DOWNLOAD PDF AN ANALYSIS OF JURORS RACE AND EDUCATION

Chapter 1 : Mississippi D.A. has long history of striking many blacks from juries | In the Dark | APM Reports

Each of the four Race to Zero contests is judged by a panel of jurors, and the first place winner in each category presents their project to a grand jury, which then selects a grand winner. Learn more about the individual jurors by contest below, or learn how the jurors evaluate projects in the Race to Zero Student Design Competition Guide.

Race and the American Judicial System: A Critical Analysis Sean Wilson I Criminal Justice I Analysis I July 16th, The constitutional guarantee of equal protection in courtrooms and the practice of allowing prosecutors to use peremptory challenges have resulted in tension between citizens and legal figures. The right to a jury trial is a hallmark of the American criminal justice system. However, the fairness of the American criminal justice has recently been called into question. The "trial by jury" standard has been believed to mean that jurors should be reflective of the community in which the defendant lives. However, within the past few centuries, courts throughout the nation, especially southern courts, have made sure that African-Americans who were charged with crimes were subject to jury trials that consisted of all-white juries. As a result, legal lynchings against black defendants became common practice within the American judicial system. White jurors have often engaged in jury nullification when white defendants are charged for crimes committed against black victims. The well-known trials of the killers of Medgar Evers and Emmet Till, and more recently Trayvon Martin, highlight injustices committed by biased white jurors who some believe ignored the facts, and instead focused on extra-legal factors to make a decision. As a product of these incidences, the process of finding justice in courts has changed substantially but there are still tools used by the judicial system for invidious race and gender discrimination. The peremptory challenge is a tool used by both prosecutors and defense attorneys to eliminate unfavorable candidates from severing as a juror. This article critically examines the history, use, and effects of peremptory challenges and suggest solutions to what Hoffman A self-informing jury is a jury that consists of individuals who are members of the community who are familiar with parties involved in the trial and had some knowledge of the dispute between parties. The right to a jury trial was eventually brought to America by the English colonists to serve as a tool against oppression and a symbol of freedom Weddle, The right of a defendant to have a trial by jury is written in Article III of the constitution and the Sixth and Seventh Amendments, which grant defendants the right to trails by an impartial jury in all criminal prosecutions and the right to have juries in common-law civil cases. In addition, the Sixth Amendment also requires that a jury that harbors bias against the defendant will not try defendants. Although the constitution did not set forth any guidelines for impartiality, The Supreme Court ruled that an impartial jury is a jury that is impartial to issues that may arise in a given trial. Therefore, parties are allowed to question potential jurors during voir dire. Parties are also granted the opportunity to remove jurors who may hold biases against them by using challenges with or without cause. The hypocrisy of the Sixth Amendment and early American history is that not every citizen was able to serve on juries. Most states typically only allowed property-owning taxpaying white men to serve on juries. Jury qualifications were later loosened by the late 19th century, but the issue was not fully addressed until the Fourteenth Amendment was passed in The Fourteenth Amendment guarantees all citizens equal protection under the law, and it is used to make the Bill of Rights applicable to all states. The Fourteenth Amendment ensures that no state will implement laws that can infringe on the rights of citizens of the United States or deny persons equal protection of the laws. In addition, the Fourteenth Amendment also granted citizenship to emancipated African-Americans, and it gave congress the power to enforce the provisions of the Fourteenth Amendment against states that failed to provide equal protection of laws for all citizens. Thus, it became harder for states to bar citizens from serving on juries, though several states found ways to exclude citizens from serving on juries. The Importance of Strauder v. West Virginia The earliest case to touch on the racial makeup of the jury was Strauder v. In Strauder, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment of the Constitution prohibited the government from purposely prohibiting individuals from serving on juries based on race. The Supreme Court invalidated a West Virginia Statue that disqualified African-Americans from serving on juries and a conviction of an African-American man who was found guilty of murder by an all white jury was

