The Yale Law Journal

TO: All J.D. Candidates at Yale Law School
FROM: Volume 123 Notes Committee (Ida Araya-Brumskine, James Dawson, Carlton Forbes, Matthew Letten, Ravi Ramanathan, John James Snidow, John Lewis, and Benjamin Eidelson)
RE: Note Submissions Process
DATE: May 21, 2013

Introduction

We encourage you to submit a Note for publication in Volume 123 of The Yale Law Journal. Publication in the Journal allows student authors to share their ideas with the legal community and to contribute to legal scholarship.

Volume 123 of the Journal will be accepting Notes for all eight of its issues; each issue will likely contain between one and three Notes. As detailed below, all Notes must be submitted through the Journal’s electronic submissions process. You may submit your Note through the electronic system at any time.

The drop dates for Volume 123 are listed below. Notes submitted after 5 p.m. on the drop date will not be considered until the next drop date.

Wednesday, February 27, 2013
Wednesday, April 3, 2013
Saturday, June 1, 2013
Friday, September 13, 2013

There will also be additional drop dates in Fall 2013. However, we strongly encourage you to submit your Note sooner rather than later. In many instances, the Notes Committee sends a Resubmission Memorandum (see below) to writers instead of accepting the piece immediately or rejecting it outright. The sooner you submit, the more time you will have to integrate the Notes Committee’s suggestions into your revised version. Many writers whose Notes were ultimately accepted for publication in past volumes have benefitted from submitting at early drop dates so that they had time to respond to the Committee’s suggestions.

The Notes Committee reviews submissions anonymously. To preserve anonymity, all questions regarding the Notes submissions process should be directed to Managing Editor Ryan McCartney (ryan.mccartney@yale.edu).

Members of the Class of 2014 or 2015 who are the sole authors of accepted Notes will be invited to join the Journal as editors. The Journal will not extend offers of membership to the authors of co-written Notes.
What Is a Note?

A Note is a student-written piece of legal scholarship. Successful Notes typically share the following three characteristics. First, a good Note is **original.** It should advance a particular area of legal scholarship beyond its current state. The best Notes are insightful and creative. Notes can take a variety of forms, and need not be “mini-articles.”

Second, a good Note is **well supported.** The Note should provide persuasive evidence for each of its conclusions and acknowledge the limits of its arguments. Authorities should support each step in the argument. Citations should be complete and unambiguous.

Finally, a good Note is **well written and well organized.** Concise, effective prose and clear, logical presentation are essential. A Note should clearly convey its thesis and the relevance of each section.

Although many Notes begin as Substantials or SAWs, good Notes are different from most Substantials and SAWs in a couple of ways. First, Notes need not contain a lengthy literature review and should proceed quickly to original analysis. Second, Notes should be directed at a broad legal audience, not one professor.

Notes published in previous volumes of the *Journal* provide examples of excellent student scholarship and may serve as a useful guide. Excellent examples from Volume 122 of the *Journal* include:


Who Can Submit a Note?

We are strongly committed to publishing a wide variety and large number of Notes this year, and we encourage **all** current J.D. students to submit a proposal or draft. Students may submit co-written Notes as long as all authors are J.D. candidates. Students who have already acquired a J.D. or its foreign equivalent may **not** submit a Note but are welcome to submit Articles, Essays, and *YLJO* pieces.

Eligible students may publish up to oneComment and one Note within Volume 123, but cannot publish more than one of either.
Journal Membership

The *Journal* encourages non-*Journal* members to submit Notes. Members of the Class of 2014 or 2015 who are the sole authors of accepted Notes will be invited to join the *Journal* as editors. The *Journal* will not extend offers of membership to the authors of co-written Notes.

We hope that you will accept your offer of membership and join the *Journal* as a First Year Editor, fulfilling the same responsibilities as your peers in that role. If you have additional questions about becoming a *Journal* member, you will have an opportunity to ask them before accepting the membership offer. You will not need to decide until after we have committed to publishing your Note.

