court of a state of the United States and the juror's civil rights have not been restored."). In Georgia, restoration of civil rights is not automatic with regards to jury service. *See* Judicial Council of Georgia, Administrative Office of the Courts, Georgia Jury Commissioner's Handbook 10 (2005), *available at*: http://www.georgiacourts.org/publications/jch.pdf (last viewed 2/28/12) ("An individual who completes a felony sentence may register to vote, but cannot serve on a jury until that person has received a pardon or restoration of civil rights from the Board of Pardon and Paroles.") (citing 1983 GA. OP. ATT'Y GEN. 69 (No. 83-33) (1983)); *see also* Love, *supra* note 17, at GA1-GA2 (2007), *available at*: http://sentencingproject.org /doc/File/Collateral%20Consequences/Georgia.pdf.

[67] HAW. REV. STAT. ANN. § 612-4(b)(2) ("A prospective juror is disqualified to serve as a juror if the prospective juror… Has been convicted of a felony in a state or federal court and not pardoned."). The pardon process in Hawaii is initiated by the Governor who "as a matter of policy always asks Paroling Authority and Attorney General for advice and recommendation," before ultimately granting or denying the pardon. *See* Love, *supra*

Idaho	during sentence[68]	
Illinois	lifetime challenges for cause[69]	
Indiana	during sentence[70]	
Iowa	lifetime challenges for cause[71]	
Kansas	hybrid[72]	during incarceration or ten years from conviction (whichever is longer)
Kentucky	life[73]	

note 17, at HI1-HI2 (2007), *available at*: http://sentencingproject.org/doc/File/ Collateral%20Consequences /Hawaii.pdf (last viewed 2/28/12).

[68] IDAHO CODE § 18-310(1) ("A sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced."); IDAHO CODE § 18-310(2) ("Upon final discharge, a person convicted of any Idaho felony shall be restored the full rights of citizenship…[a]s used in this subsection, 'final discharge' means satisfactory completion of imprisonment, probation and parole as the case may be.").

[69] 705 ILL. COMP. STAT. ANN. 305/2(3) ("Jurors must be…[f]ree from all legal exception, of fair character, of approved integrity, of sound judgment."); *see also* People v. Gil, 608 N.E.2d 197, 206 (1992) ("A venireperson may be excused for cause where he or she has been previously charged with various crimes.") (citing People v. Seaman, 561 N.E.2d 188, 200 (1990)).

[70] IND. CODE § 33-28-5-18(b)(5) ("A prospective juror is disqualified to serve on a jury if any of the following conditions exist… [t]he person has had the right to vote revoked by reason of a felony conviction and the right has not been restored."); IND. CODE § 3-7-13-4(a)(1)-(2) ("A person who is…convicted of a crime; and imprisoned following conviction is deprived of the right of suffrage by the general assembly."); IND. CODE § 3-7-13-4(b)(1)-(2) ("A person described in subsection (a) is ineligible to register under this article during the period that the person is…imprisoned; or otherwise subject to lawful detention."). In Indiana, apart from Ind. Code § 33-28-5-18(b)(5), a convicted felon's voting rights may also be suspended under the infamous crimes clause of the Indiana Constitution. *See* Ind. Const. art. 2, § 8. In such a case, a convicted felon's voting rights are not necessarily reinstated upon the expiration of a term of incarceration. *See* Snyder v. King, 958 N.E. 2d 764 (2011). In turn, since Indiana ties juror eligibility to the right to vote, if a convicted felon's voting rights are suspended under the infamous crimes clause of the Indiana Constitution, a convicted felon may not regain his or her juror eligibility at the end of a term of incarceration.

[71] IOWA COURT ANN. R. 2.18(5)(a); ("A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes…[a] previous conviction of the juror of a felony."); IOWA COURT ANN. R. 1.915(6)(a) ("A juror may be challenged by a party for any of the following causes…[c]onviction of a felony.").

[72] KAN. STAT. ANN. § 21-6613(a) ("A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction, be ineligible to hold any public office under the laws of the state of Kansas, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case."); Kan. Stat. Ann. § 43-158(c) ("The following persons shall be excused from jury service… persons who within 10 years immediately preceding have been convicted of or pleaded guilty, or *nolo contendere,* to an indictment or information charging a felony."); Kan. Stat. Ann. § 22-3722 ("When an inmate has reached the end of the postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state.").

[73] KY. REV. STAT. ANN. § 29A.080(2)(e) ("A prospective juror is disqualified to serve on a jury if the juror…[h]as been previously convicted of a felony and has not been pardoned or received a restoration of civil rights by

Louisiana	life[74]	
Maine	no exclusion[75]	
Maryland	life[76]	
Massachusetts	hybrid[77]	during incarceration or ten years from

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the Governor or other authorized person of the jurisdiction in which the person was convicted."). In Kentucky, restoration of civil rights is not automatic. A convicted felon must apply for and receive a gubernatorial pardon or restoration of rights. *See* Love, *supra* note 17, at KY1-KY3 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Kentucky.pdf (last visited 2/28/12).

