In Our View: Blind Justice, but with Sight

Reduce racial bias in juries, but with eyes wide open to reality regarding prejudice

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The notion of a fair and impartial legal system is so essential to democracy that Lady Justice is frequently depicted wearing a blindfold. The idea is that application of the law must be blind to wealth, power, race, or any other characteristic that could unduly influence justice.

While this concept is a foundation of jurisprudence in the United States, it all too often is applied unevenly. Now, the state Supreme Court has taken steps to help ensure that courts live up to the principle that justice is, indeed, blind. In a ruling that will take effect at the end of the month, the court is seeking to reduce racial bias in jury selection.

Under our system of jurisprudence, lawyers for both sides in a case may interview prospective jurors and reject them without giving a reason. In a 1986 ruling (Batson v. Kentucky), the U.S. Supreme Court held that excluding jurors solely because of their race violated the Equal Protection Clause of the 14th Amendment. The new state ruling extends that protection in an effort to reduce bias in jury selection; challenges based on “implicit, institutional and unconscious” race and ethnic biases will not be allowed.

That creates a noble but unrealistic standard. "Unconscious" bias is difficult to define and impossible to legislate. Washington’s new rule specifically lists challenges that are presumed to not be race neutral and therefore are invalid: prior contact with police, expressing a distrust of police or the belief that police engage in racial profiling, living in a high-crime neighborhood, having a child outside of marriage, receiving welfare benefits, or speaking English as a second language. Rejecting a potential juror based upon those factors will not be allowed.

In the process, the state Supreme Court has reinforced numerous stereotypes and has intensified debate about the meaning of blind justice. The rule establishes a standard of whether an “objective observer” could view race or ethnicity as a factor in the use of a peremptory challenge to a juror, a standard that is open to wide interpretation — and abuse.

There is little question that biases, explicit and implicit, infect the legal system. In a 2013 opinion, Washington Supreme Court Justice Steven Gonzalez wrote: “The time has come to abolish peremptory challenges. The use of this procedure propagates racial discrimination, contributes to the historical and ongoing underrepresentation of minority groups on juries, imposes needless administrative and litigation costs, results in less effective juries, amplifies resource disparity in jury selection and mars the appearance of fairness in our justice system.”
That has an impact. Various studies have found that blacks are more likely to be struck from juries and that the racial makeup of a jury plays a role in the likelihood of conviction. In 2012, researchers from Duke University looked at more than 700 non-capital felony cases in two Florida counties and found that all-white jury pools convicted black defendants 16 percent more often than white defendants. A 2014 study from the University of Washington found that race influences a jury's decision to impose the death penalty. The systematic exclusion of minorities from juries belies the notion of blind justice.

Washington’s new rule regarding peremptory challenges is the nation’s first. While it is important to recognize and work against biases in the legal system, the guidelines employ overly broad strokes to deal with a nuanced issue. A legislative approach to the issue would allow for public input and public debate while likely better serving the people of Washington.