Developing Your Note

We strongly encourage you to work with a Notes Editor as you develop your Note. Notes Editors are available to provide substantive, stylistic, and organizational advice at any stage of the writing process—from formulating an idea to polishing a completed piece. They are also available to answer any questions you may have about the Notes submission process.

**Please do not contact a Notes Editor directly** to request his or her assistance in developing your submission. Instead, email Managing Editor Ryan McCartney ([ryan.mccartney@yale.edu](mailto:ryan.mccartney@yale.edu)). In your email, include a brief description of your Note’s topic or proposed topic and any preferences you have about working or not working with a particular Editor. Please also indicate if any Notes Editors would be able to identify you as the author of the submission, and thus be forced to recuse themselves from considering your submission. The Managing Editor will assign you a Notes Editor with these considerations in mind. The Managing Editor will assign Notes Editors to authors on a first-come, first-served basis.

In order to provide thorough feedback, the Notes Editors ask that you give them one week to read over your piece. Please note that **we will not assign a piece to a Notes Editor within 10 days of an upcoming drop date**. As such, any development requests made during the 10 days prior to a drop date will be considered for the next review date.

Anonymity: Discussing Your Note

Because the Notes acceptance process is anonymous, you should refrain from discussing your Note with members of the Committee other than the Notes Editor assigned through the Notes development process described above. To that end, **please do not discuss your Note with Ida Araya-Brumskine, James Dawson, Carlton Forbes, Matthew Letten, Ravi Ramanathan, John James Snidow, John Lewis, or Benjamin Eidelson**. Committee members who can identify a submission’s author with confidence must recuse themselves from considering that piece. Any questions regarding the acceptance process should be directed to Managing Editor Ryan McCartney ([ryan.mccartney@yale.edu](mailto:ryan.mccartney@yale.edu)).

**Do not reveal your identity on the cover page, in the footnotes, in the document properties, or in any other section of your Note.** We suggest using the “search and replace” feature to change all occurrences of your name to “Author.”
Note Format

The Notes Committee is seeking Notes that are **15,000 words or fewer**. The Committee will consider submissions **up to 17,500 words**, although please keep in mind that every additional word over 15,000 words must justify itself. There is no **minimum length for Notes**.

The word count must include text and footnotes, but need not include the Abstract, Table of Contents, or Statement of Originality. Please note that for some word processing software, including footnotes in the word count may require changing the default options. The text of your Note should be in 12-point Times New Roman font and may be single- or double-spaced. Footnotes should be in 10-point Times New Roman font and single-spaced. All pages should be consecutively numbered with 1-inch margins.

Please pay careful attention to spelling, *Bluebook*, and other similar technical details, as a neat and careful presentation will invariably affect the Committee’s impression of the Note. Also, please do not include any information in the Note itself or in the accompanying materials that might disclose your identity.

Statement of Originality

The Statement of Originality is a **very important** part of a Note’s submission. Each submitted and resubmitted Note should be accompanied by a thorough, detailed explanation of what makes the Note original and how the Note stands apart from existing literature on the topic. Besides helping the Committee appreciate the Note’s strengths, the statement can guide the Committee during its independent assessment of the Note’s originality. Of course, every piece of scholarship relies on what has come before, so the statement should also discuss the Note’s major sources and intellectual debts, including both cited and un-cited scholarship that may be useful in understanding the background for your topic. Do not merely list your sources, but explain them and distinguish your argument from those of other authors. A well-prepared Statement of Originality can significantly increase a Note’s chances of acceptance.

