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Ban on Using Nationality to Exclude Jurors Is Upheld

By **SAM ROBERTS**

A federal judge has affirmed that allowing American-born blacks on a Bronx jury but systematically excluding West Indians is discriminatory.

Affirming a magistrate's ruling, the judge concluded last week that prosecutors cannot exclude prospective jurors solely on the basis of their national origin.

The decision, in the Southern District of New York, came in the case of Mark Watson, a Jamaican-born man who is serving 37 ½ to 75 years in prison after his conviction in 2000 for rape, sodomy and burglary.

Judge William H. Pauley III's decision did not find that the Bronx district attorney had specifically discriminated against West Indians. But if prosecutors cannot prove in a hearing that four Jamaicans and one Trinidadian were excluded for reasons other than national origin, Mr. Watson could receive a new trial.

As much as the ruling further defines the role that race, ethnicity and gender can legally play in jury selection, it also speaks to the city's evolving diversity. More than one in three blacks are foreign-born, mostly from the Caribbean. More people of West Indian ancestry live in New York than in any other city outside the West Indies.

Mr. Watson's challenge was filed in 2005 by Michael C. Taglieri, an appellate lawyer for the [Legal Aid Society](#).

The United States Supreme Court has held that blacks, like other groups, cannot be systematically excluded from a jury solely because of their race, and that peremptory challenges, which require no stated explanation, can be exercised by the prosecution only "to secure a fair and impartial jury."

Steven Reed, a spokesman for the Bronx district attorney, declined to comment on Tuesday about the latest ruling. A year ago, when the magistrate's decision was handed down, he said: "It is not now, nor has it ever been, our policy to discriminate against, or condone discrimination against, West Indians or any other group."

Whether the inclusion of West Indians on the jury would have affected the verdict in 2000 is arguable. Even among West Indians, differences depend on "generation, education, when people migrated and their social origins in the Caribbean," said Donald Keith Robotham, an anthropology professor at the [City University of New York](#) Graduate Center. He added that in general, though, "West Indians traditionally tend to have a rather stern Protestant morality, which would have powerfully negative views of rape and especially sodomy, feelings of solidarity notwithstanding."

Mr. Taglieri said prosecutors "were deliberately trying to pick a biased jury, so I wouldn't automatically conclude that my client would lose before a fair jury."

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