

Respect

WINTER 2020 VOL 19 NO. 2

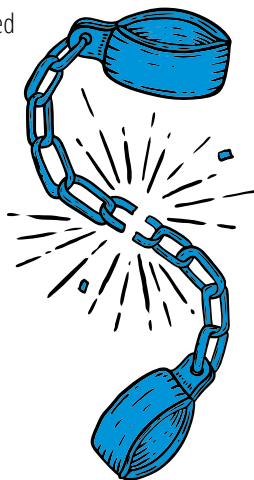
A DIVERSITY NEWSLETTER

What's the Price for Righting A Wrong? *by Phyllis Raybin Emert*

When a wrong has been committed, it is natural for the injured party to seek **reparations** to right that wrong. Compensation can be in the form of cash; however, when the perpetrator of the wrong is the government, reparations can also take the form of tax credits, community projects, property or scholarships given to the injured party.

The concept of paying reparations for slavery has been considered since the Civil War ended and "40 acres and a mule" was suggested as compensation (see sidebar for more on this) to newly freed slaves for the injustices that had been forced upon them.

Last year marked the 400th anniversary of the first slave ship coming to what would become the United States. The issue of how to compensate African Americans for the institutional discrimination resulting from that injustice is something that the country still grapples with today.



An October 2019 poll, conducted by the Associated Press and the National Opinion Research Center, revealed that most Americans don't support paying reparations for slavery, with only 29 percent in support.

Making excuses

Speaking on the subject of reparations for slavery, Senate Majority Leader Mitch McConnell, on the day before Congress held a historic hearing on the subject, stated, "I don't think reparations for

CONTINUED ON PAGE FOUR

Selecting the Perfect Jury Without Bias *by Maria Wood*

In general, attorneys—whether on the defense or prosecution—want to obtain a jury that is favorable to their side. The practice of jury selection, however, has come under scrutiny because of the potential for prosecutors to exclude jurors based on race.

Whether a prosecutor unfairly dismissed African Americans from the jury pool was the

subject of a U.S. Supreme Court decision handed down in June 2019. In *Flowers v. Mississippi*, the Court overturned a murder conviction of an African American defendant because of a pattern by the prosecutor of routinely rejecting African Americans from the jury.

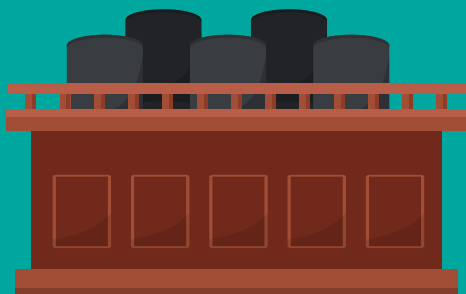
The Court's 7-2 decision **reversed** the conviction of Curtis Flowers, who was charged in 1996 with the murder of four people at Tardy Furniture in Winona, Mississippi. In the

majority opinion for the Court, Justice Brett M. Kavanaugh wrote, "The state's relentless, determined effort to rid the jury of black individuals strongly suggests that the state wanted to try Flowers before a jury with as few black jurors as possible, and ideally before an all-white jury. We cannot ignore that history."

Flowers v. Mississippi

The history that Justice Kavanaugh is referring

CONTINUED ON PAGE SEVEN



Polish Law Sparks Controversy and a Reckoning of History

by Michael Barbella

Auschwitz. Belzec. Chelmno. Majdanek. Sobibor. Treblinka.

Those are names of extermination camps that will be forever linked to the worst **genocide** in human history.

Millions of European Jews died at those camps during World War II under the direction of Nazi leader Adolf Hitler, who considered Jews a threat to German racial superiority. He established the camps, also known as killing centers or death camps, to eliminate Jews from society. His plan was called "The Final Solution."

During the war, there were

thousands of concentration camps, work camps or forced labor camps spread across Europe. There were, however, only six extermination camps and

all of them were located in Poland.