reversed. Strauder was reaffirmed by the Supreme Court repeatedly between and , and several other state statutes that excluded African-Americans from jury service were invalidated Burgess and Smith, Common characteristics such as race, gender, and socio-economic status can help a juror empathize with the defendant, and such characteristics may be helpful when deciding guilt or innocence Weddle, For example, southern states were able to keep African-Americans off juries by excluding them from voting lists and requiring that potential jurors are educated property owners, such requirements often excluded African-Americans from serving on juries. Alabama In , the issue of racial discrimination in the jury selection process reared its head again when the Supreme Court heard the case of Swain v. Alabama, which involved a Black man being indicted for raping a white girl. The prosecutor used his peremptory challenges to eliminate six Black jurors. The Alabama and the U. Supreme court sided with the prosecution. Browne-Marshall noted that the Supreme Court decided that in order for Swain to win his appeal, he had to prove that the removal of the jurors was based on purposeful discrimination, which is an extremely difficult standard to meet. As a result, the court placed a heavy burden on criminal defendants who sought to show a constitutional violation in their case. Swain was not able to meet the courts burden although the prosecution had used six peremptory challenges to remove all of the African-American jurors from the jury. The defense attempt to introduced evidence that showed that no African-American person had served on a jury in that county since was unsuccessful. Kentucky The Supreme Court revisited the issue of racially based peremptory challenges two decades after the Swain decision in Batson v. This case involved an African-American man who was charged with 2nd degree burglary and the possession of stolen goods. Four African-American jurors were struck by the prosecution, which resulted in an all-White jury. The Supreme Court ruled in favor of Swain by finding that removing black jurors from the trial was a violation of the Fourteenth Amendment. As a result, the Supreme Court made it unconstitutional for attorneys to exclude jurors based on race or the belief that a juror cannot impartially rule on the case because of their race Browne-Marshall, In addition, the Supreme Court also outlined three steps to determine if a peremptory challenge is based on a race-neutral explanation. First, a prima facie case revealing discrimination must be established, and then the burden shifts to the side that made the challenge to give a race-neutral explanation. Finally, the court must decide if they will accept the challenge after an explanation is heard. Therefore, the defendant can now rely on circumstantial evidence from his trial to make a prima facia showing of racial discrimination. The design of the Batson procedure is to provide actual answers to suspicions that discrimination may have impacted the jury selection process. Justice Marshall, in dissent, noted that he feared that Batson did not go far enough, and he felt that the court should have abolished peremptory challenges altogether. In addition, Justice Marshall predicted that the Batson framework would be ineffective in abolishing discriminatory use of peremptory challenges. Therefore, Batson has done little to address the impact that racial biases play on jury instructions. Batson critics have argued that Batson has done little to change the makeup of jurors and race plays an important role in jury selection, regardless of Supreme Court decisions McGuffee, Garland, Eigenberg, Golash argues that Batson does more to enhance the appearance of fairness in the jury selection process rather than creating a racially unbiased method of seating a jury. The widespread prosecutorial practice of striking all minority groups members from the jury was a public embarrassment to the judicial system. The requirement of offering such non-racial reasons may not stop the well-trained prosecutor from striking minorities from juries, but it will provide the occasion for him to offer an excuse for doing so p. Thus, prosecutors typically use slick strategies during jury selection to pick jurors that will support the state. As a result, prosecutors can work around Batson by providing race-neutral explanations for using peremptory challenges. The Peremptory Challenge During the venire process, potential jurors are sometimes questioned by the judge or by counsel. If the judge feels that a potential juror may harbor biases that may affect their ability to make an unbiased judgment during a trial, they can be dismissed for cause. Challenges for cause are unlimited and are used when a juror does not possess the qualifications to serve on a jury. Peremptory challenges give litigants the ability to remove potential jurors from a jury panel without a given reason or explanation. The Constitution does not specifically legitimize peremptory challenges, but they have always been used in the United States, and the Supreme Court acknowledged the importance of peremptory challenges under the Sixth Amendment when speaking on the importance of achieving an

impartial jury. Preemptory challenges are different from challenges for cause because peremptory challenges are limited in number, and they are used when there is not enough evidence to remove a juror for cause. Peremptory Challenge - Race Neutral Explanations In order for a peremptory challenge to be accepted by a judge counsel has to provide a race-neutral explanation as to why a juror was striked. Moreover, the Supreme Court has held that counsel has the right to exercise a peremptory challenge based on silly reasons such as a potential juror having unkempt hair. The Supreme Court also has found that it is acceptable to exclude potential jurors who are bilingual. Thus, widespread discrimination remains in jury selection methods because attorneys can simply provide a race-neutral explanation for their use of a peremptory challenge; although their motives for removal of a potential juror may be racially based. Batson violations are extremely difficult to prove because most judges are willing to accept race-neutral reasons that counsel offer. Peremptory challenges after Batson The Supreme Court made it easier to win a race-based peremptory challenge case in Johnson v. The court held that "permissible inferences of discrimination were sufficient to establish prima facie case of discrimination under Batson, shifting the burden to the state to adequately explain the racial exclusion by offering permissible race-neutral justification for the strikes" Johnson v. However, even with the Batson and Johnson rulings legal observers still believe that attorneys still use race-based peremptory challenges Page, The debate regarding peremptory challenges features two sides, one side that argues for the eradication of peremptory challenges Hoffman ; Marder, , and another side that argues for the modification of peremptory challenges Page, ; Stolz, Those who argue for the eradication of peremptory challenges argue that many peremptory challenges are being masked as being race-neutral when in reality they are racially based which violates Batson. Several legal and social scholars have examined the juror selection process and the social and psychological parts of the process in order to determine which side was more likely to use a peremptory challenge. Rose found, through the analysis of thirteen criminal trials in North Carolina that the most frequently used tool to excuse a juror was the peremptory challenge. In addition, Rose also found that blacks and whites were equally likely to be removed from the jury through peremptory challenges, but race did matter when identifying which side was likely to strike a juror. Research by Clark, Boccaccini, Caillouet, and Chaplin found that young unemployed African-American males were more likely to be excused by the prosecution. A study conducted by Gabbidon et al. Young unemployed African-American males are not the only group affected by racist legal practices. Rose also found that some district attorneys also distrusted African-American female jurors, and some district attorneys even went as far as to target African-American female jurors for removal. There was even a well-known training tape in Philadelphia that was given to district attorneys that labeled African-American women as downtrodden and angry about their gender and race, which can result in them taking their frustration off on the state Rose, Some district attorneys throughout the nation feel that African-Americans are unable to be objective when serving on juries due to their animosities towards society. The results found that when defendants challenge peremptory challenges they often lose their cases, and that federal courts often accept the prosecutions peremptory challenge explanations as race neutral. In addition, Gabbidon et al. However, the results of the cases in were not any more successful than cases in prior years. Although this number is significant, Gabbidon et al. Thus, the Batson and Johnson decisions have done little to address the impact that peremptory challenges have on the representation of African-American jurors in trials. J Simpson trial and verdict of not guilty several legal scholars and legal commentators saw the deep racial rifts that infiltrate the justice system and legitimize the justice system in America. Jury nullification is the notion that jurors have the right to refuse to enforce unjust laws when laws have been unjustly enforced. With jury nullification, the jury can sidestep legal requirements by using their discretionary power to acquit a defendant contrary to the evidence or the law. Thus, the jury has the power to ignore the law and the evidence of a trial to make an independent judgment when embracing a more lenient approach to deciding a verdict. African-Americans have historically been wary of law enforcement and the judicial system due to years of harassment and oppression by law enforcement and the judicial system. Therefore, it is not surprising that most African-Americans question the legitimacy of administering justice in America. Thus, in order to legitimize the justice system for African-Americans, African-Americans must become active participants within the justice system, which includes working within the system and participating in the justice system as

jurors. However, with the increasing prevalence of racially based peremptory challenges used by prosecutors and even defense attorneys, African-American citizens continue to be barred from participating in the process of justice by serving on juries.

Chapter 2 : The Millennial Jurorâ€™s Thoughts On IP - Law

Contrary to the popular notion that racially charged cases provoke biased decisions, white jurors demonstrate prejudice more often when race is not a prominent concern, according to the results of a new study, published in this month's Psychology, Public Policy, and Law. Samuel R. Sommers and Phoebe.