[74] LA. CODE CRIM. PROC. ANN. ART. 401(A)(5) ("In order to qualify to serve as a juror, a person must… Not be under indictment for a felony nor have been convicted of a felony for which he has not been pardoned by the governor."). In Louisiana, a first-time convicted felon convicted of certain crimes, automatically receives a non-gubernatorial pardon after the completion of the imposed sentence. Such pardons are issued by the Board of Pardons and do not require the approval of the governor. *See* LA. CONST. ART. IV, § 5(E)(1) ("a first offender convicted of a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor."). *See also* LA. REV. STAT. ANN. § 15:572(B)-(E). Nevertheless, the Louisiana Supreme Court has noted that such a pardon does not restore a convicted felon's eligibility for jury service; noting that only a gubernatorial pardon will do so. *See* State v. Jacobs, 904 So.2d 82, 90-91 (2005) ("Defendant complains that convicted felons, even those receiving first offender pardons, are excluded from grand jury service…[d]efendant's argument is without merit."); State v. Kennedy, 957 S.2d 757 (Unpublished Appendix p. 3)(2007) (overturned on other grounds) ("an automatic pardon for a first felony offender under Article IV, § 5(E)(1), while restoring some privileges, does not restore the status of innocence to the convict who has merely served out his sentence as does an executive pardon granted by the governor…[a]bsent a pardon from the governor, a person convicted of a felony in Louisiana is not qualified to serve as a juror.")(citing State v. Baxter, 357 So.2d 271, 273 (La.1978)). Louisiana courts treat first offender pardons differently from gubernatorial pardons in several contexts. *See* Judge Helen Ginger Berrigan, Executive Clemency, First-Offender Pardons; Automatic Restoration of Rights, 62 LA. L. REV. 49 (2001).

[75] ME. REV. STAT. ANN. TIT. 14, § 1211 ("A prospective juror is disqualified to serve on a jury if that prospective juror is not a citizen of the United States, 18 years of age and a resident of the county, or is unable to read, speak and understand the English language.").

[76] MD. CODE ANN., CTS. & JUD. PROC. §8-207(b)(4)-(5) ("[A]n individual is not qualified for jury service if the individual…[h]as been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 6 months and received a sentence of imprisonment for more than 6 months; or [h]as a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding 6 months."); MD. CODE ANN., CTS. & JUD. PROC. §8-103(c) ("An individual qualifies for jury service notwithstanding a disqualifying conviction under subsection (b)(4) of this section if the individual is pardoned."). In Maryland, the Parole Commission investigates and advises the governor with regards to pardons, but the governor has the ultimate authority to grant or deny a pardon. *See* Love, *supra* note 17, at MD2 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Maryland.pdf (last viewed 2/28/12); *see also* Md. Const. art. II, § 20.

[77] MASS. GEN. LAWS. ANN. CH. 234A, §4(7) (Any citizen of the United States who is a resident of the judicial district or who lives within the judicial district more than fifty per cent of the time, whether or not he is registered to vote in any state or federal election, shall be qualified to serve as a grand or trial juror in such judicial district unless one of the following grounds for disqualification applies…[s]uch person has been convicted of a felony within the past seven years or is a defendant in pending felony case or is in the custody of a correctional institution."); MASS. GEN. LAWS. ANN. CH. 234, §8 ("If a person whose name has been so placed

		conviction (whichever is longer) and lifetime challenges for cause
Michigan	life[78]	
Minnesota	during sentence[79]	
Mississippi	life[80]	
Missouri	life[81]	

in the jury box has been convicted of any felony, or of any other offence punishable by imprisonment in a jail or house of correction for more than one year, or is guilty of gross immorality, or is found by the justice holding court to be unqualified or unfit to serve as a juror, he may be relieved by said justice from sitting in any case, or his name ordered by the justice to be stricken from the jury list.").

[78] MICH. COMP. LAWS § 600.1307a(1)(e) ("To qualify as a juror a person shall…[n]ot have been convicted of a felony."); *see also* MICH. COMP. LAWS § 600.1307a(4) ("For purposes of this section, "felony" means a violation of a penal law of this state, another state, or the United States for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony."). In Michigan, the restoration of civil rights is not automatic. *See* U.S. v. Metzger, 3 F.3d 756 (1993). (holding that a convicted felons juror eligibility is not automatically restored upon expiration of the imposed sentence). A convicted felon can only restore his or her juror eligibility through gubernatorial pardon. *See* Mich. Const. art. 5, § 14.

[79] 49 MINN. STAT. ANN., MINN. R. CRIM. P., 26.02(5)(1)(2) ("A juror may be challenged for cause on these grounds...[a] felony conviction unless the juror's civil rights have been restored."); MINN. GEN. R. PRAC. 808(b)(6) ("To be qualified to serve as a juror, the prospective juror must be… A person who has had their civil rights restored if they have been convicted of a felony."); MINN. STAT. ANN. §609.165(1) ("When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide."). In Minnesota, restoration of civil rights is automatic upon completion of sentence. *See* MINN. STAT. ANN. §609.165(2) ("The discharge may be…upon expiration of sentence.")

[80] MISS. CODE ANN. § 13-5-1 ("Every citizen not under the age of twenty-one years, who is either a qualified elector, or a resident freeholder of the county for more than one year, is able to read and write, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror."); MISS. CODE ANN. § 1-3-19 ("The term 'infamous crime,' when used in any statute, shall mean offenses punished with death or confinement in the penitentiary."). As Kalt notes, some interpret section 13-5-1 as restoring juror eligibility to convicted felons 5 years after conviction. *See* Love, *supra* note 17, at MS2 (2008), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Mississippi.pdf (last visited 2/28/12). Yet, courts have held that section 13-5-1 disqualifies convicted felons from jury service regardless of the age of their conviction. *See* Fleming v. State, 687 So. 2d 146, 148 (1997) ("[P]ersons convicted of "infamous crimes" are not competent to serve on juries.").

[81] Mo. Rev. Stat. § 494.425(4) ("The following persons shall be disqualified from serving as a petit or grand juror… [a]ny person who has been convicted of a felony, unless such person has been restored to his civil rights."). A second provision disqualifies convicted felons permanently. *See* Mo. Rev. Stat. § 561.026(3) ("Notwithstanding any other provision of law, a person who is convicted…[o]f any felony shall be forever disqualified from serving as a juror."). Yet, comments on this portion of Missouri's code indicate that a convicted felon could regain juror eligibility through a pardon. *See* Comment to 1973 Proposed Code, Mo. Rev. Stat. § 561.026 ("Many states permit persons with felony records to serve on juries. However, the Committee decided to exclude all convicted felons from jury service (unless pardoned) in order to help maintain the integrity of the jury system."). In Missouri, the governor has final pardoning power. But, prior

Montana	during sentence[82]	
Nebraska	life[83]	
Nevada	hybrid[84]	repeat or violent offenders – life/first-time non-violent offenders – during sentence (civil juries)/during sentence plus six years (criminal juries)
New Hampshire	life[85]	

to the governor's decision, the Missoui Board of Probation and Parole investigates each potential pardon is investigated and then makes non-binding recommendations to the governor. *See* Love, *supra* note 17, at MO1 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Missouri.pdf (last visited 2/28/12).