Poland is one of nine countries Hitler invaded and occupied in his quest to conquer Europe. It was Germany's invasion of Poland, in fact, that triggered World War II, with Great Britain and France declaring war on the Nazis within days. The Polish army fought against the Germans but were defeated within weeks of the 1939 invasion.

Although these killing centers were set up and run by Nazis, the term “Polish death camp” has often been used to refer to Auschwitz and other extermination camps, inflaming an ongoing debate about Poland’s role in the Holocaust.

Controversial law

In 2018, lawmakers in Poland passed legislation that criminalized any reference to Polish collusion with Nazi war crimes. The law, called the Amended Act on the Institute of National Remembrance, addressed public speech that accused Poland of Nazi crimes during the German occupation.

“For several dozen years, Poland has been repeatedly slandered and portrayed as Hitler’s accomplice, therefore, defending the good name of our nation against statements that have nothing to do with historical truth seems to be an obvious and necessary stance,” stated a January 2018 statement from the Institute of National Remembrance, a government institution charged with prosecution of crimes against the Polish nation.

Signed into law in February 2018, the new law amended a 1998 **statute** that imposed fines or a three-year prison term on those who denied or discredited German and/or Soviet crimes during the Holocaust and Soviet invasion. The amendment to

the law carried the same penalties for people who attribute Holocaust crimes to the “Polish nation” or “Polish state.”

The text of the law stated: “Whoever accuses, publicly and against the facts, the Polish nation, or the Polish state, of being responsible or complicit in the Nazi crimes committed by the Third Reich...shall be subject to a fine or a penalty of imprisonment of up to three years.”

Polish President Andrzej Duda said the law protected Polish interests, ensuring the country is “not slandered as a state and as a nation.”

European and U.S. officials regarded the measure as a threat to free speech, claiming the law could be used to suppress differing opinions. Israel likened the legislation to Holocaust denial.

“Enactment of this law adversely affects freedom of speech and academic inquiry,” then U.S. Secretary of State Rex Tillerson said of the law when it was passed. “We believe that open debate, scholarship, and education are the best means of countering misleading speech.”

The law exempted those who were part of “artistic or scientific activities,” but Samuel Kassow, a historian at Trinity College told *PolitiFact* the law was too vague.

"When you're saying the Polish state and the Polish nation, what does that really mean?" he asked. "If you're a famous historian or a famous artist you might be safe from being prosecuted. But if you're a high school teacher or untenured faculty member or a graduate student doing research on the Holocaust, this law could have a chilling effect."

History and impossible choices

During World War II, the Germans forced at least 1.5 million Polish people into servitude and detained hundreds of thousands in concentration camps. Data from the U.S. Holocaust Memorial Museum indicates the Nazis killed at least 1.9 million non-Jewish Polish civilians between 1939 and 1945.

While many Polish citizens resisted the Third



**This publication was made possible
through funding from the
IOLTA Fund of the Bar of New Jersey.**

Jodi L. Miller
Editor

Editorial Advisory Board

Robyn B. Gigl, Esq.
Chair

Mary M. Ace, LCSW

Naeem Akhtar, Esq.

Kim C. Belin, Esq.

Tamara Britt, Esq.

Risa M. Chalfin, Esq.

Eli L. Eytan, Esq.

Norberto A. Garcia, Esq.

John F. Gillick, Esq.

Hon. Lisa James-Beavers, ALJ

Ronald G. Lieberman, Esq.

Wendy Allyson Reek, Esq.

Cheyne R. Scott, Esq.

Margaret Leggett Tarver, Esq.

Brandon L. Wolff, Esq.