Please do not be intimidated by the Statement of Originality! Instead, think of it as a chance to pitch your novel idea to an inexpert audience. Feel free to supply ideas or material that would contribute to an appreciation of your argument but that were not emphasized in the Note itself. There is no minimum or maximum length for the statement. The average length is three to four single-spaced pages. Statements should err on the side of over-inclusiveness, especially with regard to the scope of the existing literature. Be sure to check both legal and non-legal books and periodicals, as well as both online and printed sources. **Two sample Statements of Originality are appended to this memorandum.** If you decide to enlist the aid of a Notes Editor in developing your submission, he or she will be available to help with your Statement of Originality.

For a tutorial on preemption checking, see the following website: http://library.law.yale.edu/research/preemption-checking.

Even beyond the acceptance process, every Note author is expected to stand behind his or her Note as **original and accurate**. If it is discovered after acceptance that the Note does not meet these standards, the piece will not be published.
Acceptance Process

Every member of the Notes Committee will read your Note provided that you comply with the submissions guidelines. They will discuss your Note at length before deciding whether to accept it. Any member of the Committee who knows the identity of an author with confidence cannot participate in the discussion or the decision to accept the Note for publication.

All students submitting Notes will be notified promptly after the Committee’s decision. Students whose work is not accepted will receive an email message indicating the decision. This will be followed shortly by a Response Memorandum providing feedback and evaluation. A Notes Editor may also contact you offering to assist you in revising the piece. Please note that most Notes have been accepted only after revision and resubmission, so students whose Notes are not accepted are strongly encouraged to work with a Notes Editor to revise their Notes and resubmit at a future review date.

Resubmission Memorandum

All authors who are resubmitting Notes they submitted previously must include with their Note submission materials the following: (a) a copy of the Response Memorandum they received from the Notes Committee (this includes Revise and Resubmit letters from prior volumes) and (b) a Resubmission Memorandum. The Resubmission Memorandum should describe how the Note has changed since the prior submission, and why these changes have improved or strengthened the Note. A page or so should suffice.

Submitting Your Note

The Yale Law Journal only accepts student Note submissions through our website, http://ylj.yalelawjournal.org/authors/index.html. Emailing the Managing Editor materials does not constitute proper submission; all documents must be uploaded through our website. Students having difficulty with the submission process should email Managing Editor Ryan McCartney (ryan.mccartney@yale.edu) with questions. However, if you are having difficulty with the submissions system, you must contact Ryan at least 24 hours in advance of the submission deadline. Please familiarize yourself with the submissions system in advance of the deadline.

To submit on our website, go to http://ylj.yalelawjournal.org/authors/index.html and register for an account. Once your account has been created, log in and click on the “Submit Work” hyperlink; after that, check the “Student Note” bubble and click on “Continue.” Follow the instructions on that screen to submit all required documents. Submission materials must include the following and be uploaded into the appropriate fields on our website (preferably in Microsoft Word format):

1. **Submission field.** You must upload the submission, without your name on it, into this field. The document must include a **Table of Contents** and a **Cover Page**. The Cover Page should include:

   a. The last four digits of your Social Security Number (in the upper-right hand corner);
b. The title of your piece (in the upper-left hand corner);

c. The word count (including footnotes);

d. An abstract that does not exceed 100 words; and

e. Whether you submitted this particular Note before.

2. **Statement of Originality field.** You must upload your Statement of Originality, without your name on it, into this field.

3. **Submissions Form field.** You must upload your Submission Form into this field. The Submission Form will only be accessible by Managing Editor Ryan McCartney, who alone will know the identity of any author whose submission is not accepted. The rest of the information requested in the memorandum will be used for data collection purposes only. A blank Submissions Form will be attached to each email announcing a Notes Drop Date.

4. **R&R 1, R&R 2, R&R 3 fields.** If you have previously submitted your Note, you must upload the original version of any previous Revise and Resubmit Letter(s) associated with your submission. If you alter or fail to upload a Revise and Resubmit letter from a prior version of your current submission, then the Notes Committee will not consider your submission.