Analyzing hundreds of trials, we found that prosecutors were more than four times more likely to exclude black jurors. Flowers has been tried six times for the murders of four people at the Tardy Furniture store in Winona, Mississippi. He was first convicted by an all-white jury in , and he was convicted three more times, always by nearly all-white juries. Over a year period â€" from to â€" prosecutors excluded black prospective jurors at a much higher rate than whites, an analysis of jury selection data shows. The prosecution struck 50 percent of eligible black jurors compared to only 11 percent of eligible whites. APM Reports also found that even when controlling for other, race-neutral factors raised during juror questioning, black jurors were still far more likely to be struck than white jurors who answered in the same way. Supreme Court has ruled it unconstitutional to exclude people from a jury based on race or gender. But that standard is difficult to enforce. Moreover, no agency tracks jury composition and selection in courtrooms across the country, at either the local or national level. We attempted to gather the race of jurors in all trials that Doug Evans has prosecuted since It was available for trials. Scroll down to explore the data and how we compiled it. But our analysis found stark racial disparities at every step in the jury selection process. The circles highlighted here are the 1, jurors who were struck for cause. These are the 2, jurors removed by either the prosecution or defense with peremptory strikes. We analyzed how each side used peremptory strikes and found wide racial disparities. Prosecutors used their peremptory strikes mainly to remove black prospective jurors. They struck 1, jurors. This made the jury pool much whiter. That means prosecutors were 4. These are the jurors struck by the defense. The defense can strike only jurors that the prosecution has accepted. These are the 2, people who served on Fifth Circuit Court District juries or were alternates between and Gathering information for the analysis The reporting for this analysis was arduous. Through a combination of records requests and reviewing the docket books at each of the eight courthouses in the district, reporters found trials that Evans or his office prosecuted during his 26 years in office. Reporters then went to the courthouses and scanned more than , pages of court records and jury selection transcripts. They also searched the state archives and the Mississippi Supreme Court for any missing documents. They catalogued every trial and created a digital file for each one. The reporters then searched each file for five pieces of documentation: The record of all jurors summoned for jury duty, called the venire list. The race of each prospective juror. This was often hand-noted on the venire list by the judge or court reporter. A record of the peremptory strikes exercised by the prosecution and the defense. The final list of jurors selected to sit on the jury. A transcript of juror questioning, which indicated the responses prospective jurors gave during voir dire and the stated reasons for their being struck. Reporters typed all the information pulled from these five sources into a database. Strike eligibility changed from juror to juror over the course of the selection process. Reporters used strike eligibility to track which side had the option of striking or accepting the juror. When the handwriting of the judges was hard to read, reporters left the race coded as "unknown" and stopped tracking that particular juror. Here is an example of a set of jurors whose race and gender are clearly marked. This is representative of what many of the juror lists looked like: Here is an example of an ambiguous entry that has both a B and a W marked. APM Reports found race and strike data on jury lists and 27 additional trial transcripts, yielding data from trials, more than half of all trials in the Fifth Circuit Court District since Doug Evans took office. The race of jurors in the remaining trials is unknown for one of two reasons: Reporters cross-checked the findings by isolating a number of variables: Strikes were analyzed by county, for different kinds of crimes and by race of the defendant. In every instance, a racial disparity in strikes persisted. What the analysis does not show This analysis does not prove the jurors were struck because they were black. Because of too many other factors, some unknown. A closer look In 89 of the trials for which reporters had complete voir dire transcripts, reporters could see two critical factors together: Reporters used more than 60 variables to track how jurors responded to questions from prosecutors

and defense attorneys during jury selection. They recorded that information in a database. For example, potential jurors were asked whether they were related to law enforcement officers, if they knew anything about the case, or if they had ever been accused of a crime. But those other factors did not come close to explaining away the disparity. It persisted regardless of how the jurors answered. Even when controlling for other variables, race was one of the most powerful factors predicting which jurors would be struck by the prosecution. Reporters used a technique called "binary logistic regression" to quantify the effect of race. Nonetheless the analysis still does not prove jurors were struck because of race. They declined interview requests. Who reviewed the analysis APM Reports asked three experts for guidance developing our analysis and for help checking the work. Rose studies jury selection practices. Her research on peremptory challenges has been cited by the U. Kevin Church is a statistics consultant. He works with non-profits and other organizations to understand data and build statistical models.

