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N.C. Supreme Court to Decide Whether to Finally Recognize Racial Discrimination in the Jury Box

RALEIGH, N.C. – Today, the North Carolina Supreme Court will hear oral arguments in the cases of two criminal defendants, Cory Bennett and Cedric Hobbs. In both cases the court must decide whether prosecutors illegally excluded black citizens from juries because of their race. If the court decides in the defendants' favor, it will be the first time in North Carolina's history that the high court has acknowledged race discrimination against jurors of color.

"These cases are about far more than these two defendants," said **Duke Law Professor James Coleman**, a scholar on race and the law who filed an amicus brief in both cases. "They're about whether North Carolina's high court will finally confront the problem of African Americans being systematically denied the right to wield power in our justice system. For too long, this discrimination has been an open secret, ignored at the highest levels of North Carolina's justice system. Now, our court has the chance to say that race discrimination in the jury box must end."

Two recent studies found that qualified black citizens in North Carolina are excluded from juries at more than twice the rate of white people, denying defendants the right to be judged by a fair cross section of their community. Research has also found that juries with two or more members of color deliberate longer, discuss a wider range of evidence, and are more accurate in their statements about cases, regardless of the defendant's race. And as recently as June of last year, U.S. Supreme Court Justice Brett Kavanaugh wrote an opinion in *Flowers v. Mississippi* warning that race discrimination in jury selection is a pressing problem that courts must address.

Despite this, a recent analysis revealed that North Carolina's high courts have failed to enforce the law established in *Batson v. Kentucky*, a 1986 U.S. Supreme Court decision that barred racially-motivated jury

exclusion. In the thirty years since *Batson*, more than a hundred North Carolina defendants have raised claims of race discrimination against jurors of color. Yet, the state's appellate courts have never upheld a single one of those claims.

“Now, the N.C. Supreme Court has a chance to make a clean break from this unfortunate track record, and chart a new path forward,” **Coleman** said. “There is no question that black citizens are unfairly excluded from jury service because of their race. The only question is whether the North Carolina courts will finally provide meaningful protection from this longstanding civil rights violation.”

North Carolina's appellate courts stand alone among southern states in failing to acknowledge this type of discrimination. Courts in every southern state, except North Carolina, have enforced the law against jury discrimination and overturned convictions because of racial discrimination against jurors of color. Alabama, for example, has had more than 80 appellate reversals because of racially-tainted jury selection.

The evidence in the cases now before the court mirrors what has been found in studies of broad patterns in North Carolina. In both trials, prosecutors used most or all of their strikes to remove black jurors. When asked to explain their strikes, prosecutors cited characteristics virtually identical to those of white jurors who were accepted. Bennett and Hobbs will get new trials if the court decides in their favor.

If the North Carolina Supreme Court finds race discrimination in these cases, it will join other state courts that have recently confronted the issue, such as Washington, Nevada and Connecticut. All have taken steps to end racial discrimination, including reversing convictions marred by racial bias, crafting new legal approaches, and appointing study commissions on jury discrimination.

Several national organizations, along with North Carolina civil rights leaders and advocacy groups, have filed “friend of the court” briefs urging the North Carolina Supreme Court to take action. These groups include Fair and Just Prosecution, the North Carolina NAACP, the North Carolina Advocates for Justice, the Charles Hamilton Houston Institute for Race and Justice, the Anti-Defamation League, Latino Justice and the Korematsu Center for Law and Equality.

“The exclusion of African Americans from the jury box is a fundamental civil rights problem rooted in our shared history of subjugation and segregation based on race,” said **Miriam Krinsky, a former federal prosecutor and Executive Director of Fair and Just Prosecution**. “It will take a concerted effort at every level of the justice system to solve this problem. Right now, the North Carolina Supreme Court has a chance to step up to the task, apply the law fairly, and send a message that North Carolina's tolerance of this injustice must end.”

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP's work, visit <http://www.fairandjustprosecution.org/> or follow us on Facebook [@FairAndJustProsecution](https://www.facebook.com/FairAndJustProsecution).

Center for Death Penalty Litigation is a non-profit law firm that provides direct representation to inmates on North Carolina's death row, as well as consulting with and training attorneys who practice capital litigation across the state. In addition to representing individual clients, CDPL spearheads litigation that addresses systemic injustices and educates the public about the death penalty. To learn more about CDPL's work visit <https://www.cdpl.org>.

Additional background information

State v. Cory Bennett was tried in 2016 in Sampson County, North Carolina, on charges of possession and trafficking of methamphetamines. Mr. Bennett was convicted and sentenced to a maximum of 13 years in prison. During jury selection, the prosecutor used only two peremptory strikes to remove jurors, both against African-Americans. When the defense lawyer objected that the strikes were racially motivated, the trial judge overruled the objection and did not even require the State to explain its reasons for the strikes. The trial judge instead questioned the defense lawyer about her strikes against, what the judge termed, “white Americans.” The N.C. Court of Appeals found no error, but the N.C. Supreme Court decided to review the case further, even though it was not required to do so.

State v. Cedric Hobbs was tried in 2014 in Cumberland County, North Carolina, on one charge of first-degree murder related to the armed robbery of a pawn shop. Mr. Hobbs was convicted. The State sought the death penalty, but the jury chose a sentence of life imprisonment. During jury selection, the prosecution used eight peremptory strikes to remove jurors, six of whom were black. When the defense lawyer objected, the prosecutor responded defensively that the objection “was somehow [saying] we’re just racists in this county.” The trial judge required the prosecutor to explain the reasons for striking the black jurors, but nonetheless overruled the defense. The N.C. Court of Appeals reviewed the case and found no error, but the N.C. Supreme Court granted discretionary review. The defense argues the State’s strikes were discriminatory because the prosecutor cited “race-neutral” traits that caused them to remove black jurors but accepted white jurors with the very same traits. A statistical study showed the prosecutor’s office in this county has a twenty-year track record of removing black jurors at twice the rate that they remove all other jurors. And the prosecutors in this case questioned black jurors very closely on certain issues but did not closely question white jurors who had the same characteristics.

Discrimination against jurors of color is a major problem in North Carolina. Studies show that North Carolina’s appellate courts have failed to police jury discrimination. Other studies show the effect of this failure: such discrimination is rampant in North Carolina’s trial courts. These studies are discussed in [an article](#) published in NACDL’s legal magazine, *The Champion*. That article also highlights efforts by several state supreme courts to address the problem. In addition, in December 2019, the Connecticut State Supreme Court [announced](#) a new Jury Selection Task Force, because “allow[ing] the systematic removal of minority jurors . . . create[s] a badge of inferiority, cheapening the value of the jury verdict.” It is time for North Carolina to take similar steps to enforce and update its own laws barring race discrimination in jury selection.

The briefs in the two cases, including amicus briefs, can be found [here](#).