

Using Public Reporting to Combat Discriminatory Jury Selection in Massachusetts

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THESIS

Massachusetts should require District Court clerks to collect demographic information on jury venires in criminal cases and the circumstances of jurors' selection or removal, making an often-discriminatory process more transparent through publicly accessible jury-diversity data.

BACKGROUND & ANALYSIS

Juries are a rare instance of pure democracy in our legal system. However, attorneys on both sides of a case are allowed to remove potential jurors in the summoned group of citizens, the venire, without providing reason. The plaintiff's attorney often uses peremptory challenges to strike venire members whose demographics supposedly predict more-lenient decisions about the defendant. These strategic peremptory strikes can have detrimental consequences; they result in juries that are overwhelmingly, or fully, made up of white men.⁵ Demographically homogeneous juries are less likely to engage in rigorous debate, comprehensive deliberation, and detailed examination of evidence.⁶ A jury with no Black male jurors imposes a death sentence on the defendant 72 percent of the time, while a jury with even one Black male juror imposes a death sentence only 43 percent of the time.¹

A 1986 Supreme Court ruling in *Batson v. Kentucky* found that if the defense could show a racial pattern in peremptory strikes, the prosecutor must provide a race-neutral justification for each elimination.² However, the *Batson* ruling does nothing to prevent attorneys from employing simple tactics to strike non-white jurors:³ Instead of admitting to the race-based reason for eliminating a particular individual from the venire, attorneys contrive a racially neutral justification using any other personal information gathered.

Defendants are promised the right to an impartial and representative jury, but a truly transparent and democratic process for selecting juries is not yet a reality. Advocates lack access to comprehensive statistics regarding the disparities between the venire, the citizens removed by peremptory challenges, and the selected jury—essential data on jury composition that is needed to identify and rectify jury-selection discrimination. The only access that the public currently has to information regarding jury diversity is through research organized by legal institutions that often rely on interviewing venire members.

KEY FACTS

- In 2011, North Carolina prosecutors removed 20 percent of Black venire members, compared to 10 percent of white venire members.⁴
- Strategic peremptory challenges result in juries that are overwhelmingly, or fully, made up of white men.⁵
- Juries with no Black male jurors impose a death sentence 72 percent of the time, while juries with even one Black male juror impose a death sentence only 43 percent of the time.¹
- Demographically homogeneous juries are less likely to engage in rigorous debate, comprehensive deliberation, and detailed examination of evidence.⁶

TALKING POINTS

- After thirty-two years of continued jury discrimination, with *Batson v. Kentucky* in place as an insufficient solution, it is time that attorneys be held accountable for discriminating against potential jurors.
- The Constitution promises the right to an impartial and representative jury, yet a truly transparent and democratic process for selecting juries is not yet a reality.
- Publicly available information on jury diversity is essential to informing future political debate, courtroom policy, and the formation of more representative, less homogenous juries.

THE POLICY IDEA

Massachusetts should establish a statewide survey for collecting information on jury diversity. At the end of each individual's jury participation, the District Court clerk should distribute a survey to collect both the juror's demographic information and the outcome of his or her jury duty (i.e., removed for cause, removed using a peremptory challenge, or selected). The anonymized demographic information (surveys will not ask for or record juror names) will consider race, age, ethnicity, gender, education level, religion, sexual orientation, and income. The Clerk's Office of each District Court will synthesize the diversity statistics and publish them in an annual online report.

POLICY ANALYSIS

The annual report on jury diversity will segment survey data into four groups. One data group will show the demographics of all venire members; the other data groups will show the demographics of the venire members removed from the venire for cause, those removed using peremptory strikes, and those selected. The implementation costs for this policy would involve the cost of writing and distributing the demographic survey, informing District Court Clerk's Offices on how to compile the survey data, and producing and distributing the annual report.

With this information on jury diversity made public, citizens, researchers, and special-interest groups can track jury selection relative to a district's demographics and relative to other districts. When information reveals patterns of discrimination taking place in jury selection, attorneys can be held accountable for their discriminatory practices.

Some proposals advocate for ending peremptory strikes altogether to address discriminatory jury selection. However, when used correctly, peremptory strikes are essential for maintaining a jury whose members are not obtrusively biased, such as when potential jurors are personally involved in a case. When such a citizen vows that he or she can be fair, the only way that a prosecutor can remove this person from venire is through a peremptory strike. This policy proposal preserves the functionality of peremptory strikes while countering a way in which strikes can be exploited. A failure to combat discriminatory practices in jury selection will continue to affect marginalized citizens' lives negatively. Publicly available information on jury diversity is essential to informing future political debate, courtroom policy, and the formation of more representative, less homogenous juries.

NEXT STEPS

As record-keepers for each District Court, the Massachusetts District Court Clerk's Offices would be the institutions responsible for implementing this reform. A bill requiring jury-diversity reporting from District Courts could be introduced to the Massachusetts House of Representatives, a measure could be placed on a statewide ballot, or District Court Clerk's Offices could develop and publish a survey independently.

Groups whose support for a public report on jury diversity would be sought include public defenders, research centers, minority advocacy groups, the Jury Sunshine Project, the ACLU of Massachusetts—especially as the proposal pertains to its public-education campaign *What a Difference a DA Makes*—and other groups representing those who have been historically discriminated against in the courtroom, such as people of color, women, and the indigent. Through social media campaigns, messaging around this proposal will stress why public access to jury demographic information is beneficial. It will detail how citizens can be empowered to understand jury diversity in their own district and underline the importance of transparency in the criminal justice system.

ENDNOTES

1. “The big problem with how we pick juries,” YouTube video, 6:44, posted by “Vox,” October 12, 2018, https://www.youtube.com/watch?v=cPRK_ABldIk.
2. “Batson v. Kentucky, 476 U.S. 79 (1986),” Justia, accessed March 10, 2019, <https://supreme.justia.com/cases/federal/us/476/79/#tab-opinion-1956654>.
3. *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* (Equal Justice Initiative, 2010), 15, <https://eji.org/sites/default/files/illegal-racial-discrimination-in-jury-selection.pdf>.
4. Wright, Ronald F., Kami Chavis, and Gregory S. Parks. “The Jury Sunshine Project: Jury Selection Data as a Political Issue.” *Illinois Law Review*, October 20, 2018. <https://illinoislawreview.org/print/vol-2018-no-4/the-jury-sunshine-project/>.
5. *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* (Equal Justice Initiative, 2010), 5, <https://eji.org/sites/default/files/illegal-racial-discrimination-in-jury-selection.pdf>.
6. Wright, Ronald F., Kami Chavis, and Gregory S. Parks. “The Jury Sunshine Project: Jury Selection Data as a Political Issue.” *Illinois Law Review*, October 20, 2018. <https://illinoislawreview.org/print/vol-2018-no-4/the-jury-sunshine-project/>.
7. *Born Suspect: Stop-and-frisk Abuses & the Continued Fight to End Racial Profiling In America* (Baltimore: NAACP, 2014). https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf.