

TRIAL BY YOUR PEERS IN BROWARD COUNTY FLORIDA

Many young black men who are accused of criminal offences in Broward County believe that they are not fairly treated because their cases are heard mostly by juries dominated by white jurors.

There are many who discount the value of racial composition of a jury, but the perception of discriminatory treatment persists. Is it important that justice not only be done but be seen to be done? Of course trial by jury is so vital to our democracy that the perception by black men in this county that many trials by jury are merely a rubber stamp, a mere stop on the road to inevitable conviction, must be addressed.

PROSECUTORS

Do state prosecutors deliberately use jury challenges to exclude black jurors? Regrettably they do. If one (1) in every six (6) Browardian Americans is black then, in one (1) member of every Broward jury should be black. Obviously black males experience difficulty being selected as jurors in Broward County. Most of the Broward criminal defendants are black, but very few Broward jurors are black. As Shakespeare says 'thereby hangs a tale.'

Many black males are excluded from juries because they are felons. This skews the 'one in six (6) argument.' However the systemic exclusion of black jurors in Broward still needs to be analyzed.

THE COURTS

Jury selection permits both challenges for cause and discretionary challenges called peremptory challenges. Challenges for cause exclude individuals who have a direct interest in the outcome of the action such as the relatives and friends of the parties, the relatives of the attorneys etc. The courts have attempted to restrict racially motivated use of peremptory challenges.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), The United States Supreme Court ruled that a prosecutor may not use his or her peremptory challenges to exclude a juror based on a juror's race. In *Batson* the court ruled that once the defendant makes a prima facie showing that the prosecutor has used peremptory challenges based on race, then the burden shifts to the state to come forward with a race-neutral reason to justify the challenge to black jurors.

Batson also held that a state denies a black defendant equal protection when it put him on trial before a jury from which members of his race have been purposefully excluded. Justice Marshall writing a concurring opinion called for the elimination of peremptory

challenges completely. The Supreme Court therefore has solved the racial issue. However state courts have frustrated its impact through restrictive interpretation.

Batson v. Kentucky, is a federal case and its State of Florida progeny is Melbourne v. State, 679 So. 2d 759 (Fla. 1996). Melbourne set forth a three (3) tier analysis for a trial court's determination of whether a peremptory challenge is being used in a discriminatory manner.

Initially the party objecting to the peremptory challenge on racial, ethnic or gender grounds must make a timely objection and on that basis, must show that the juror is a member of a protected class, and request that the court ask the striking party its reason for the strike. Secondly the proponent of the strike must give a race and gender neutral reason for the strike. If the explanation is not facially gender neutral and race- neutral, the inquiry ends and the strike is denied. Melbourne, 679 So. 2d at 764 n.7.

If, however, the attorney gives a facially race-neutral reason, the court must move to the third step, which requires the judge's assessment of whether the proffered reason is genuine or pretextual. The Florida Supreme Court has stressed that the burden of persuasion throughout this process remains on the opponent of the strike to prove purposeful discrimination and that peremptory challenges are presumed to be exercised in a nondiscriminatory manner.

It is submitted that the 3 tier analysis in Melbourne is inconsistent with Batson since it seems to impose a difficult evidentiary burden on the opponent of the strike. Black men continue to be convicted by all white juries in Broward County contrary to the law and the constitution. Individuals seeking election in Broward County to be judges ought to be asked by the black community what their position is on Batson and on Melbourne.

Dr. David P. Rowe, LLB, J.D., Adjunct Professor of Law, University of Miami School of Law, Coral Gables, Florida, U.S.A. He is a member of the Florida Bar and the Jamaica Bar.

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