Chapter 3 : Race and the American Judicial System: A Critical Analysis I The Hampton Institute

As the Clarion Ledger recently reported, an APM Reports analysis of Evans' year tenure found that his office was 4 Â½ times more likely to strike black potential jurors than white ones.

Search the Champion Looking for something specific? However, this page and others deemed to serve the public interest - as opposed to a narrower benefit to the criminal defense profession - are left unprotected for access by all interested persons. The Persistence of Discrimination in Jury Selection: In , the U. Supreme Court held in Batson v. Kentucky that it violates the Equal Protection Clause of the Fourteenth Amendment to use a peremptory challenge during jury selection to remove a potential juror because of race. Nowhere is this more evident than in North Carolina. The North Carolina state appellate courts have done nothing to prevent prosecutors from striking minority jurors based on race. In 30 years, and in over cases raising the Batson issue, the courts of appeals in North Carolina have never reversed a case because of discrimination against a minority juror. Remarkably, North Carolina is the only state in the American South with such a stark record of indifference to racial bias in jury selection. This indifference is not merely a theoretical matter for professors to complain about in law review articles. Time after time, studies have shown the importance of racially diverse juries. Most recently, research has demonstrated that juries with two or more members of color deliberate longer, discuss a wider range of evidence, and collectively are more accurate in their statements about cases, regardless of the race of the defendant. It delegitimizes the justice system in the eyes of minority citizens. Consider the North Carolina capital trial of Quintel Augustine, an African American man who was sentenced to death in for shooting a police officer. Choate eagerly awaits the outcome. Supreme Court has predicted, for Ms. States Strengthening the Batson Framework A number of state appellate courts have responded to the challenge by experimenting with new ways to strengthen the Batson framework. Racism now lives not in the open, but beneath the surface. The court used its rulemaking authority to issue a first-of-its-kind rule that goes beyond Batson to provide greater protection against discriminatory peremptory strikes. It diverges from Batson, however, by eliminating the requirement to show purposeful discrimination. It presumes that a strike is invalid or requires advance notice about the explanation for its use, for common reasons that have often been accepted by courts but correlate strongly with race. These include such reasons as prior contact with law enforcement, distrust of law enforcement due to racial profiling, living in a high-crime neighborhood, or having an objectionable demeanor. Liu of the state supreme court described a similarly unique approach to Batson that provides meaningful oversight of prosecutors while also eschewing demonization of these public officials, who typically discharge their duties in good faith. Such loaded terms obscure the systemic values that the constitutional prohibition on racial discrimination in jury selection is designed to serve. The Nevada decisions reflect a state appellate court taking seriously its duty to reverse convictions even when the Batson violations are not revealed by explicitly racist or biased statements, but by a closer look at records which demonstrated that prosecutors accepted certain characteristics in white jurors while simultaneously relying on those same attributes to justify striking minority jurors. In contexts related to but distinct from Batson, other state courts have tried to modernize their approaches to implicit bias in the courtroom. The court also changed its method for determining whether the racial composition of the jury pool violated the right to a jury drawn from a fair cross-section of the community. A Stark Outlier In contrast to these forward-thinking courts, the appellate courts in North Carolina have not assumed a leadership role in addressing explicit racial bias, let alone implicit bias, in the selection of juries. The history of these issues in North Carolina shows how indispensable leadership from appellate courts can be, and the damage caused by their apparent indifference. A study published in the North Carolina Law Review revealed that, in the three decades since Batson was decided, the North Carolina Supreme Court has never found a single instance of discrimination against a minority juror. Among southern states, North Carolina is a stark outlier in its failure to enforce Batson. Appellate courts in South Carolina have found at least a dozen Batson violations since , and those in Virginia have found at least six. In two cases, the appellate court found discrimination not against African Americans, who have historically been excluded from jury service, but against white citizens. How

