



We Should All Belong in the Jury Box

By CDPL Staff

Black Americans have long struggled to be acknowledged as full citizens. In 1860, Jefferson Davis, who was then a U.S. senator, argued that the United States was founded “by white men for white men.” In 1898, the Chairman of the North Carolina Democratic Party declared “North Carolina is a WHITE MAN'S STATE and WHITE MEN will rule it,” calling upon whites to stand together against “Negro domination” and in support of “White Supremacy” by depriving Blacks of political power.

Today, there are still those who believe that people of color and immigrants don't truly belong in this country or are less entitled to the rights of American citizenship. Perhaps that's why people of color are still deprived of a basic Constitutional right and obligation: jury service.

One place every citizen should belong is in the jury box. Those accused of crimes deserve to be judged by a true cross section of their community, including people who have walked in their shoes. And all of us — regardless of race, gender, political views, or life experience — deserve to wield power in the courtroom. The Supreme Court has repeatedly said that, just like voting, jury service is “a tangible implementation of the principle that the law comes from the people.”

Because jury service is an exercise of power, jury discrimination has a long history in the United States, just like voter suppression. From the end of the Civil War and into the twentieth century, it was routine for all-white juries to send Black men and boys to swift executions based on flimsy evidence, while at the same time white mobs lynched their Black neighbors with impunity. In 1899 a Wilmington newspaper warned that Black participation on juries allowed “red-handed murderers and beastly rapists [to go] free... ready to begin again their hellish, fiendish work... Hence the increase in lynchings.”

At first, Black people were excluded from jury pools. For example, in a 1948 case in Bertie County, the clerk of court admitted that, when the names of potential jurors were drawn, the names of white people were written in black ink, while the names of African Americans were written in red. If the name drawn was red, the prosecutor would immediately dismiss the juror “for want of good moral character or sufficient intelligence,” according to Seth Kotch's death penalty history *Lethal State*. The result was that, in a county whose population was 60 percent Black, no Black person had ever been selected for a jury.

However, in the 1960s, civil rights reforms barred the most egregious forms of jury discrimination, such as poll taxes and intelligence tests. Prosecutors then moved to a

more subtle tactic of exclusion: the use of peremptory strikes. Before a trial, attorneys for each side choose the jurors. Potential jurors are questioned, and each side may remove a certain number for any reason, with the crucial exception that strikes must not be based on race or gender.

But this restriction has gone largely unenforced. Studies show that, even today, North Carolina prosecutors strike qualified African Americans from juries at more than twice the rate of whites. More than three dozen people on North Carolina's death row were sentenced by all-white juries. And close to half of those on death row had no more than one person of color on their jury.

Despite glaring disparities in how prosecutors exercise their strikes, North Carolina appellate courts have never found an instance of discrimination against citizens of color, allowing prosecutors to strike jurors Black jurors for reasons that are only thinly veiled racism. A 1994 training by the North Carolina Conference of District Attorneys encouraged prosecutors to strike jurors for reasons like "disheveled appearance," "air of defiance," and "lack of eye contact" with the prosecutor. These highly subjective reasons play on racist stereotypes of Black people as unintelligent, unkempt, and hostile.

At a hearing in Wayne County, a white prosecutor said he excluded a Black man from the jury in Lynnwood Forte's 2003 capital trial because the juror did not address the prosecutor as "sir." At the 1998 trial of Kevin and Tilmon Golphin, a Cumberland County prosecutor justified one challenged strike by claiming the juror had "a rather militant animus."

In the 1996 Forsyth County trial of Russell Tucker, the prosecutor struck every single African American from the jury. When Tucker's attorneys objected, the prosecutor claimed he removed one woman because she "lacked a stake in the community." The juror had lived in the county her entire life, raised children, and worked as a nurse there. Yet, the judge allowed the strike.

When courts allow this type of discrimination, they reinforce the old notion that Black people aren't full citizens, and, that juries are an institution through which the white "community" judges Black people who have upset the social order. In a 1998 Randolph County murder trial, veteran capital prosecutor Garland Yates implored an all-white jury, "twelve white people good and true, twelve White jurors in Randolph County," to convict a Black defendant. These words reveal a racist truth that usually goes unspoken.

N.C. Supreme Court Chief Justice Cheri Beasley recently expressed her grief for those "whose lived experiences reinforce the notion that Black people are ostracized, cast out, and dehumanized." But she also sounded a note of hope: "We must come together to firmly and loudly commit to the declaration that all people are created equal, and we must do more than just speak that truth. We must live it every day in our courtrooms." To reach that goal, everyone must belong in the jury box.

Listen: The Whitening of the Jury

In this 5-minute podcast created by Duke Center for Documentary Studies students Khalid Bashir and Shaakira Raheem, attorney Johanna Jennings talks about the ways that racial discrimination on juries persists in North Carolina courtrooms.

<https://soundcloud.com/cds-audio/12-khalid-bashir-shaakira>