Thomas A. Zeringo

Law Sparks Controversy CONTINUED FROM PAGE TWO

Reich and risked their own lives to help Jews escape the Nazis, some cooperated with Germans. For example, historians note that residents of Jedwabne, a small town in northeastern Poland, gathered several hundred Jews in July 1941, corralled them in a barn and set it on fire. In addition, Polish historians Jan Grabowski and Jan Gross detail other incidents in separate books, including the 1945 murder of more than 40 Jews in Kielce, Poland. Those 40 Jews survived the Holocaust only to be killed by the Polish police, soldiers or civilians.

"The mass murder of Polish Jews was not abstract," Grabowski said during a February 2018 press conference in Tel Aviv. "It happened inside the space of the Polish nation, so this is why you cannot pretend that this is only a German-Jewish affair. There are no Polish bystanders in the Holocaust."

In April 2018, Grabowski told *Newsweek* that the issue of Polish collaboration is an important aspect of the war that needs discussion, not just for Poland, but for everyone.

"Your neighbor asks for your help. If you help him, you could be killed, but if you don't, he could be killed." These are the horrible choices that people during the war had to face, and Grabowski contends, "They need to be discussed."

Stifling free speech

Jan Kubik, a Rutgers University political science professor, who also teaches at the School of Slavonic and East European Studies at University College London, says the Polish government could use the law to punish historians for research that they find objectionable.

"We know well that laws are never air-tight and need to be interpreted by judges," Professor Kubik says. "The results of such interpretations become increasingly unpredictable in a country in which the independence of the judiciary is diminished, as is the case in Poland at the moment."

Perry Dane, a professor at Rutgers Law School who is an expert in Jewish law, argues that Poland's Holocaust statute whitewashes history rather than safeguards the truth about the country's role in World War II.

"It is true that Poles as well as Jews were the victims of Nazi war crimes and crimes against humanity," Professor Dane notes. "It is also true that Germany bears the primary moral and legal blame for the killing of six million Jews. But some Poles did collaborate or assist, or worse. And that historical record should not be suppressed."

Professor Dane calls the Polish law self-serving. "Its goal is to protect the dignity of the state and soothe the conscience of the nation. This seems to me to cut at the very core of what every free speech **regime** should be about," he says.

Walking it back

By April 2018, a press release published by the prosecutor's office in Poland revealed that 44 complaints had been filed based on the

new law. However, because of the backlash from the U.S., Europe and Israel, Poland's Ministry of Justice did not prosecute anyone for violating the law.

In June 2018, four months after enacting the law, the Polish government amended it, removing the penalty of prison. The statute's current version still penalizes those referencing "Polish death camps" but imposes only a monetary fine rather than an additional jail sentence, making it a civil offense and not a criminal one.

Despite the change, Professor Kubik believes the law is still flawed because it was written by politicians.

"Lawmakers, who are politicians, should not be in the business of clearing up any—particularly serious—misconceptions because they are **partisan**, though to various degrees," Professor Kubik says. "A significant part of what I like to call the architecture of democracy must be a separation of

duties, not just powers. Independent, autonomous professional organizations, in this case Holocaust historians, should lead such efforts and be respected as the highest authority in such matters."

Professor Kubik also says that politicians should, in turn, lead efforts to create and support the authority of such organizations and not try to discredit or control them.

Emboldening others

Many historians feared that Poland's law, despite the backlash against it, would embolden other nations to do the same. In January 2020, Lithuanian lawmakers announced they were drafting legislation that would declare, "neither Lithuania nor its leaders participated in the Holocaust." The reasoning of the Lithuanian government mirrors the Polish law, contending that because the Germans occupied the country at the time, Lithuania could not be complicit in the Holocaust.

A summary that appears in the U.S. Holocaust Memorial Museum states: "The Lithuanians carried out violent riots against the Jews both shortly before and immediately after the arrival of German forces."

Condemning the proposed Lithuanian legislation, Efraim Zuroff, the director of the Simon Wiesenthal Center in Eastern Europe, told the *Jewish News Syndicate*, it was "the next step in Holocaust distortion in Eastern Europe" and "the final stage of a long attempt to whitewash massive complicity by Lithuanians in the Holocaust." •



1. Why might it be understandable to want history to remember your country in a favorable light, as Poland does? Can you think of times when history would not look favorably on the United States?
2. At what point should a nation accept collective responsibility for the actions it has taken?
3. At what point does a person have personal responsibility to act morally?

