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## Racial Justice Act hearing: Researcher suggests racial bias in selecting juries



Staff photo by Paul Woolverton [\[+\] click to enlarge](#)

Tufts University professor Sam Sommers testifies that people often make race-based decisions without realizing that racial factors influence their...

**By Paul Woolverton**  
 Staff writer

Despite laws and court cases dating back to the late 1800s, America and the South have a history of blocking blacks from serving on juries that persists today, civil

rights activist and criminal defense lawyer Bryan Stevenson testified at a Fayetteville murderer's Racial Justice Act hearing Thursday.

A Supreme Court decision from 1986, Batson vs. Kentucky, was intended to end the practice of racial bias in jury selection. It has been ineffective, Stevenson said.

The Batson ruling has been stymied by cultural inertia, he said, plus lawyers' distaste for accusing each other of racism, judges who don't effectively evaluate claims of racial bias and prosecutors who circumvent the rules in order to achieve tactical advantage in the courtroom.

"The history of African Americans serving on juries has been defined by resistance," Stevenson said.

Stevenson was testifying on behalf of convicted murderer Marcus Reymond Robinson, a black man who along with an accomplice killed a white Fayetteville teenager, Erik Tornblom, in a robbery in 1991. Robinson was sentenced to death, and the other defendant was sentenced to life in prison.

Now, Robinson is trying to use North Carolina's Racial Justice Act of 2009 to prove there was racism in the selection of his jury in Cumberland County 1994. If his lawyers can persuade that race was a factor in the prosecutors' decisions to peremptorily strike blacks from the jury pool, he can have his death sentence converted to life in prison. Thursday was the fourth day of his hearing, the first to proceed on its merits in the state.

Stevenson heads the Equal Justice Initiative, an Alabama-based nonprofit organization that studies inequities in the courts. He testified about several North Carolina cases where he thinks prosecutors attempted to remove or successfully removed potential jurors because they were black.

Cumberland County prosecutor Cal Colyer tried in cross examination to show Stevenson that the jurors in his examples may not have been excluded because of their race.

For example, in a 1991 Cumberland County murder trial for a man who raped and killed an 11-year-old girl, the prosecutor who wanted to excuse a black woman from serving on the jury was black, Colyer said, and she also was a court system employee who worked for the judge who was presiding over the trial.

The judge twice in that trial ruled that the prosecutor wrongly tried to use peremptory challenges to dismiss jurors on the basis of race.

Stevenson said that after the 1986 Batson ruling, most prosecutors looked for way to get around it. He cited documents from prosecutor training seminars on jury selection that listed race-neutral excuses for dismissing jurors, such as a juror's youth, his body language, tattoos, hairstyle or body language.

Cross examination of Stevenson is scheduled to continue at 9 a.m. today.

### **Unconscious racism**

In earlier testimony Thursday, Tufts University social psychologist Sam Sommers said race influences many of people's everyday decisions in how they interact with others around them, and often they aren't aware of it.

He called it unconscious racism or implicit racism.

Sommers said he and another researcher set up an experiment on racial bias in jury selection.

They had college students, law students and practicing lawyers act as prosecutors picking a jury. Each subject was presented with two potential jurors: Juror No. 1 was a married journalist, juror No. 2 was a divorced advertising executive.

Each subject was shown a photo purporting to be the juror.

For some, the executive was black and the journalist was white; for others, the photos were reversed.

The subjects dismissed the juror portrayed as black far more often than the juror depicted as white, Sommers said.

For example, the executive was dismissed 47 percent of the time when he was black, vs. 23 percent of the time when he was white.

The results indicate race was a factor in their decision-making, Sommers said. But when the subjects were asked why they struck the jurors, "they don't give any answers that actually hint to that influence of race that we observed."

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