[82] Mont. Code Ann. § 3-15-303(2) ("A person is not competent to act as juror…who has been convicted of malfeasance in office or any felony or other high crime."); Mont. Code Ann. § 46-18-801(2) ("Except as provided in the Montana constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship, the same as if the conviction had not occurred.").

[83] NEB. REV. STAT. § 25-1601(f) ("Persons disqualified to serve as either grand or petit jurors are…persons who have been convicted of a criminal offense punishable by imprisonment in a Department of Correctional Services adult correctional facility, when such conviction has not been set aside or a pardon issued."); NEB. REV. STAT. § 29-112 ("Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is incompetent to be a juror or to hold any office of honor, trust, or profit within this state, unless such person receives from the Board of Pardons of this state a warrant of discharge, in which case such person shall be restored to such civil rights and privileges as enumerated or limited by the Board of Pardons."). Nebraska has a similar provision relating to convicted felons not sentenced to a term of imprisonment. *See* NEB. REV. STAT. § 29-112.01 ("Any person sentenced to be punished for any felony, when the sentence is other than confinement in a Department of Correctional Services adult correctional facility, shall be restored to such civil rights as enumerated or limited by the Board of Pardons upon receipt from the Board of Pardons of a warrant of discharge, which shall be issued by such board upon receiving from the sentencing court a certificate showing satisfaction of the judgment and sentence entered against such person."); NEB. REV. STAT. § 83-1, 118 (5) ("Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored two years after completion of the sentence. The notice shall also include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.").

[84] Nev. Rev. Stat. § 6.010 ("Except as otherwise provided in this section, every qualified elector of the State, whether registered or not, who has sufficient knowledge of the English language, and who has not been convicted of treason, a felony, or other infamous crime, and who is not rendered incapable by reason of physical or mental infirmity, is a qualified juror of the county in which the person resides. A person who has been convicted of a felony is not a qualified juror of the county in which the person resides until the person's civil right to serve as a juror has been restored."). In Nevada, as of 2003, restoration of civil rights is automatic for first time non-violent convicted felons immediately restoring the right to sit on a civil jury. *See* Nev. Rev. Stat. § 213.157(2)(a)-(e). But, Nevada holds that the right to sit on a criminal jury is restored later, "[s]ix years after the date of his or her release from prison." *See* Nev. Rev. Stat. § 213.157(1)(c). As of 2003, those convicted of a violent felony or multiple felonies must apply for and receive a restoration of civil rights from their sentencing court. *See* Nev. Rev. Stat. §§ 176A.850(4)(a)-(e), 213.090(2),(5)(b) (amended by 2011 Nevada Laws Ch. 14 (A.B. 66) to include firearm possession), 213.155(2)(a)-(e).

[85] N.H. Rev. Stat. Ann. § 500-A:7-a(V) ("A juror shall not have been convicted of any felony which has not been

New Jersey	life[86]	
New Mexico	during sentence[87]	
New York	life[88]	
North Carolina	during sentence[89]	
North Dakota	during sentence[90]	
Ohio	during sentence[91]	

annulled or which is not eligible for annulment under New Hampshire law.") In New Hampshire, the annulment of a criminal record is not automatic. Depending on the conviction type, only certain convicted felons qualify for annulment. *See* N.H. Rev. Stat. Ann. § 651:5 (I)-(XVII); *see also* N.H. Rev. Stat. Ann. § 651:5 (I) ("[C]onviction and sentence of any person may be annulled by the sentencing court at any time in response to a petition for annulment which is timely brought in accordance with the provisions of this section if in the opinion of the court, the annulment will assist in the petitioner's rehabilitation and will be consistent with the public welfare. The court may grant or deny an annulment without a hearing, unless a hearing is requested by the petitioner.").

[86] N. J. Stat. Ann. § 2B:20-1(e) ("Every person summoned as a juror…shall not have been convicted of any indictable offense under the laws of this State, another state, or the United States.").

[87] N.M. Stat. Ann. § 38-5-1(B) ("A person who was convicted of a felony and who meets all other requirements for eligibility may be summoned for jury service if the person has successfully completed all conditions of the sentence imposed for the felony, including conditions for probation or parole.").

[88] N.Y. Jud. § 510(3) ("In order to qualify as a juror a person must…[n]ot have been convicted of a felony.").

[89] N.C. Gen. Stat. § 9-3 (amended by 2011 North Carolina Laws S.L. 2011-42 (H.B. 234)) ("All persons are qualified to serve as jurors and to be included on the jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."). In North Carolina, civil rights are automatically restored upon completion of a sentence. *See* N.C. Gen. Stat. § 13-1(1) ("Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions…[t]he unconditional discharge of an inmate by the State Department of Correction or the North Carolina Department of Correction, of a probationer by the State Department of Correction, or of a parolee by the Department of Correction; or of a defendant under a suspended sentence by the court."). Civil rights are also restored as the result of an unconditional pardon or the satisfaction of all conditions of a conditional pardon. *See* N.C. Gen. Stat. § 13-1(2)-(3) ("Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions…[t]he unconditional pardon of the offender…[t]he satisfaction by the offender of all conditions of a conditional pardon.").