Righting a Wrong CONTINUED FROM PAGE ONE

something that happened 150 years ago, for whom none of us currently are responsible, is a good idea. We've tried to deal with our original sin of slavery by fighting a civil war, by passing landmark civil rights legislation. We've elected an African American president...No one currently alive was responsible for that. And I don't think we should be trying to figure out how to compensate for it."

"The reality is that so many descendants of slave owners benefitted from their ancestor's actions, and the generations of wealth that was built up on

their behalf," Dr. Donnetrice Allison, a professor of Africana Studies at Stockton University, says. "Just as so many African American descendants of those who were enslaved have suffered from the generational poverty and trauma enacted upon their ancestors."

In his column for *The New York Times*, Charles Blow wrote that the issue of reparations for slavery is about "**collective responsibility** and redemption" and that "America needs to set its soul right." Representative Mike Johnson of Louisiana, however, testified before Congress that reparations

in the form of a financial settlement would result in eliminating meaning, purpose and satisfaction from the lives of African Americans.

Dr. Allison agrees in part with both men.

"On the one hand, it is true that no amount of money can truly make up for the institutional racism upon which this country was built, in every aspect of our systems—criminal justice, education, business, the arts, athletics," she says. "However, a gesture towards finally taking responsibility could go a long way."

CONTINUED ON PAGE FIVE

250 Years of Seeking Reparations by Jodi L. Miller

The concept of the U.S. government paying **reparations** for wrongs it has committed is not a new one. In 1980, the U.S. Supreme Court awarded the Sioux Nation a \$100 million judgment for land that the government took from them in 1877, which violated a treaty signed in 1868. The U.S. government also apologized to Japanese Americans for **internment** during World War II and paid \$20,000 to each internment survivor still living.

Immediately after the Civil War ended, reparations were offered to newly freed slaves as well. Union General William T. Sherman and Secretary of War Edwin M. Stanton, met with 20 leaders of the Black community in Savannah, Georgia on January 12, 1865 to ask what they wanted in terms of compensation. The newly freed slaves wanted land. The spokesman for the group was Rev. Garrison Frazier, a former slave who bought his freedom in 1857.

"The way we can best take care of ourselves is to have land, and turn it and till it by our own labor," Rev. Frazier said at that time. "We can soon maintain ourselves and have something to spare."

As a result, the government seized 400,000 acres of Confederate-owned land and Gen. Sherman issued his famous Special Field Order No. 15, commonly known as the "40 acres and a mule" policy, four days later. The order stated: "The islands from Charleston, south, the abandoned rice fields along the river for thirty miles back from the sea, and the country bordering the St. Johns river, Florida, are reserved and set apart for the settlement of the Negroes now made free by the acts of war and the proclamation of the President of the United States." The order went on to state "...each family shall have a plot of not more than (40) acres of tillable ground..." There was actually no mention of mules in the order; however, some families received leftover Army mules, which is where the common name comes from.

Not so fast...

By the spring of 1865, more than 40,000 former slaves had settled on the seized land. In the fall of that year, however, President Andrew Johnson, who succeeded to the presidency after President Lincoln's assassination, overturned the order, giving the land back to the original owners and evicting thousands of freed slaves.

In 1867, House Speaker Thaddeus Stevens of Pennsylvania argued for a plan to distribute confiscated Confederate land to former slaves. "Withhold from them all their rights and leave them destitute of the means of earning a livelihood, and they will become the victims of hatred or cupidity [greed] of the rebels whom they helped to conquer," Stevens said in defending his bill from the floor of the House. That effort failed as well.