5. **Resubmit Memo 1, Resubmit Memo 2, Resubmit Memo 3 fields.** If you have previously submitted your Note, you must upload a Resubmission Memorandum for each Revise and Resubmit Letter. The Resubmission Memorandum should describe how the Note has changed since the prior submission, and why these changes have improved or strengthened the Note. A page or so should suffice.

6. **Note:** We ask that those submitting pieces with empirical work also submit their datasets and any coding that they have used. We strongly prefer data submitted as a .DO file, but we will accept other file types compatible with STATA 9 or Word document files as well. Please e-mail the file(s) to Managing Editor Ryan McCartney (ryan.mccartney@yale.edu).

The Notes Committee will not consider submissions that contain identifying information about the author. Prior to uploading any documents, double check to make sure that you have removed all self-identifying references from your documents (except the Submission Form, which is the only document that should contain identifying information). Please right-click all documents to be submitted (except the Submission Form), click on properties, and delete your name from all relevant fields under the Summary tab. Because Committee members who can identify a submission’s author must recuse themselves from considering that piece, accidentally leaving in identifying information may disadvantage a submission or even preclude its publication in Volume 123.

Please note that the Notes Committee will not review submissions that depart from any of the
submissions guidelines contained in this memo.

**Questions**

If you have any questions about any aspect of the Notes process, please talk to Managing Editor Ryan McCartney ([ryan.mccartney@yale.edu](mailto:ryan.mccartney@yale.edu)). We are eager to work with you and read your Notes. We appreciate your interest in participating in the Notes process.
This note discusses a persistent problem of Fourth Amendment analysis: the question of whether police searches and seizures which are justified on pretextual grounds present a viable Fourth Amendment issue or not. The Supreme Court’s most direct statement on such pretext claims comes from *Whren v. United States*, where Justice Scalia argues that “[s]ubjective intentions play no role in ordinary, probable-cause Forth Amendment analysis.” This note argues that *Whren*’s rule against subjective tests of police intentions is a profound mistake, rooted in a more general mistake in our approach to Fourth Amendment analysis as a whole. My argument is that is order to vindicate our intuitions about the wrongness of pretextual police action, we need to shift our understanding of the Fourth Amendment away from the language of privacy rights – introduced famously by Warren and Brandeis as the “right to be let alone” – and refocus our attention on the idea that police are beholden by the Constitution to exercise their investigatory powers in a responsible manner. If we do so, we can not only see why pretextual police behavior is deeply problematic, but bring greater coherence to our Fourth Amendment jurisprudence as well.

*Whren* has garnered quite a bit of academic discussion. Since it concerns both racial profiling and traffic stops – two issues which present their own persistent problems – much scholarly attention has focused in on it to these extents. Also, in the immediate aftermath of the *Whren* decision there was considerable academic uproar against it, as well as efforts to refute its logic under the prevailing case law. Many of these immediate arguments attacked *Whren* for enacting a bright-line rule against subjective analysis when ordinary Fourth Amendment “balancing” would have been a viable approach capable of capturing problematic examples of pretext. This note does not overlap with these approaches.

Since *Whren*, it has become clear that its logic is extremely well entrenched, and the point of this note is therefore *not* to convince readers that, under current case law, *Whren* and its progeny were wrongly decided. Instead, this note takes the converse approach, arguing that if

---

2 *Id.* at 813 (emphasis added).
6 E.g., Donohoe, supra note 5.
we want to understand why *Whren* and its progeny strike us as so intuitively wrong, it will be necessary to reconceptualize our understanding of the Fourth Amendment. This argument “against *Whren*” – which, in fact, only uses *Whren* as a platform to attack our current conceptions of the Fourth Amendment – is thus quite apart from the majority of the literature surrounding *Whren* and other cases involving purportedly pretextual police activity.

