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Many commentators have criticized the enforcement of *Batson* in the appellate courts, but this article abjures the typical focus on lax reversal rules. Instead it notes the failure of the Supreme Court and commentators alike to address the question of how prosecutors and trial courts, acting in good faith, should decide jury selection issues. After considering the range of justifications offered for striking minority race jurors, the article proposes three rules for prosecutors and trial courts to use in determining which justifications are consistent with their ethical duty to uphold the Constitution.

BATSON FOR THE BENCH? REGULATING THE PEREMPTORY CHALLENGE OF JUDGES — *Nancy J. King* 509

This article considers the judicial peremptory challenge, the use of the challenge to replace judges because of their race, and the possible responses to such abuse. It collects past studies of the judicial challenge and cases involving race-based judicial challenges and argues that this problem is bound to increase as the bench becomes more diverse. The author examines the application of the *Batson* doctrine to judicial peremptory challenges. She concludes that the risk that litigants will abuse the challenge is a serious concern that should trouble those interested in expanding or preserving the challenge.

RACE AND THE VICTIM: AN EXAMINATION OF CAPITAL SENTENCING AND GUILT ATTRIBUTION STUDIES — *Cynthia K.Y. Lee* 533

In this article, Professor Cynthia Lee explores and comments upon social science research on the influence that the victim's race has on jurors in both capital and non-capital criminal cases. In the capital sentencing arena, the overwhelming majority of studies on race and the imposition of the death penalty indicate that the race of the victim is a significant factor linked to the imposition of the death penalty. Offenders alleged to have killed a White victim are more likely to receive a sentence of death than offenders alleged to have killed a Black victim. In non-capital cases, the existing research is not as clear. Studies examining race and guilt attribution prior to 1985

indicate that juror-victim racial similarity has a statistically significant effect on guilt attribution. Studies conducted after 1985 have reached the opposite conclusion. Professor Lee critiques the methodological design of both pre- and post-1985 studies and urges social scientists to conduct further research in this area.

OBJECTIVE TESTS AND SUBJECTIVE BIAS: SOME PROBLEMS OF DISCRIMINATORY INTENT IN THE CRIMINAL LAW *Andrew D. Leipold* 559

One of the problems that plagues the criminal law is the inability to root out raced-based decisionmaking by police, prosecutors, and juries. This article explores one of the sources of the problem: the difficulty of proving discriminatory intent in a system that increasingly relies on objective tests to evaluate the conduct of government actors. The article looks at several examples of how this inconsistency can leave race-based behavior undetected, then argues that there are relatively simple steps the government can take to offset at least some of these problems.

RACE AND SELECTIVE PROSECUTION: DISCOVERING THE PITFALLS OF *ARMSTRONG* *Richard H. McAdams* 605

In this article, Professor McAdams critiques the Supreme Court's decision in *United States v. Armstrong*. *Armstrong* held that a trial judge may not grant a defendant discovery on a selective prosecution claim based on evidence that most or all of those charged with a crime belong to one race, but that the defendant must also provide "some evidence" that the government failed to prosecute similarly situated offenders of another race. Professor McAdams contends that the Court overestimates the ability of defendants who are targeted on account of race to meet this standard and that the Court fails to create an appropriate test because it does not discuss more generally what facts are necessary to suggest that race and the decision to prosecute are correlated. Finally, Professor McAdams considers and rejects certain criticisms of selective prosecution doctrine that might be said to justify the *Armstrong* rule.

PLACE AND CRIME *Tracey L. Meares* 669

Building on a sociological conception of crime as a consequence of the disruption of community-level social organization processes, Professor Meares asserts that the opposing sides in the current debate over law enforcement—one side calling for more "law and order," the other for racial redistribution of law enforcement outcomes—get it only half-right. While inner city communities need effective law enforcement to maintain the order and stability necessary for effective social control, excessive punishment of inner city residents who break the law—in particular, the wholesale imprisonment of non-violent offenders who are deeply connected to those typically considered "law-abiding" in the community—undermines the legitimacy of government in the eyes of inner city residents and disrupts the promulgation and transmission of law-abiding norms. Drawing on the law and social sciences, Professor Meares crafts a theory of effective law enforcement that draws on what is right about each approach. This new theory harnesses the potential of police work to reinforce, rather than undermine, social organization in inner city communities.

STUDENT NOTES AND COMMENTS

KNAPP V. NORTHWESTERN UNIVERSITY: THE SEVENTH CIRCUIT SLAM DUNKS THE RIGHTS OF THE DISABLED *Peter M. Spingola* 709

After recruiting Nicholas Knapp to play intercollegiate basketball, Northwestern University disqualified him from active participation in the Wildcat basketball program because of a heart abnormality school officials perceived Knapp to have. A federal district court concluded that Northwestern's exclusion decision violated the