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Question #1-

There are two ways that Defendant (D) could go about challenging his conviction based on jury composition. He could challenge his conviction as violating the Equal Protection Clause of the 14th Amendment, or he could challenge his conviction based on the 6th Amendment.

To show a violation of the Equal Protection Clause (EPC) the defendant must show that: there is a <sup>cognizable</sup> suspect class, that class is underrepresented on the jury AND the inequality is a result of the intent to discriminate. Here it is clear that women were excluded from the jury, and the defendant will argue that this is a violation of the equal protection clause. First of all, the defendant will argue that women have been found to be a suspect class by the Supreme Court in various equal protection cases. In addition, it is clear that women were underrepresented on the jury. Because women were half of the original jury panel, and because women are about half of the population, to be representative of the community the jury should be about half women. However, the jury was 80% men and only 20% women. Similarly to the case we read where Mexican-Americans were 79% of the population but 39% of the jury pool, this is not a fair representation of the community. Thus, women have not been represented on the jury. Lastly, the defendant must show that the exculsion is intentional. This is

don't measure  
jury. Approximate  
figures were  
50/30.

going to be a problem on the part of the defendant. He may be able to argue that the judge's questions were only pointed toward the women in the crowd and not the men, creating a higher likelihood that women would be stricken from the jury. However, it is unclear how this is proof of intent to discriminate on the part of the judge, and certainly not on the part of the prosecutor. The defendant's conviction will likely not be reversed based on an equal protection clause argument of unfair jury composition.

Under the 6th Amendment, the accused is entitled to a jury that is representative of the community. This rule has been incorporated into the States. To show unfair jury composition under the 6th Amendment, the defendant must show: there is a disenfranchised group, that group is underrepresented on the jury in proportion to their percentage in the community AND the underrepresentation is a result of systematic exclusion of that group. To claim a 6th Amendment violation, the defendant will argue that women have been found to be a distinctive group sharing similar characteristics by the Supreme Court. In addition, women were unrepresented on the jury in relation to their number in the community. Similar to the argument above, women were 50% of the population (based on the jury panel, the only information I have), however, they were only 20% of the jury. Hence, the defendant will argue that the second prong of the test has been met. Here instead of showing intentional discrimination, the defendant must only show systematic exclusion. He must show that the underrepresentation of women on the jury was the result of systematic exclusion, not by accident. Here it doesn't seem that women were systematically excluded. Half of the jury panel was women, so there was no exclusion there. In addition, the questions the judge asked (although

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how so? Did this question have to be limited to women?

questionable) are probably not enough to amount to systematic exclusion of one particular group, especially when it eliminated less than half of that group. Therefore the defendant's conviction will likely not be reversed based on a 6th Amendment argument for unfair jury composition.

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Question #2-

The accused in a criminal case has a right to remain silent and not testify on her behalf, established by the 5th Amendment of the US Constitution. The judge and prosecutor in a criminal case should NOT make comments regarding the decision of the defendant not to testify. However, a prosecutor can make some comment regarding the state of the evidence. In a Supreme Court case, the court found that a prosecutor's comment that "our evidence is unrefuted" is not a comment regarding the accused lack of testimony, but is rather a comment about the state of the evidence. In this case the prosecutor's comments talk mostly about evidence, and don't mention the defendant's decision not to testify. Therefore, in this case it is unlikely that a court will reverse the conviction based on the prosecutor's comments.

Whether the comments were proper in regards to improper burden shifting is another matter. But since that is not the call of this question I am moving on...

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Question #3-

Discovery is a process mostly governed by state or federal statute. However

there are some instances in which discovery is compelled by the US Constitution. The defendant will try to argue that the information about the witness' prior conviction should have been given to him based both on State or federal law, and on the US Constitution.

We do not know if we are in state or federal court, so I will talk about both. If we are in federal court, the prosecution should give the defense all prior convictions of the defendant only, not other witnesses. Because the prosecution witness is not the defendant, the prosecution did not violate discovery rules in federal court. In California, the prosecution should give up prior convictions of all <sup>material</sup> witnesses including the defendant. Therefore, in California, the prosecution is in violation of the discovery rules. Therefore, in federal court the defendant is out of luck, but in California the defendant may argue that state compulsory discovery has been violated and try to reverse his conviction based on that.

The defendant will also argue that not only was the lack of discovery in violation of state rules, it was also in violation of the US Constitution. Certain evidence is discoverable under the US Constitution. For instance, under Brady, certain exculpatory evidence must be disclosed to the defendant. Exculpatory evidence must be disclosed if: the evidence is EXCULPATORY and if the evidence is MATERIAL (Brady and Bagley). The evidence here is clearly exculpatory because it attacks the credibility of a prosecution witness and suggest that the witness has a tendency for lying. For the evidence to be material, it must be of such a nature that the case would have been

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*Good*  
different without the evidence (Bagley). Here we don't have very much information to say whether or not the case would have been different. We know that the witness was not the only witness to testify and that there were other witnesses to support the prosecution's case. Furthermore, the most that would have happened if the defense had the evidence is that they would have impeached the witness. Although fraud does go to the witness' character for truthfulness, the conviction is eight years old which makes the relevance more tenuous. In addition, the fraud might have been fraud on a tax return or something that might not persuade the jury. Thus, the case probably would not have been different with the evidence, the the Brady test has not been met. Of course, the appellate court will review all of the evidence and make the determination with more evidence than I have to work with, and might come to a different conclusion on the state of the evidence they have.

Lastly, the fact that the defendant did not request the exculpatory information is irrelevant. In Bagley, the USSC concluded that it is not necessary for the defense to request exculpatory information- the prosecution should give it to the defense on their own without elicitation.

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discovery exculpatory evidence not requested

*Excellent work.*