"Had such a radical land reform taken place it is easy to envision that the vast current differences in wealth between Blacks and non-Blacks would not exist," William Darity Jr., an economist and professor of public policy at Duke University, told *The New York Times*.

Proposing a pension

In an 1890 letter to politician and newspaperman Walter R. Vaughn of Iowa, Frederick Douglass pointed out that former slaves, who had built the Capitol Building, as well as the White House, had not been compensated for 250 years of unpaid labor.

"The Egyptian bondsman went out with the spoils of his master, and the Russian serf was provided with farming tools and three acres of land upon which to begin life," Douglass wrote,



CONTINUED ON PAGE FIVE

Righting a Wrong CONTINUED FROM PAGE FOUR

“...the issue of reparations for slavery is about ‘collective responsibility and redemption’...”

Historic hearing

Representative John Conyers of Michigan first introduced legislation, called the Commission to Study Reparations Proposals for African Americans Act, in 1989. It did not pass and no action was taken. Rep. Conyers, who retired in 2017 and died in 2019, re-introduced the legislation every year for 25 years.

Representative Sheila Jackson Lee of Texas took up the cause and introduced the legislation again in January 2019. The proposed bill, H.R. 40, would study the effects of slavery and its impact

and then make recommendations to Congress on how to correct the harm done to African Americans. The bill requests that \$12 million be allocated for a 13-member commission to study the issue.

The House of Representatives held the first ever public hearing to discuss reparations for slavery on June 19, 2019. The date is significant because it is also what is known as Juneteenth, a holiday that commemorates the announcement of the abolition of slavery in Texas. Because Texas was such a distant

CONTINUED ON PAGE SIX

CONTINUED ON FROM PAGE FOUR

“but the Negro has neither spoils, implements nor lands, and today he is practically a slave on the very plantation where formerly he was given to toil under the lash.”

At Vaughn’s request, Representative William Connell of Nebraska introduced the Ex-Slave Pension Bill, which was modeled on the Civil War pension scale for soldiers. According to the National Archives, “Ex-slaves 70 years and older at the time of disbursement were to receive an initial payment of \$500 and \$15 a month for the rest of their lives; those aged 60-69 years old would receive \$300 and \$12 a month; those aged 50-59 years old would receive \$100 and \$8 a month; and those under 50 would receive a \$4 a month pension.”

Rep. Connell tried to promote the legislation as a stimulus or “Southern-tax relief bill,” contending that it would provide “economic justice to former slaves and their spending would help boost the Southern economy.”

While Rep. Connell’s bill failed, the ex-slaves themselves took up the pension movement. By the 1890s, there were several ex-slave pension organizations, including most prominently, the National Ex-Slave Mutual Relief, Bounty and Pension Association (MRB&PA), which at its height boasted membership in the hundreds of thousands.

According to the National Archives, three government agencies, including the Bureau of Pensions, the Post Office Department and the Department of Justice, worked together to investigate and discredit organizations and

individuals associated with the ex-slave pension movement. In 1899, the Post Office issued a fraud order against MRB&PA, stopping the delivery of all mail from the organization. A 1902 letter from the commissioner of pensions accused the organization of

arousing false hope in the ex-slaves seeking reparations, which would lead to “inevitable disappointment, and probably distrust of the dominant race and of the Government.”

The campaign against the ex-slave pension movement was successful. When another bill came before the Senate Committee on Pensions, it concluded, “This measure is not deserving of serious consideration by Congress.”

Seeking reparations in court

Despite government harassment, MRB&PA brought a class action lawsuit against the U.S. Treasury Department in 1915. The suit, which was the first litigation on a federal level seeking reparations, claimed that the more than \$68 million dollars in taxes collected between 1862 and 1868 on cotton should rightly go to ex-slaves since it had been produced as a result of their “involuntary servitude.”

