Conne

84-6263 BATSON v. KENTUCKY

Argued 12/11/85

Niehaus (Petr)

SOC commented she could see no basis for a 6th amend. ~~do~~ claim. Best basis would be E/P clause.

Consider our cases require only that the venire be representative. (See Taylor v. La., 419 U.S. 522, 538

BRW wrote Swain

Agree that because of size of petite jury, ~~prosecutor~~ ~~from~~ it cannot be representative of the community.

See BRW's question as to a black Δ striking all whites. JPS noted there is no state action where the Δ ~~strikes~~ strikes jurors.

In Swain

J. Goldberg's dissent, joined by C.J. Warren & J. Douglas, agreed that it was necessary to ~~show~~ show "systematic exclusion" – not on case by case basis. See Swain 380 U.S. 202, 244.-245.

(See next page)

Pearson (Asst AG of Ky – a black)

Argues must be systematic exclusion.

BRW said Swain would ~~mean~~ not ~~permit a prosecutor to~~ apply if a prosecutor stated at trial that he didn't like blacks & ~~wouldn't~~ think they could be fair. (I could agree with BRW, but his ~~hy~~ statement is unrealistic – no prosecutor is likely to make such a statement.)

Wallace (SG – 10 minutes)

Swain is an E/P case, & is consistent with the jurisprudence of this Court.

Fed Rules of Crim. Procedure allow preemptory challenges.

Answering SOC, Wallace said Swain is consistent with 6th amend as well as E/P clause.