[90] N.D. Cent. Code § 27-09.1-08(2)(e) ("A prospective juror is disqualified to serve on a jury if the prospective juror… Has lost the right to vote because of imprisonment in the penitentiary or conviction of a criminal offense which by special provision of law disqualified the prospective juror for such service."); *see also* N.D. Cent. Code § 12.1-33-01(1)(a) ("A person sentenced for a felony to a term of imprisonment, during the term of actual incarceration under such sentence, may not…[v]ote in an election.").

[91] Ohio Rev. Code Ann. § 2961.01 (A)(1) ("A person who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict

Oklahoma	life[92]	

or finding of guilt for committing a felony under any law of that type is returned, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit."). In Ohio, restoration of juror eligibility is automatic after a term of imprisonment that does not include post-release supervision, upon receipt of a final release from parole authorities, or at the expiration of community control sanctions in cases where imprisonment was not mandated. *See* Ohio Rev. Code Ann. § 2967.16(C)(1)(a)-(c) ("[T]he following prisoners or person shall be restored to the rights and privileges forfeited by a conviction…[a] prisoner who has served the entire prison term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions...[a] prisoner who has been granted a final release by the adult parole authority...[a] person who has completed the period of a community control sanction or combination of community control sanctions,…,that was imposed by the sentencing court."); *see also* Love, *supra* note 17, at OH1 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Ohio.pdf. In Ohio, a pardon will also restore a convicted felon's civil rights. *See* Ohio Rev. Code Ann. § 2961.01 (A)(2) ("The full pardon of a person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under division (A)(1) of this section.").

[92] Okl. Stat. Ann. tit. 38 § 28(C)(5) ("Persons who are not qualified to serve as jurors are…[p]ersons who have been convicted of any felony or who have served a term of imprisonment in any penitentiary, state or federal, for the commission of a felony; provided, any such citizen convicted, who has been fully restored to his or her civil rights, shall be eligible to serve as a juror."). In Oklahoma, restoration of civil rights is not automatic. Convicted felons must apply for and receive a gubernatorial pardon. Aside from a gubernatorial pardon, Oklahoma law has no mechanism for fully restoring the civil rights of convicted felons. *See* Love, *supra* note 17, at OK1 (2007), *available at*: http://sentencingproject.org/doc/File/ Collateral%20Consequences/ Oklahoma.pdf (indicating - without citation - that a convicted felons is "fully restored to his or her civil rights" only through a gubernatorial pardon). Moreover, even after the restoration of a convicted felon's civil rights, that convicted felon is challengeable for cause for life. *See* 22 Okl. Stat. Ann. § 658(1) ("General causes of challenges are…a conviction for felony."); *see also* Jackson v. State, Okla.Crim.App., 964 P.2d 875 (1998).

Oregon	hybrid[93]	criminal and grand juries – during incarceration plus fifteen years/civil juries – during incarceration
Pennsylvania	life[94]	
Rhode Island	during sentence[95]	
South Carolina	life[96]	

[93] In Oregon a felony conviction entails the loss of civil rights – including the right to serve as a juror – but provides for the automatic restoration of those rights at the expiration of a term of imprisonment. *See* Or. Rev. Stat. Ann. § 137.281 (1)(a), (3)(c) ("In any felony case, when the defendant is sentenced to a term of incarceration, the defendant is deprived of all rights and privileges described in subsection (3) of this section from the date of sentencing until…[t]he defendant is released from incarceration…[t]he rights and privileges of which a person may be deprived under this section are…acting as a juror."). Nevertheless, Oregon disqualifies convicted felons and certain misdemeanants from criminal grand/petit juries even after the automatic restoration of civil rights. *See* Or. Rev. Stat. Ann. §10.030 (3)(a)(E)-(F) ("Any person is eligible to act as a grand juror, or as a juror in a criminal trial, unless the person…[h]as been convicted of a felony or served a felony sentence within the 15 years immediately preceding the date the person is required to report for jury service; or…[h]as been convicted of a misdemeanor involving violence or dishonesty, or has served a misdemeanor sentence based on a misdemeanor involving violence or dishonesty, within the five years immediately preceding the date the person is required to report for jury service."). Oregon's Constitution authorizes this disqualification of felons and certain misdemeanants from criminal grand/petit juries for a term of years. *See* Or. Const. art. I, § 45 (1)(a)-(b) ("In all grand juries and in all prosecutions for crimes tried to a jury, the jury shall be composed of persons who have not been convicted:…[o]f a felony or served a felony sentence within the 15 years immediately preceding the date the persons are required to report for jury duty; or…[o]f a misdemeanor involving violence or dishonesty or served a sentence for a misdemeanor involving violence or dishonesty within the five years immediately preceding the date the persons are required to report for jury duty."). Recently, however, Oregon's Committee on the Judiciary has sponsored a bill that would reduce the waiting period for felons to 10 years. *See* 2011 OR S.J.R. 31 (NS) (February 17, 2011). Convicted felons and all misdemeanants are allowed to serve on civil juries upon expiration of a term of imprisonment. *See* Or. Rev. Stat. Ann. §10.030 (2)(d) ("Any person is eligible to act as a juror in a civil trial unless the person…[h]as had rights and privileges withdrawn and not restored under ORS 137.281.").

[94] 42 Pa. Cons. Stat. Ann. § 4502(a)(3) ("Every citizen of this Commonwealth who is of the required minimum age for voting for State or local officials and who resides in the county shall be qualified to serve as a juror therein unless such citizen…has been convicted of a crime punishable by imprisonment for more than one year and has not been granted a pardon or amnesty therefor."). In Pennsylvania, only a gubernatorial pardon will restore a convicted felon's juror eligibility. *See* Pa. Const. art. 4, § 9(a) ("In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons.").