many people would follow the speed limit if they knew the police would never pull them over to issue a ticket? This is precisely why appellate courts should, and often do, reverse criminal convictions for constitutional violations, for example, when a prosecutor fails to turn over exculpatory evidence to the defense. In these instances, appellate reversals function as a powerful and important incentive for state actors to adhere to the law. This discrimination was demonstrated in a comprehensive study by Michigan State University College of Law researchers that analyzed more than 7, peremptory strikes made by North Carolina prosecutors in capital cases tried between and A recent study conducted at the Wake Forest University School of Law released preliminary findings that in all noncapital felony trials in North Carolina from to â€" which included data on 29, potential jurors â€" prosecutors struck nonwhite potential jurors at a disproportionate rate. In these cases, prosecutors struck 16 percent of nonwhite potential jurors, while they struck only eight percent of white potential jurors. Put another way, this study of 29, jurors found that prosecutors excluded black and other nonwhite jurors at twice the rate they excluded white jurors. The Wake Forest study also found that in several large North Carolina cities, prosecutors excluded minority jurors nearly three times as often as white jurors. In the capital case of State v. Augustine, discussed in the introduction, the prosecutor met with law enforcement officers and took notes about the jury pool. That juror is a black female. I left one black person on the jury already. At a seminar called Top Gun, prosecutors were given a list of race-neutral reasons to cite when Batson challenges were raised. In an amicus brief submitted to the U. But what is happening in North Carolina is not inevitable, even if one believes that Batson itself is an imperfect tool. As appellate courts in Washington, California, Iowa, and the District of Columbia have shown, inherent in the principles underlying Batson are many opportunities to change course. The North Carolina Supreme Court, for example, is currently considering cases that raise the question whether new evidence discovered by the Michigan State study of North Carolina capital cases may form the basis for otherwise procedurally defaulted Batson violations raised by death row inmates. The state supreme court is also considering cases that ask whether death row inmates who raised and presented evidence on state law-based claims of systemic bias in jury selection will get the opportunity to present that evidence in court, despite the fact that the legislature repealed the statute after the claims were filed, and after a trial court actually granted relief to some of the defendants following hotly contested evidentiary hearings. Other state courts could likewise permit re-examination of Batson claims where new studies and new methods of analysis reveal discrimination in older cases, particularly those involving the death penalty. The North Carolina appellate courts, like others, also have an opportunity to modify their Batson jurisprudence in order to avoid the crippling burden of proof that Batson itself was meant to alleviate. For example, North Carolina courts could end their practice of declining to find a prima facie case of discrimination under Batson, even when prosecutors strike 50 percent or more of the qualified jurors of color. In two cases, the North Carolina Supreme Court refused to find a prima facie case even when prosecutors struck percent of the minority jurors. For example, in a capital case, on a record of three clearly discredited reasons that had been rejected by the trial court, the state supreme court declined to find a Batson violation because it concluded that one of the three reasons might withstand scrutiny. Jury service reflects one of the most fundamental principles of American democracy: Supreme Court has acknowledged the importance of revisiting precedent when it appears it may not be robust enough to police race discrimination in jury selection. The Court created the Batson framework because the earlier legal standard for proving racially motivated jury selection had proved ineffective. This is the only way courts can guarantee minority defendants juries of their peers and communities of color that their voices will be heard in the criminal justice system. And it is the only way appellate courts can make clear that the consideration of race in jury selection will no longer be tolerated, not just in word but in fact. See Jerry Kang et al. The Racial Justice Act was enacted in , amended in , and repealed in Leesville Concrete Company, U. City of Seattle v. See Washington General Rule Both pages are found at https: July 14, ; Bradford v. United States, A. Warren, Thirty Years of Disappointment: In one case involving minority jurors, the court of appeals found a constitutional violation, but only because the prosecutor defaulted under Batson and failed to offer any explanation whatsoever for the strikes of two African American jurors. Even though a violation was found on appeal, it was only because the prosecutor ignored the procedural rules of Batson entirely. Hinds County

School Board, F. A Continuing Legacy 19, available at https: The EJI report only counted Batson reversals in criminal cases. United States, U. Golphin, Walters, and Augustine, Nos. Appendix to Petition for Writ of Certiorari, at 12a and 14a, State v. These notes are also on file with the author. This Batson issue was not raised on direct appeal. The transcript of the Batson colloquy is on file with the author. Brief of Amici Curiae of Joseph diGenova et al. The Impact of Miller-El v. Supreme Court historically declined to conduct the comparative juror analysis outlined in Miller-El v. About the Author James E.