BATSON V. KENTUCKY CHALLENGE
& SUBSEQUENT DECISIONS AS TO DISCRIMINATION IN THE SELECTION OF POTENTIAL JURORS BASED ON RACE, ETHNICITY OR SEX
476 U.S. 79 (1986)

A black man was charged for burglary and receipt of stolen goods. As part of the criminal procedure of the case, a Judge from the State Court conducted a *Voir dire*. During the *Voir dire*, 4 black individuals were eliminated as potential jurors by the prosecution in their peremptory challenges. The defense objected prior to the jury being sworn in as only white jurors remained and were selected, thus, was a violation of the Sixth and Fourteenth Amendment of the Constitution of the United States, Equal Protection of Laws. The District Judge ruled that "peremptory challenges authorize to 'strike anybody they want'".

The defense alleged that there was a "pattern of discrimination" in the exercise of the prosecution's peremptory challenges causing equal protection citing *Swain v. Alabama*, 380 U.S. 202 (1965). *See People v. Wheeler*, 22 Cal.3d 258, 148 Cal.Rptr. 890, 583 P.2d 748 (1978). *Commonwealth v. Soares*, 377 Mass. 461, 387 N.E.2d 499, cert. denied, 444 U.S. 881, 100 S.Ct. 170, 62 L.Ed.2d 110 (1979).

The *Swain* doctrine focused the claim for equal protection solely on the prosecutor's conduct. In this case, the movant defendant requested that Kentucky follow California and Massachusetts' cases as to rights under the Sixth Amendment and § 11 of the Kentucky Constitution. The Supreme Court of Kentucky decided to affirm the State Court's determination.

The Court granted certiorari to revisit the decision of *Swain* that stated "[s]tate's purposeful or deliberate denial to Negroes on account of race of participation as jurors in the administration of justice violates the Equal Protection Clause." 380 U.S., at 203-204, 85 S.Ct., at 826-27.

The Supreme Court initially laid the foundation of its doctrine as to the issue to the case of *Strauder v. West Virginia*, 100 U.S. 303 (1880), wherein the Court decided that black defendants were affected by equal protection of laws when the Court did not authorize members of the black race as jurors had been purposely excluded. The trial court decided that the defendant had no right to challenge as the "petit jury [was] composed in whole or in part of persons of his own race." Id. at 305.

The defendant has a right to be tried by a jury whose members are selected pursuant to a "non-discrimination criteria." *Martin v. Texas*, 200 U.S. 316 (1906). Further, in *Ex Part Virginia*, 100 U.S. 339. The equal protection clause guarantees the defendant that the state will not exclude members of his race from the jury venire on account of race. *Strauder*, *supra*, 100 U.S., at 305. Finally, in Norris v. Alabama, 294 U.S. 587 (1935), the Court held that the Court cannot rely on the false assumption that members of his race as a group are not qualified to serve as jurors. In *Strauder* the Court stated that "the very idea of a jury is a body composed of the peers or equals, neighbors, fellows, associates, persons having the same legal status in society."

In *Batson*, the Court recognizes that by denying a person participation in a jury service on account of defendant's race, the state unconstitutionally discriminated against the excluded juror. *Strauder* at 100 U.S. 308. After *Strauder*, the Supreme Court held in Ballard v. U.S., 392 U.S. 187 (1946), "selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice."

In *Batson v. Kentucky, Id.,* denial of equal protection where procedures implementing a neutral statute, excluded persons from the jury venire on racial grounds. Therefore, in *Batson*, the Court makes it clear that the constitution protects all forms of racial discrimination in selection of jurors. Purpose discrimination is defined under equal protection as to whether the defendant has met his burden of proving a purposeful discrimination on part of the State.

Race based exclusion was made applicable to potential race-based jurors in civil cases under the equal protection in Powers v. Ohio, 499 U.S. 400, 402 (1991). Also, in *Lugar v. Edmonson,* 457 U.S. 922 (1982) based on alleged discriminatory act without using 28 U.S.C. § 1871. See also Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1970).

In *Edmonson, supra,* the Court authorized for the 1st time a civil case wherein no state action occurred all under the 5th Amendment as to a constitutional violation of when a private party litigant in a civil case may use peremptory challenges to exclude jurors based on their race.

Finally, the *Batson v. Kentucky* challenge has broadened to include exercising peremptory challenges to exclude jurors on the basis of race, ethnicity and/or sex. *Rivera v. Illinois*, 556 U.S. 148 (2009)(holding that "[u]nder *Batson v. Kentucky* [], and later decisions building upon *Batson*, parties are constitutionally prohibited from exercising peremptory challenges to exclude jurors on the basis of race, ethnicity, or sex." [citations omitted]). *See also J.E.B. v. Alabama, ex rel., T.B.*, 511 U.S. 127 (1994)(holding the same normative as to gender, in a case relating to the exclusion of male jurors); *Mississippi University for Women v. Hogan,* 458 U.S. 718, 723 (1982)(gender based).

In conclusion, there is only one way to avoid the violation by having a "neutral explanation (norm)" to otherwise exclude the challenged juror.

LGBT
panel
(ADD)