[95] R.I. Gen. Laws § 9-9-1.1(c) ("No person convicted of a felony shall be allowed to serve as a juror, until completion of such felon's sentence, served or suspended, and of parole or probation regardless of a nolo contendere plea.").

[96] S.C. Code Ann. § 14-7-810(1) ("In addition to any other provision of law, no person is qualified to serve as a juror in any court in this State if…[h]e has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty."). In South Carolina, only a grant of clemency from the Probation, Parole, and Pardon Board will restore a convicted felon's juror eligibility. The Governor cannot grant clemency, he can only grant reprieves and death sentence commutations. *See* S.C. Code Ann. §§ 24-21-910, 24-21-920.

South Dakota	during sentence[97]	
Tennessee	life[98]	
Texas	life[99]	
Utah	life[100]	

[97] S.D. Codified Laws § 16-13-10 ("Any person who has been convicted of a felony unless restored to civil rights is not eligible to serve as a juror."). S.D. Codified Laws § 23A-27-35 ("A sentence of imprisonment in the state penitentiary for any term suspends the right of the person so sentenced to vote, to hold public office, to become a candidate for public office and to serve on a jury, and forfeits all public offices and all private trusts, authority, or power during the term of such imprisonment."). South Dakota restores a convicted felon's civil rights – including juror eligibility – by way of a final order of discharge. That order is typically granted once a convicted felon has completed his or her entire sentence – including any term of supervised release. *See* S.D. Codified Laws § 24-15A-6 ("The department shall establish the sentence discharge date for each inmate based on the total sentence length, minus court ordered jail time credit. Each inmate shall be under the jurisdiction of the department, either incarcerated or under parole release or a combination, for the entire term of the inmate's total sentence length unless the board grants an early final discharge…, a partial early final discharge…,the court modifies the sentence or the sentence is commuted."); *see also* S.D. Codified Laws § 24-15A-7 ("Whenever any inmate has been discharged under the provisions of § 24-15A-6, the inmate shall at the time of discharge be considered as restored to the full rights of citizenship. At the time of the discharge of any inmate under the provisions of this chapter, the inmate shall receive from the secretary a certificate stating that the inmate has been restored to the full rights of a citizen. If an inmate is on parole at the time the inmate becomes eligible for discharge, the secretary shall issue a like certificate, which is due notice that the inmate has been restored to the full rights of a citizen."). In rare instances, a convicted felon is eligible for early final discharge. *See* S.D. Codified Laws §§ 24-15A-8, 24-15A-8.1.

[98] Tenn. Code Ann. § 22-1-102(a) ("The following persons are incompetent to act as jurors…[p]ersons convicted of a felony or any other infamous offense in a court of competent jurisdiction; or…[p]ersons convicted of perjury or subornation of perjury."). In Tennessee, restoration of civil rights is not automatic. Convicted felons must apply for and receive a restoration of rights. *See* Tenn. Code Ann. § 40-29-101(a)-(c) ("Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court…[t]hose pardoned, if the pardon does restore full rights of citizenship, may petition for restoration immediately after the pardon; provided, that a court shall not have jurisdiction to alter, delete or render void special conditions of a pardon pertaining to the right of suffrage…[t]hose convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed for the infamous crime.").

[99] Tex. Gov't Code Ann. § 62.102(7) ("A person is disqualified to serve as a petit juror unless the person…has not been convicted of misdemeanor theft or a felony."). Tex. Code Crim. Proc. Ann. art. 19.08(4) ("No person shall be selected or serve as a grand juror who does not possess the following qualifications…[t]he person must not have been convicted of misdemeanor theft or a felony."). Tex. Code Crim. Proc. Ann. art. 35.16(a)(2) ("A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons…[t]hat the juror has been convicted of misdemeanor theft or a felony."). In Texas the restoration of civil rights is not automatic. Convicted felons must apply for and receive a restoration of civil rights, which involves a host of procedural requirements. *See* Tex. Code Crim. Proc. Ann. art. § 48.05(a). As Kalt notes, however, while Tex. Code Crim. Proc. Ann. art. 42.12 § 20(a) gives courts the power to restore a convicted felon's civil rights following the successful completion of community supervision, courts have disagreed about the power of this provision. *See* People v. Vasquez, 25 Cal.4th 1225 (2001).

Vermont	life[101]	
Virginia	life[102]	
Washington	during sentence[103]	
West Virginia	life[104]	

[100] Utah Code Ann. § 78B-1-105(2) ("A person who has been convicted of a felony which has not been expunged is not competent to serve as a juror."). In Utah, only certain felons are eligible for expungement and must adhere to many procedural requirements. *See* Utah Code Ann. § 77-40-105.

[101] Vt. Stat. Ann. tit. 4, § 962(a)(5) ("A person shall be qualified for jury service if the person…has not served a term of imprisonment in this state after conviction of a felony."). In Vermont, restoration of civil rights is not automatic. To restore civil rights, convicted felons must apply for and receive a gubernatorial pardon. *See* Vt. Const. Ch. II, § 20 ("The Governor shall have power to grant pardons and remit fines."); *see also* Vt. Stat. Ann. tit. 28, § 453 ("On request of the governor, the board shall act as an advisory board to assist or act for him or her in investigating or hearing matters pertaining to pardons, and may make recommendations to him or her regarding such matters.").

[102] Va. Code Ann. § 8.01-338(2) ("The following persons shall be disqualified from serving as jurors…[p]ersons convicted of treason or a felony."). In Virginia, restoration of civil rights is not automatic. To restore civil rights, convicted felons must apply for and receive a gubernatorial pardon. *See* Va. Const. art. 5, § 12 ("The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.").