The Court of Appeals for the District of Columbia dismissed the case, *Johnson v. McAdoo*, on the grounds of governmental **immunity**. The U.S. Supreme Court **upheld** that decision. In 1995, another reparations case, *Cato v. United States*, was rejected on the same grounds. •



1. What do you think of the original “40 acres and a mule” policy and what eventually happened to it?
2. In the story, the commission of pensions mentions “the dominant race.” Why is the concept of a “dominant race” dangerous?

Righting a Wrong CONTINUED FROM PAGE FIVE

state, the news of the Emancipation Proclamation, issued on January 1, 1863, did not reach the state until June 19, 1865, after the Civil War ended.

Several witnesses testified during the hearing on both sides of the issue, including New Jersey Senator Cory Booker, who was in favor of reparations, and retired football player Burgess Owens, who was against.

"If we were to pay reparations today, we would only divide the country further, making it harder to build the political coalitions required to solve the problems facing Black people today," said Coleman Hughes, an African American writer, who testified at the hearing. "Reparations, by definition, are only given to victims. So the moment you give me reparations, you've made me into a victim without my consent," Coleman argued.

The hearing's star witness was Ta-Nehisi Coates, an African American writer who many credit for reviving the debate on reparations with his article "The Case for Reparations," published in *The Atlantic* in 2014.

During his testimony, Coates rebutted the argument that no one alive today is responsible by pointing out that treaties signed centuries ago are still honored and that the U.S. was still paying out pensions to Civil War soldiers well into this century.

"Many of us would love to be taxed for the things we are solely and individually responsible for. But we are American citizens, and thus bound to a collective enterprise that extends beyond our individual and personal reach," Coates testified. "It would seem ridiculous to dispute invocations of the founders, or the greatest generation, on the basis of a lack of membership in either group. We recognize our lineage as a generational trust, as inheritance, and the real dilemma posed by reparations is just that: a dilemma of inheritance. It is impossible to imagine America without the inheritance of slavery."

Coates also pointed out in his testimony that reparations wouldn't just address the sin of slavery but the 100 years of oppression that came after in the form of Jim Crow laws, which enforced racial **segregation**.

"Enslavement reigned for 250 years on these shores. When it ended, this country could have extended its hallowed principles—life, liberty and the pursuit of happiness—to all, regardless of color," Coates said. "But America had other

principles in mind. And so, for a century after the Civil War, Black people were subjected to a relentless campaign of terror, a campaign that extended well into the lifetime of Majority Leader McConnell."

Effects felt today

Economist Julianne Malveaux also testified during the hearing, addressing the inequalities felt by African Americans today.

"Enslavement is the foundation on which this country was built," Malveaux said. "When [your] zip code determines what kind of school you go to, when [your] zip code determines what kind of food you eat—these are the **vestiges** of enslavement that a lot of people don't want to deal with."

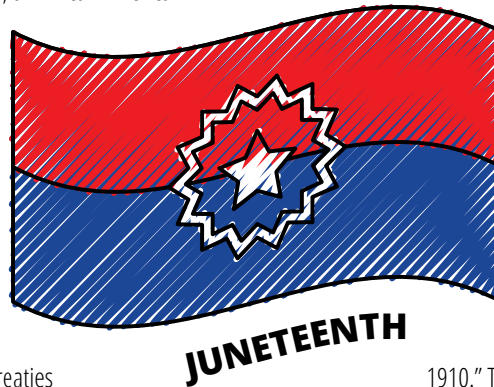
Malveaux noted that the wealth gap between an African American household and a white household today is "as wide as it was in

1910." The median white household is 10 times wealthier

than the median black household.

Today, many African Americans do not have equal access to medical care, cannot qualify for home mortgages because of biased bank lending policies, and don't get a quality education because neighborhood schools are often underfunded or in poor condition.

Dr. Allison admits that the process of paying reparations would be complex and challenging, but if the country was committed to making amends for its greatest sin, it has the power to do so. •



1. Do you support paying reparations for slavery? Explain your answer.
2. When righting a wrong, does it matter how long ago that wrong was committed? Why or why not?
3. Read the definition of "collective responsibility" in the glossary. Which events in U.S. history should our society hold a collective responsibility?