That said, there are a few articles that have concerned themselves centrally with the notion of pretext in Fourth Amendment law, and whether our entire understanding of pretextual police activity may be off base. Among these is Professor Yeager’s *The Stubbornness of Pretexts,* and articles such as Sherry Colb’s *The Qualitative Dimension of Fourth Amendment “Reasonableness.”* Colb’s work is not quite in point – although a reconsideration of Fourth Amendment doctrine is offered, the view is that a shift from “quantitative” balancing to “qualitative” balancing is required. Not only is this a somewhat difficult concept to deploy, but it does not track the rights/responsibility distinction that I am trying to introduce.

Yeager’s work, which is perhaps the most focused account of the status of subjective intentions in Fourth Amendment law, also takes a different approach from the one used by this note. Professor Yeager attempts to argue against *Whren* and its progeny by differentiating between subjective police intentions which are truly internal and “hidden,” and subjective police intentions which have particular external manifestations that are constitutionally problematic. He calls the former “pretext” arguments and says that *Whren* is correct that they are not a problem, while the latter category do present a real constitutional issue. In my note, I address this problem of the “wholly internal subjective intention” through a but-for cause requirement in my proposed test. This is a different approach. Yeager would ask whether the traffic stop really was conducted as a traffic stop, or whether the behavior of the police made clear that it was really a drug search. I would ask whether the traffic stop would have happened but for the policeman’s desire to effect a drug search – a different question entirely.

Furthermore, Yeager does not address what is ultimately at the heart of my note: how our rights-based rhetoric surrounding privacy and the Fourth Amendment precludes us from a healthy consideration of ill-motivated police action. Although Yeager and I, and perhaps others, have overlapping discussions of the kinds of pretext claims that appear in *Whren,* this note is the first to argue that, to truly understand what is problematic about pretext, we will have to change our vocabulary for addressing Fourth Amendment problems. That makes it wholly unique from the conclusions of those like Yeager, who have a nuanced account of pretext claims but not of what their persistence teaches us about the problems with our Fourth Amendment jurisprudence generally.

In addition to some modest overlap with the scholarship on “pretext,” this note also engages with scholarly pieces which generally argue for a government responsibility orientation towards constitutional analysis. This focus on responsible government behavior is often called “purposivism,” because it requires scrutiny of the purposes that animate government action to know whether it was undertaken responsibly or in derogation of constitutional duties. Although

---

this tack has been applied to the First Amendment,\(^9\) as well as the Fourteenth Amendment,\(^10\) I do not believe it has ever been applied to the Fourth Amendment. This, at the very least, makes this note original and unique.

I do borrow some from theorists who focus *generally* on constitutional analysis through the lens of skepticism of government power rather than of individual rights. The theorist to whom I am most indebted in this regard is probably Richard Fallon, whose relevant work is discussed in the text of the note.\(^11\) Fallon does not apply this insight to the Fourth Amendment with any depth, however, and I also take issue with some of his conclusions about the merits of balancing tests. In any event, though his work and other theoretical approaches to rights are generally helpful, they are not squarely on point.

In sum, while the literature on *Whren* appears extensive, no one has yet used the persistent problem of pretext claims to discuss the *basic* failing of our Fourth Amendment analysis to classify these claims in the correct, power-skeptical terms. This note therefore makes a unique contribution to the literature on *Whren*, and on the Fourth Amendment generally, and thus cannot be regarded as preempted by the existing literature.


Sample Statement of Originality # 2

This Note proposes a new way of understanding the Sixth Amendment’s fair cross-section (FCS) requirement for criminal juries. This project is significant because virtually every commentator to address the issue agrees that the Supreme Court’s justification of FCS doctrine is unpersuasive, incoherent, or both. On the one hand, some critics argue that early FCS precedents were wrong to argue that jury impartiality depends on the racial and gender composition of individual petite juries. This critique has only grown stronger since Batson v. Kentucky applied the equal protection clause (EPC) to prohibit race-based peremptory strikes during voir dire. On the other hand, other critics view FCS doctrine as an unwelcome half-measure best replaced by more aggressive forms of race-conscious jury selection. As this second group rightly points out, current FCS doctrine turns a blind eye to many prevalent forms of juror exclusion, thereby undermining the jury’s democratic character.