[103] Wash Rev. Code Ann. § 2.36.070(5) ("A person shall be competent to serve as a juror in the state of Washington unless that person…[h]as been convicted of a felony and has not had his or her civil rights restored."). In Washington, restoration of civil rights is quite complicated. If a convicted felon's offense occurred prior to July 1, 1984, he or she must apply for an receive a restoration of civil rights – which is not automatic. *See* Wash. Rev. Code Ann. §§ 9.92.066, 9.95.240, 9.96.050. If an convicted felon's offense occurred after July 1, 1984, his or her civil rights are automatically restored – in theory – at the end of the imposed sentence. *See* Wash. Code Ann. § 9.94A.637. But, as commentators have noted that the restoration process is "so bewildering that almost nobody negotiates it well." *See* Editorial, "Felon-voting laws confusing, ignored," *Seattle Times* (May 22, 2005). Moreover, the restoration of rights is contingent upon a convicted felons satisfying all financial obligations unless he or she can show that repayment will cause "manifest hardship." *See* Wash. Code. Anm. § 10.73.160(4). *See also See* Love, *supra* note 17, at WA1-WA2 (2007), *available at*: http://sentencingproject.org/doc/File/Collateral%20Consequences/Washington.pdf.

[104] W. Va. Code § 52-1-8(b)(6) ("A prospective juror is disqualified to serve on a jury if the prospective juror…[h]as been convicted of perjury, false swearing or other infamous offense."). In West Virginia, courts have held that all felonies are infamous offenses because they are "punishable by imprisonment in the state penitentiary." *See* State v. Bongalis, 378 S.E.2d 449, 455 (1989). In West Virginia, while convicted felons' right to vote is automatically restored upon completion of the imposed sentence, but federal courts have held that juror eligibility requires a certificate of discharge or gubernatorial pardon. There is no statutory mechanism for convicted felons to apply for or receive a certificate of discharge restoring their civil rights. *See* Berger v. U.S., 867 F.Supp. 424, 430 (1994) ("Nor has the disqualification ever been interpreted by the West Virginia Supreme Court of Appeals as ceasing to exist after the convicted person has served his sentence."); U.S. v. Morrell, 61 F.3d 279 (1995) ("We agree with the reasoning of the *Berger* court that the civil rights of a convicted felon cannot be restored as an operation of West Virginia law upon the completion of a prison sentence because W.Va.Code § 52-1-8 disqualifies convicted felons from jury service."). Instead, a convicted felons must apply for and receive a gubernatorial pardon. *See* W. Va. Const. art 7, § 11; W. Va. Code § 5-1-16.

Wisconsin	during sentence[105]	
Wyoming	life[106]	

[105] Wis. Stat. Ann. § 756.02 ("Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored."). In Wisconsin, civil rights are restored at the expiration of the imposed sentence. *See* Wis. Stat. Ann. § 304.078(2) ("Except as provided in sub. (3), every person who is convicted of a crime obtains a restoration of his or her civil rights by serving out his or her term of imprisonment or otherwise satisfying his or her sentence."); *see also* Wis. Stat. Ann. § 304.078(3) ("If a person is disqualified from voting under s. 6.03(1)(b), his or her right to vote is restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification.").

[106] Wyo. Stat. Ann. § 1-11-102 ("A person who has been convicted of any felony is disqualified to act as a juror unless his conviction is reversed or annulled, he receives a pardon or his rights are restored pursuant to W.S. 7-13-105(a)."). Wyo. Stat. Ann. § 6-10-106(a)(i)-(iv) ("A person convicted of a felony is incompetent to be an elector or juror or to hold any office of honor, trust or profit within this state, unless…[h]is conviction is reversed or annulled;…[h]e receives a pardon;…[h]is rights are restored pursuant to W.S. 7-13-105(a)."). In Wyoming, civil rights are not automatically restored. Instead, to restore his or her civil rights, a convicted felon must apply for and receive a gubernatorial pardon or a statutory restoration of rights under Wyo. Stat. Ann. § 7-13-105(a). See Wyo. Const. Art 4, § 5 (discussing pardons); see also Wyo. Stat. Ann. § 7-13-105(a) ("Upon receipt of a written application, the governor may issue to a person convicted of a felony under the laws of a state or the United States a certificate which restores the rights lost pursuant to W.S. 6-10-106 when…[h]is term of sentence expires; or…[h]e satisfactorily completes a probation period.").

APPENDIX B

Chapter One: Participant Characteristics

	Convicted Felons (N=247)		Law Students (N=218)		Eligible Jurors (N=242)	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Gender						
Male	183	74.09	121	55.50	184	76.03
Female	58	23.48	97	44.50	58	23.97
No response	6	2.43	-	-	-	-
Race						
Caucasian	79	31.98	131	60.09	79	32.64
African-American	57	23.08	17	7.80	57	23.55
Latino/a	73	29.55	17	7.80	66	27.27
Other/mixed	34	13.77	52	23.85	40	16.53
No response	4	1.62	1	0.46	-	-
Education						
Less than high school	61	24.70	-	-	-	-
High school graduate/GED	89	36.03	4	1.83	27	11.16
Some college/vocational training/associates degree	83	33.60	6	2.75	129	53.31
College graduate	3	1.21	80	36.70	54	22.31
Post graduate	5	2.02	126	57.80	32	13.22
No response	6	2.43	2	0.92	-	-
Native language						
English	217	87.85	188	86.24	196	80.99
Non-English	23	9.31	29	13.30	38	15.70
No response	7	2.83	1	0.46	8	3.31
Occupation						
Reports having an occupation	125	50.61	218	100.00	208	85.95
Reports not having an occupation	33	13.36	-	-	7	2.89
No response	89	36.03	-	-	27	11.16

