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# It's Still Too Easy to Push Blacks, Minorities Off of Juries

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# It's still too easy to push blacks, minorities off of juries

Jeffrey Bellin, Opinion contributor Published 6:19 p.m. ET Dec. 14, 2017 | Updated 7:08 p.m. ET Dec. 14, 2017

*Connecticut case shows how 'race-neutral' eliminations in jury selection can usher in discrimination. Rules must be changed to close loopholes.*



(Photo: Brennan Linsley, AP)

It's illegal to eliminate jurors solely on the basis of race.

But a recent appellate court decision shows how easy it is to circumvent the rule meant to ensure a fair and balanced jury, which is a cornerstone of the American justice system.

The ruling in *Connecticut v. Holmes* (<https://law.justia.com/cases/connecticut/court-of-appeals/2017/ac39077.html>) — the appeal of a Connecticut murder case that ultimately landed a black man in prison after a potential African-American juror was eliminated — should alarm anyone who cares about democracy.

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## Racial implications in rejection

During jury selection in the original case, "W.T.," who was African American and being interviewed by both the prosecution and the defense as a potential juror, expressed concerns about law enforcement in answer to questions posed by the prosecutor.

"Some things are not fair," W.T. said. He also stated that "sometimes . . . when I see the police in back of me, I wonder, you know, if I'm going to be stopped."

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But W.T. also emphasized that he would follow the law and "judge (the case) by the facts."

Still, the prosecutor eliminated W.T. The state explained that the elimination was "race-neutral" and expressed concern about the fact that W.T.'s family members "have been convicted and have served time. ... If we had a Caucasian who was in the same situation," they would also have eliminated him from the jury, the state said.

But I suspect few people who read W.T.'s full statement would have agreed with the prosecutor's decision. W.T. comes across as a thoughtful, candid person, the kind of person we want on juries.

**MORE:** [Re-entry program helps inmate fight anger issues \(/story/opinion/policing/reentry/column/2017/12/04/re-entry-program-helps-inmate-fight-anger-issues/889647001/\)](#)

As Connecticut appellate Judge Douglas Lavine noted in his concurring opinion, the views W.T. expressed were "by no means radical or unreasonable. On the contrary, they appear to be logical, fact-based, and understandable."

But attorneys have a limited number of chances (that number varies by state) to remove potential jurors, for any reason at all, and with no explanation given. And until 1986, those reasons could have included race. But the Batson rule, named after the [Supreme Court decision](#) (<http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-batson-v-kentucky>), was intended to change all of that.

Defendants can use the rule to challenge the elimination of a juror if they think the prosecutor's choice was based on race. And in this case, the defendant did.

For the Batson challenge to have worked, the defendant had to show that the prosecutor made the decision based primarily on race and with the intention to discriminate — something that's difficult to prove when prosecutors can easily use reasons related to race, that are deemed "race-neutral," to eliminate jurors.

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The state claiming that a Caucasian juror would have been eliminated for expressing the same concerns about police sounds good but likely wouldn't happen. That level of police fear and discrimination is tied much more closely to the black experience in America.

The trial judge in the original case upheld W.T.'s elimination, stating that the prosecutor's decision was "race-neutral."

The appellate court also upheld the ruling.

The Batson challenge may have changed procedures, but [September's Connecticut v. Holmes \(http://caselaw.findlaw.com/ct-court-of-appeals/1873423.html\)](http://caselaw.findlaw.com/ct-court-of-appeals/1873423.html) appellate ruling shows that the results are still the same — prosecutors who want to eliminate black jurors can do so in a way that's frequently incontestable.

## Progress, but still a divided nation

We live in a society where, despite real progress, race still matters. And there can be many "race-neutral" reasons for striking a potential juror that strongly correlate with race.

A 2016 [Pew Research Center \(http://www.pewsocialtrends.org/2016/09/29/the-racial-confidence-gap-in-police-performance/\)](http://www.pewsocialtrends.org/2016/09/29/the-racial-confidence-gap-in-police-performance/) study found, for example, that 75% of whites believe that police in their community treat racial groups equally. Only 35% of blacks believe the same.

This statistical reality means that, without violating Batson, prosecutors can systematically exclude minority jurors simply by asking about police and striking those from the jury pool who express concern.

As the Connecticut court ominously notes within its own ruling, using these strikes “with respect to potential jurors who express negative views [toward the police \(https://law.justia.com/cases/connecticut/court-of-appeals/2017/ac39077.html\)](https://law.justia.com/cases/connecticut/court-of-appeals/2017/ac39077.html) or the justice system may well result in a disproportionate exclusion of minorities from our juries, a deeply troubling result.”

**MORE:** [She has spent nearly a lifetime suffering in the system \(/story/opinion/policing/2017/10/09/suffering-system-recidivism-incarceration-prison-jail-policing-the-usa/708781001/\)](http://www.washingtonpost.com/news/justice/wp/2017/10/09/suffering-system-recidivism-incarceration-prison-jail-policing-the-usa/708781001/)

The Connecticut case cannot be written off as the work of a racist prosecutor or insensitive judges. The prosecutor was trying to obtain a conviction in a serious murder case. The Connecticut judges, like judges across the country, were faithfully following Batson, holding their noses and upholding lawful jury strikes.

The problem is the law, which must be changed.

States should radically reduce the number of peremptory (or unexplained) strikes allowed, or abolish them altogether. Judges should also be empowered to reject “race-neutral” strikes that strongly correlate with race. Lavine's opinion suggests this path forward, citing an article I co-authored after studying almost 300 judicial decisions applying the Batson rule.

There is more at stake than the outcome of any particular trial.

The right to a jury serves two functions: It protects citizens against oppressive government overreach; and it infuses the system with democratic legitimacy.

Both goals are undermined if minorities are systematically removed from juries, even if the law deems their exclusion “race-neutral.”

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