The Note proposes a third way: construing FCS doctrine as a means of enfranchising eligible jurors. While holding true to the legal principles animating the American criminal jury and other areas of constitutional law, including EPC jurisprudence, an enfranchisement-based approach also highlights opportunities for progressive reforms. As proof of this last claim, the Note’s Part III studies the most important recent FCS case, United States v. Green, as a case study in jury disenfranchisement. In November 2006, just this month, the jury selection reform envisioned in Green was just voted in by the judges of the District of Massachusetts. Because Green grappled with issues of racial underrepresentation common in juries across the country, the novel remedy it spawned is bound to become a focal point for future scholarship.1 The Note offers the first study of this important recent development in the field.

The Note draws on a variety of source types, including: scholarship arguing for “jury affirmative action,” or other race-conscious juror selection;2 the growing body of empirical research on the exclusionary effects of various jury selection techniques;3 social science studies

---

1 To give some context, the Hennepin County jury selection proposal is a focal point in academic literature, even though it was never implemented and Minnesota courts refused to require its use on equal protection grounds. See Hennepin County v. Perry, 561 N.W.2d 889 (Minn. 1997). Perhaps the second most discussed jury selection program is race-conscious selection system briefly implemented in the Eastern District of Michigan but ultimately struck down on equal protection grounds in United States v. Ovalle, 136 F.3d 1092 (6th Cir. 1998). In contrast, the remedy propounded in Green is about to be implemented in the District of Massachusetts and, in light of its race-blindness, is certainly constitutional.


on the implications of racial and gender diversity in petit juries; theoretical work relevant to jury impartiality and political representation; doctrinal studies that view FCS doctrine in the context of other areas of constitutional law; and some secondary historical accounts related to the origins and development of the American jury. Of course, the Note also relies on a large number of judicial opinions, including jury cases in the Supreme Court and elsewhere. With


7 Jeffrey Abramson, We the Jury (2000); Randolph Jonakait, The American Jury System (2003); Akhil Amar, The Bill of Rights (1998); Jack N. Rakove, Original Meanings.


one important exception described below, no published work has entertained the possibility that FCS doctrine might be explained in light of jury enfranchisement.

Vikram Amar’s Jury Service as Political Participation Akin to Voting

The Note’s greatest intellectual debt is to Vikram Amar’s important 1995 article entitled “Jury Service as Political Participation Akin to Voting.” As Amar himself puts it, his basic point is that “the link between jury service and other rights of political participation such as voting is an important part of our overall constitutional structure, spanning three centuries and eight amendments.” Because Amar’s essay is this Note’s closest kin, I will describe the differences between the two works at some length. In particular, the two pieces differ in topic, method, and conclusion.

First, Amar’s essay concerns itself with jury law generally, including both FCS and equal protection doctrines, over a period of centuries. In contrast, the Note focuses on current FCS doctrine, and so is able to consider that body of law in far greater detail. For example, Amar’s practical suggestions are almost entirely limited to the question of what kinds of groups should receive constitutional protections under the Impartiality and Equal Protection Clauses. That is an important question, but it directly bears on only one aspect of FCS doctrine, namely, the distinctiveness prong. In contrast, the Note discusses how all three FCS prongs—distinctiveness (Section II.2), substantial underrepresentation (Section III.1), and systematic exclusion (Section II.3)—can be understood in light of an enfranchisement conception of jury legitimacy.