Appendix B. ***Continued***

	Convicted Felons (N=247)		Law Students (N=218)		Eligible Jurors (N=242)	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Religion						
Reports having a religion	164	66.40	111	50.92	118	48.76
Reports not having a religion	10	4.05	97	44.50	86	35.54
No response	73	29.55	10	4.59	38	15.70
Family income						
No income	105	42.51	39	17.89	17	7.02
<20K	41	16.60	29	13.30	56	23.14
20K-40K	28	11.34	24	11.01	42	17.36
41K-60K	25	10.12	23	10.55	49	20.25
61K-80K	5	2.02	16	7.34	29	11.98
81K-100K	3	1.21	17	7.80	16	6.61
101K-120K	2	0.81	15	6.88	10	4.13
>120K	6	2.43	44	20.18	18	7.44
No response	32	12.96	11	5.05	5	2.07
View of the death penalty						
Strongly support	37	14.98	66	30.28	43	17.77
Support	31	12.55	63	28.90	68	28.10
Neutral	74	29.96	45	20.64	71	29.34
Oppose	29	11.74	25	11.47	45	18.60
Strongly oppose	70	28.34	18	8.26	10	4.13
No response	6	2.43	1	0.46	5	2.07
Victimization						
Been the victim of a serious crime	115	46.56	38	17.43	56	23.14
Not been the victim of a serious crime	121	48.99	175	80.28	175	72.31
No response	11	4.45	5	2.29	11	4.55
Political Perspective						
Very conservative	15	6.07	21	9.63	14	5.79
Conservative	43	17.41	40	18.35	71	29.34
Moderate	105	42.51	70	32.11	115	47.52
Liberal	45	18.22	62	28.44	30	12.40
Very liberal	20	8.10	22	10.09	8	3.31
No response	19	7.69	3	1.38	4	1.65

APPENDIX C

Chapter One: Missing Data Analysis

Like many data sets in the social sciences, my data set suffered from missing values. A preliminary investigation of the data revealed that 20% of the possible responses to measures of juror characteristics were missing at random (Little and Rubin 2002; Enders et al. 2006).[107] For my analyses, I used multiple imputation by chained equation (MICE) to handle this missing data (Little and Rubin 1989-1990).

In several studies, MICE outperformed other common techniques for handling missing data (e.g. complete case analysis or single imputation), yielding the least biased parameter estimates (Graham 2009). MICE is also flexible, as it allows a researcher to specify imputation models that are variable specific (e.g. continuous, binary, ordinal, or nominal). Performing analyses using MICE requires 3 steps: 1) creating a multiply imputed data set, 2) analyzing each imputed data set, and 3) combining estimates from multiply imputed data sets (White et al., 2011).

Generally, MICE uses observed data to estimate a set of plausible values for the missing data (Rubin 1987). For each missing variable *z*, a specified imputation model regresses *z* onto a series of complete variables for which there are observations of *z*. From this posterior predictive distribution of *z*, *m* random draws create *m* imputed data sets (White et al. 2011). For data sets that involve a number of incomplete variables, this process utilizes previously imputed values for each subsequent imputation. As a general rule, to stabilize the results, the number of imputations *m* should match the percent of missing data in a data set (Rubin 1987). Hence, I created 20 imputed data sets.

[107] I did not impute values for missing dependent variables.

Initially, I used logistic regression to impute variables with 2 categories, multinomial logistic regression for variables with 3-5 categories, and linear regression to impute variables with more than 5 categories. Yet, using these default models, my first attempt to impute missing data failed to converge, even at 30, 40, and 50 cycled imputations.

Suspecting that the number of parameters was preventing convergence, I coarsened variables with multiple categories but with few responses for several of those categories. Specifically, I reduced the number of categories for Education, Race, and Religion. I coarsened Education from 10 categories to 5 categories (less than high school, high school diploma/GED, some college/ associates degree/vocational training, college graduate, and post-graduate), Race from 7 categories to 4 categories (White, African American, Latino, Other), and Religion from 9 categories to 2 categories (self-identified as having a religion, self-identified as not having a religion).

Using a series of box-plots and F-tests, I also determined that several ordinal variables showed linearity. Specifically, to impute values for Death Penalty View and Political Affiliation I used ordinal logistic regression models, but treated these variables as linear for the imputation model and in subsequent regression analyses of the entire data set. For these two measures, I then passively imputed dummy variables post-imputation to preserve individual categories for later analyses.

After recoding and specifying different imputation models, the overall model converged; yielding 20 imputed data sets. To verify that the imputed data set accurately reflected the original data, I used histograms to compare the distribution of imputed values against the values of the original data. No gross discrepancies presented.

I then analyzed each imputed data set and combined estimates from multiply imputed data sets using Rubin's rules (Rubin 1987; White et al. 2011). These rules combine the 20 imputed estimates "into an overall estimate and variance–covariance matrix…incorporat[ing] both within-imputation variability (uncertainty about the results from one imputed data set) and between-imputation variability (reflecting the uncertainty due to the missing information)" (White et al. 2011, 378). The results of these analyses appear in Tables 3, 7, and 8.

APPENDIX D

Chapter Two: Participant Characteristics

	Total (N=101)		Convicted Felons (N=21)		Non-Felons (N=80)	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Gender						
Male	65	64.36	16	76.19	49	61.25
Female	35	34.65	5	23.81	30	37.50
Transgender	1	0.99	-	-	1	1.25
Race						
Caucasian	53	52.48	8	38.10	45	56.25
African-American	21	20.79	7	33.33	14	17.50
Latino/a	18	17.82	5	23.81	13	16.25
Asian/Asian-American	6	5.94	1	4.76	5	6.25
Other/mixed	3	2.97	-	-	3	3.75
No response	-	-	-	-	-	
Education						
Less than high school	5	4.95	2	9.52	3	3.75
High school graduate/GED	23	22.77	12	57.14	11	13.75
Some college/vocational training/associates degree	40	39.60	7	33.33	33	41.25
College graduate	18	17.82	-	-	18	22.50
Post graduate	14	13.86	-	-	14	17.50
No response	1	0.99	-	-	1	1.25
Occupation						
Reports having an Occupation	79	78.22	12	57.14	67	83.75
Reports not having an occupation	22	21.78	9	42.86	13	16.25
No response	-	-	-	-	-	-
Religion						
Reports having a religion	69	68.32	15	71.43	54	67.50
Reports not having a religion	32	31.68	6	28.57	26	32.50
No response	-	-	-	-	-	-