Informed Citizens are Better Citizens

Help the New Jersey State Bar Foundation Reach More People

Please follow the Bar Foundation on Social Media and invite your friends to like and follow us as well

@NJStateBarFdn can be found on the following platforms:



Perfect Jury CONTINUED FROM PAGE ONE

to is the fact that Flowers was put on trial six times for these crimes. Twice the result was a **mistrial** and four times the trial resulted in convictions that were later overturned by the Mississippi Supreme Court. It was the sixth trial in 2010, where Flowers was convicted and given a death sentence, which the U.S. Supreme Court examined.

In his opinion, Justice Kavanaugh noted that during the jury selection process in all six trials, Doug Evans, the Mississippi district attorney, used **peremptory challenges** to dismiss 41 of 42 African American jurors. In addition, Justice Kavanaugh said the prosecutor asked more questions of potential African American jurors than white jurors—an average of 29 for prospective black jurors and one to white jurors before they were accepted and seated on the jury. When Flowers was tried for the sixth time, the jury contained one African American and 11 white members.

Peremptory challenges and *Batson v. Kentucky*

The discussion surrounding cases involving possible bias in jury selection is centered on peremptory challenges. There are two types of challenges that attorneys can make when excluding a prospective juror from the jury. Attorneys can block or strike any juror for what is known as “cause.” That just means that there is something about the juror that would exempt them from service, such as he or she knows the defendant or cannot be objective in hearing the case for whatever reason. Challenges for cause are unlimited, but the attorney must explain to the judge the reason for the challenge.

Prosecutors and defense attorneys are also permitted what are known as peremptory challenges where they may exclude a potential juror without stating a reason. The number of peremptory challenges allowed in a criminal trial is limited and the number varies by state. For instance, in New Jersey the number depends on the seriousness of the crime but at most is 20 challenges for the defense and 12 for the prosecution.

The 1986 U.S. Supreme Court case of *Batson v. Kentucky* ruled that prosecutors could not use race as the basis for a peremptory challenge. In that case, James Kirkland Batson, an African American man, was convicted by an all-white jury in a Kentucky circuit court of burglary and receiving stolen goods. Lawyers for Batson claimed the prosecutor dismissed four African American jurors from the jury pool and in doing so violated the equal protection clause of the 14th Amendment and Batson’s right to an impartial jury. In a 7-2 decision, the Court sided with Batson.

“The state is not permitted to use its peremptory challenges to automatically exclude potential members of the jury because of their race,” the Court’s majority opinion stated. “The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude Black persons from juries undermine public confidence in the fairness of our system of justice.”

Under *Batson*, if one legal team believes the other is wrongly dismissing jurors based on race, it can file a motion requesting that the other side justify the dismissal. The prosecutor or the defense attorney can argue there was no racial bias in the jury selection process.



Despite the *Batson* doctrine, proving discriminatory intent in jury selection is hard to establish, Ronald Wright, a professor at Wake Forest University and a criminal law expert, explains.

“You have to prove the party was deciding on the basis of race,” Professor Wright says. In most instances, if the trial judge finds no *Batson* violation, the appellate court will likely uphold that ruling, he says.

“It’s a good thing they have a *Batson* doctrine and they enforce it dutifully,” Professor Wright notes.

“But if your job is to prove a particular person on a particular day showed racial bias, our judicial system is not designed to go very far with that test. It will always be exception rather than the rule.”

Jury stats in North Carolina

In 2011, Professor Wright and several of his colleagues compiled a study on jury selection practices in North Carolina. The report concluded prosecutors blocked twice as many African American jurors as white jurors—20 percent versus 10 percent, respectively. At the same time, judges dismissed 14 percent of African American jurors compared to 10 percent of white jurors. On the other hand, defense attorneys removed 22 percent of white jurors and 10 percent of African American jurors.