Second, the two pieces employ very different methodologies. The Note explores the constitutional values animating the contemporary criminal justice system. At various points, the Note argues that a commitment to juror enfranchisement, and not jury demography, comports with important features of widespread jury selection practice, recent equal protection jurisprudence, and even the nuances of FCS doctrine itself. In contrast, Amar primarily employs an originalist methodology. For example, Amar relies heavily on the nineteenth-century notion that certain amendments protected only civil rights (e.g., the Fourteenth) whereas others (e.g., the Fifteenth) were concerned with political rights like jury service. Amar’s approach has the advantage of offering a wealth of historical insights. However, it also has important disadvantages. For example, Amar makes no use of social science research bearing on either jury
demography or contemporary jury selection practice. In contrast, the Note grapples with these issues in Parts I and III, respectively.

Finally, the Note advances unique conclusions. Amar’s main practical suggestion is that FCS and equal protection clause doctrines should protect the same types of groups whose electoral votes are safeguarded by explicit constitutional provisions—namely, race (Fifteenth), gender (Nineteenth), class (Twenty-fourth), and age (Twenty-Sixth) groups. In contrast, the Note defends courts’ widespread but poorly articulated reluctance to accept FCS claims on behalf of groups defined by non-permanent characteristics, including age (Section II.2). At the same time, the Note also explores the possibility that FCS protections should extend to groups defined by quasi-permanent characteristics not enumerated in the constitution, such as geography. I therefore suggest that an FCS claim could be brought by disenfranchised residents of particular cities (Section II.2) or counties (Section III.2). The Note arrives at these distinctive conclusions largely because it alone explores the limitations in the juror-as-voter analogy (Section III.1). Consequently, the Note develops an independent conception of jury as opposed to electoral enfranchisement.

Conclusion

This Note offers a fresh look at a fascinating area of law that lies at the intersection of criminal procedure, equal protection clause jurisprudence, and political theory. The project’s motives are both doctrinal and practical. Doctrinally, an enfranchisement approach to FCS doctrine solves two widely discussed puzzles: Why does the FCS requirement extend only to venires, and not to petite juries? And, How can FCS doctrine’s race-consciousness be constitutional in light of the Court’s more recent race-blind equal protection jurisprudence? Practically, the Note’s timely discussion of United States v. Green offers the first analysis of the latest legal efforts to increase minority representation in federal juries.

12 See Heather Gerken, Second Order Diversity, 118 HARV. L. REV. 1099, 1115 (2004) (“[A]lmost any theory that would explain why we care about a pool that mirrors the population would also favor a jury that does the same.”). See also Duren, 439 U.S. at 371 (Rehnquist, J., dissenting) (“[I]f ‘that indefinable something’ [associated with women jurors] were truly an essential element of the due process right to trial by an impartial jury, a defendant would be entitled to a jury composed of men and women in perfect proportion to their numbers in the community.”); Kim Forde-Mazrui, Jural Districting: Selecting Impartial Juries Through Community Representation, 52 VAND. L.REV. 353, 369 (1999) (“[W]hile the Court’s decisions interpreting a fair cross-section requirement as part of the Sixth Amendment’s guarantee of an impartial jury suggests that representativeness is critical to the jury’s function, the Court’s subsequent limitation of the fair cross-section requirement to the venire state suggests instead that representativeness is not crucial to the jury’s function.”).
13 See Andrew D. Leipold, Constitutionalizing Jury Selection in Criminal Cases: A Critical Evaluation, 86 GEO. L.J. 945 (1998) (“A defendant is thus placed in a strange position: he is entitled to a jury drawn from a fair cross section specifically because it increases the odds that different groups and perspective will be represented in the jury pool, which in turn helps ensure that he panel is impartial; when actually seating a jury, however, he may not take those same characteristics into account.”); Amar, Jury Service, 80 CORNELL L. REV. at 210. (“[T]he two analyses [EPC and FCS] are in a great deal of tension: whereas the Sixth Amendment ‘flavor’ approach values a group’s input into the jury process because the group has characteristics that make it different from other groups in society, the Court’s recent Equal Protection Clause cases deny any relevant differences between the excluded and included groups at all.”).