Appendix D. *Continued*

	Total (N=101)		Convicted Felons (N=21)		Non-Felons (N=80)	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
Family income						
<20K	41	40.59	16	76.19	25	31.25
20K-40K	30	29.70	2	9.52	28	35.00
41K-60K	10	9.90	3	14.29	7	8.75
61K-80K	7	6.93	-	-	7	8.75
81K-100K	4	3.96	-	-	4	5.00
101K-120K	2	1.98	-	-	2	2.50
>120K	4	3.96	-	-	4	5.00
No response	3	2.97	-	-	3	3.75
Victimization						
Been the victim of a crime	41	40.59	7	33.33	34	42.50
Not been the victim of a crime	58	57.43	13	61.90	45	56.25
No response	2	1.98	1	4.76	1	1.25
Political Perspective						
Conservative	20	19.80	5	23.81	15	18.75
Moderate	37	36.63	8	38.10	29	36.28
Liberal	38	37.62	6	28.57	32	40.00
Other	6	5.94	2	9.52	4	5.00
No response	-	-	-	-	-	-

APPENDIX E

Chapter Two: Novel Case Facts and Novel Legal Concepts

Novel Case Facts:

1) Defendant's Driver's License Found in Bank Teller's Drawer
2) Defendant's Driver's License Placed in Back of Defendant's Car
3) Bank Teller's Identification of Defendant's Hair
4) Bank Teller's Identification of Defendant's Eyes
5) Tow Truck Service Receipt
6) Lack of Bank Video
7) Lack of Usable Fingerprints
8) Defendant's Status as a Parolee
9) Defendant's Prior Conviction for Robbery
10) Timeline of Events

Novel Legal Concepts:

1) Reasonable Doubt Standard
2) Innocent Until Proven Guilty Standard
3) Relevance Standard
4) Burden of Proof
5) Crime Element 1: FDIC Bank
6) Crime Element 2: Identification
7) Crime Element 3: Took Money by Force or Fraud
8) Crime Element 4: From the Possession of Another

APPENDIX F

Chapter Three: History of Felon Jury Exclusion in Maine

In 1652, the Massachusetts Bay Colony annexed what is now the state of Maine. From 1652 until the passage of the 1802-1803 Acts and Resolves of Massachusetts ("Acts and Resolves"), English common law governed juror eligibility in that region (Blackstone, 1771). Under English common law, only *liberos et legales homines* (free and lawful men) were eligible to take part in the jury process (Blackstone 1771 p. 350; *see also* Bacon, 1807). That exclusion continued with the Acts and Resolves (Massachusetts, 1802-1803). Chapter 29 of the Acts and Resolves states "if any person, whose name shall be put into either (jury selection) box, shall be convicted of any Scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the Box, by the Selectmen of his town" (Acts and Resolves, 1802 p. 173). Thus, early in its history, Maine prohibited convicted felons from serving on juries. In 1820, as part of the Missouri Compromise, Maine achieved statehood and continued to track Massachusetts' policy of mandatorily excluding convicted felons from jury service (Maine Laws, 1821). From 1821 to 1954, the mandatory language of Maine's felon jury exclusion policy went virtually unchanged, stating that jury commissioners "shall" disqualify prospective jurors "convicted of a scandalous crime" or a "gross immorality" (Maine Laws, 1821)[108]

In 1954, Maine's policy regarding felonious jurors underwent its first substantive revision, moving from a mandatory exclusion to a permissive exclusion (Maine Revised Statutes, 1954). That year, Maine added a juror exclusion and exemption list to its code

[108] From 1821 to 1954, Maine law mandatorily excluded convicted felons from jury service (*See* Maine Revised Statutes, 1840 Chapter X, Title

(Maine Revised Statutes, 1954 vol. 3 ch. 116 § 7). The exclusion and exemption list did not include convicted felons (Maine Revised Statutes, 1954 vol. 3 ch. 116 § 7). Additionally, the 1954 version of the Maine Revised Statutes states, "They [the jury commissioners] *may* also drop from the list, names of persons who…have been convicted of any scandalous crime or gross immorality" (Maine Revised Statutes, 1954 vol 3. ch. 116 § 4). This permissive disqualification lasted until 1964, when Maine again altered their juror eligibility criteria.

In 1964 Maine dropped the permissive disqualification language from its Revised Statutes and included an exemption and exclusion list that again did not include convicted felons (Maine Revised Statutes, 1964 tit. 14 ch. 305 § 1201). Therefore, in 1964, Maine did not restrict a convicted felon's opportunity to serve as a juror. Seven years later, Maine slightly changed the language of the 1964 standard. In the 1971 Maine Laws, a convicted felon's right to sit on a jury was tied to the right to vote (Maine Laws, 1971). The provision read, "A prospective juror is disqualified to serve on a jury if he…has lost the right to vote" (Maine Laws, 1971 ch. 391 §1211). This language, however, did not change convicted felons' status, as Maine has never curtailed their right to vote (Maine Revised Statutes, 1987).[109] In 1981, Maine removed the provision of the Maine Revised Statutes linking juror eligibility to voting rights. The present statute governing juror eligibility in Maine makes no mention of convicted felons. In effect, Maine has allowed convicted felons to serve as jurors since 1964 and is now the only jurisdiction that places no restriction on their opportunity to serve.

[109] Title 21 of the 1987 Maine Revised Statutes § 112 In an email on November 11, 2011, Sue Wright, reference librarian for the Maine State Law and Legislature Reference Library, confirmed that Maine has never taken away convicted felons' right to vote.