Professor Wright contends that publishing statistics like the ones his study uncovered helps in making judges and prosecutors accountable for jury selection decisions and promotes public discussion on the issue.

“You could say to a prosecutor, ‘how come your office is removing African American or **Latinx** jurors at twice the rate they’re removing white jurors?’” Professor Wright says. “We’re not asking if you had race on your mind at a particular trial, but over the course of an entire year why is the removal rate twice

as high for some races as for others? That is not a judicial challenge. You’re not going to court to change anything. You are raising an accountability question with the public.”

Another solution to end bias in jury selection, according to Professor Wright, would be to restrict the number of peremptory challenges allowed. Justice Thurgood Marshall, in a **concurring opinion** for *Batson v. Kentucky*, actually advocated for ending peremptory challenges, saying they don’t protect a defendant’s right to a fair trial.

Professor Wright admits that restricting or ending peremptory challenges would be difficult. Instead, he says education to combat racial bias is needed to ensure fairness in jury selection.

“Both judges and prosecutors ought to do some

CONTINUED ON PAGE EIGHT

Perfect Jury CONTINUED FROM PAGE SEVEN

training within their organizations,” Professor Wright says. “Not training to avoid *Batson* claims when you pick juries, but more affirmative training, such as what to look for if you are trying to include the entire community on juries.”

What about Curtis Flowers?

After the Supreme Court decision last June, Flowers was taken off death row. While the Court reversed his conviction, he is not free. In December 2019, he was released on bail, but still awaits word on whether the state of Mississippi will try him a seventh time.

In January 2020, District Attorney Doug Evans **recused** himself from the case and asked the circuit court to assign it to the Mississippi Attorney General’s

Office. At press time, that office had not made a decision on whether to move forward with a seventh trial, offer Flowers a plea deal or drop the charges against him.

The *Flowers v. Mississippi* decision prompted the NAACP Legal Defense Fund and the MacArthur Justice Center to file a class action lawsuit in November 2019 on behalf of potential African American jurors in Doug Evans’s jurisdiction. The suit

claims that since 1992, Evans and his assistants dismissed African American jurors at a rate that is 4.4 times greater than the dismissed rate for white jurors.

“The honor and privilege of jury service is a defining feature of what it means to be an American citizen,” the complaint says. “When state or local officials bar a citizen

from service because he or she is Black, that discriminatory act is no mere indignity. It is an assertion that the prospective juror is inferior—a second-class citizen who cannot be entrusted with the responsibilities of full citizenship.” •



1. Do you think race should factor into keeping a juror off a jury? Why or why not?
2. How would you feel if a jury made up of people that were not like you had the power to convict you of a crime?
3. Besides race, what other inequalities could potentially make a jury that is not reflective of a defendant’s peers?

Glossary

collective responsibility — sometimes known as “collective guilt.” It is a concept that individuals are responsible for the actions of others through tolerating, ignoring or harboring them, even if they do not actively participate in those actions. **concurring opinion** — a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons. **genocide** — the deliberate destruction of a racial, political or cultural group. **immunity** — exemption from criminal prosecution or legal liability. **internment** — to confine, especially in times of war. **Latinx** — the neutral alternative to Latino or Latina, meaning a person of Latin American descent. **majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **mistrial** — a trial that has been ended before its conclusion because of an error in procedure. **partisan** — someone who supports a particular political party or cause with great devotion. **peremptory challenge** — the right to challenge and remove a prospective juror without giving a reason. **recuse** — when a judge or prosecutor excuses oneself from participating in a case because of a conflict of interest or lack of impartiality. **regime** — a government. **reparations** — financial compensation. **reverse** — to void or change a decision by a lower court. **segregation** — the policy of separating people from society by race or social class. **statute** — legislation that has been signed into law. **upheld** — supported; kept the same. **vestiges** — leftovers; remainders.