

Trial essay

Law



Jury trial evidence racial discrimination compared to Bench trial, as there seems to have some loopholes in the law encompassing the rights to jury trials. The use of peremptory challenges by the prosecution becomes an instrument by which the prosecutor could strike selected jurors to exclude them in the jury. Mabra Glen Abernathy and Barbara Ann Perry (1993) pointed out that although the Court long held that the systematic and intentional exclusion of any class of persons eligible to serve, from the jury lists is invalid, there many cases wherein black jurors are excluded from the jury trying a Negro person.

Abernathy and Perry stated the court concluded that such a procedure “ established a prima facie case of discrimination, which the state failed to overcome” (p. 141). They cited the cases such as *Strauder v. West Virginia*, 100 U.

S. 303, the *Avery v. Georgia*, 345 U. S. 559 which excluded black jurors from the jury list trying a Negro man. There were quite a number of jury trial cases wherein discrimination were evidence particularly in the selection of the Juror.

Judicial discretionA judicial discretion yielding apparent discrimination has to do with the use of peremptory challenges by the prosecution during the criminal trial of a black dependant in a Kentucky state court. Abernathy and Perry stated, “ The judge conducted a voir dire examination of the venire and excused certain jurors for a cause. The prosecutor then used his peremptory challenges to strike all four black persons on the venire, and a jury composed only of white persons was selected. Defense counsel moved to

discharge the jury on the ground that the prosecutor's removal of the black veniremen violated dependant's rights under the Sixth and Fourth Amendments to a jury drawn from a cross of the community, and under the Fourteenth Amendment to equal protection of the laws. The trial judge denied the motion and the dependant was convicted" (Abernathy & Perry 1993, p. 141).

Jury selectionThe selection of persons to sit in the jury often shrouded with discrimination. David Fellman (1979) cited that in the Jackson County of Alabama where there were 2, 688 Negroes, it was shown that no Negro had served on any jury " within the memory of witnesses who had lived there all their lives, and who ranged in age from fifty to seventy-six" (p. 195). Fellman adds " The clerk of the jury commission in twenty-four years, and two jury commissioners all testified that they had never known of a Negro serving on a grand jury in the county" (p.

195). This apparently shows discrimination in the selection of the jury.

Capital PunishmentCapital punishment is also another area where worse discrimination occurs. Paul Finkelman (2006) noted that several justices " acknowledged that race affects the administration of capital punishment" (p. 225) Finkelman cited that in *Batson v. Kentucky* the court rendered an opinion derived from the Baldus Study.

This study confirms the continued presence of the bias experienced by people of African descent. Finkelman (2006) stated that the murderers of Caucasians " remain more likely to be sentenced to death than those who murdered people of African descent" (p. 225) References Abernathy, M. G.

& Perry, B. A. (1993) *Civil Liberties Under the Constitution USA*: University of South Carolina Press
Fellman, D.

(1979) *Defendants Right Today USA*: University of Wisconsin Press
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P. (2006) *Encyclopedia of American Civil liberties USA*: CRC Press