

Where Do We Go from Here?

By Eddie L. Holiday III



My name is Eddie L. Holiday III. My family is made of public servants. My father, Eddie Lee Holiday II, served as an avionics navigations systems technician for the United States Air Force. My grandfather, Eddie Lee Holiday, served as a drill sergeant in the United States Army in the 1950s, primarily in Louisiana and Texas. My grandfather served his country during the Jim Crow era and experienced the abuse of power by federal, state, and local officials. Even though my grandfather suffered physical beatings and demeaning insults by police officers, he continued to serve his country, as he believed that through hard work and perseverance, his country would recognize the humanity of its fellow African American citizens. We, as a nation, are still working toward that goal.

Unlike my father and grandfather, I never served in the military. Instead, I attended college and earned my undergraduate degree from *the best* historically Black university, Howard University. I continued my matriculation at the prominent Howard University School of Law. I chose Howard University School of Law because it is the home of my legal heroes: Charles Hamilton Houston—known as “the man who killed Jim Crow”—and the Honorable Supreme Court Justice Thurgood Marshall. Charles Hamilton Houston once said, “a lawyer is either a social engineer or a parasite on society.” His mentee, Justice Marshall, said, “the practice of law should serve as a tool for creating equality in society.” I took those wise words to heart, thought back on my family’s legacy, and made the decision to begin my legal career as a public servant. To that end, I left Washington, D.C., and travelled to Miami, Florida, to become an assistant state attorney in the country’s fourth largest prosecuting office.

While I was a prosecutor, I had the opportunity to take and defend countless depositions and first-chair over two dozen bench trials and over 50 jury trials to verdict. Near the end of my time at the Miami-Dade Office of the State Attorney, I assisted the trial team that prosecuted the police-involved shooting of Mr. Charles Kinsey. Mr. Kinsey was an unarmed African-American mental therapist who was assisting a patient with severe autism when he was shot in the leg by a police officer in North Miami. After a

hung jury, the second trial resulted in the jury finding the officer guilty of culpable negligence.

As I made the transition from criminal to civil, I continued to follow the criminal proceedings of other police-involved shootings across the county. I realized not only how difficult it is to charge police officers, but also that the verdict in Mr. Kinsey’s shooting was an anomaly. While police shootings and other forms of police misconduct against unarmed minorities are beginning to lead to more filed charges, the charges are not leading to convictions. Between 2005 and 2017, 80 officers had been arrested on murder or manslaughter charges for on-duty shootings; and during that 12-year span only 35 percent were convicted. Of course, each trial has its own unique set of facts, but the jury pools are hardly a reflection of their communities with respect to race. I don’t admit to having all the answers, but I do have one question for the legal community, “Where do we go from here?”

The reason I ask, “Where do we go from here?” is because the United States has a long history of conscious racial discrimination by lawyers in the jury selection process. It has been over 140 years since the Supreme Court ruled that excluding African Americans from the jury selection process is a violation of the Equal Protection Clause of the 14th Amendment. *See Strauder v. West Virginia*, 100 U.S. 303 (1879); *Batson v. Kentucky*, 476 U.S. 79 (1986) (extending to peremptory challenges by prosecutors); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991) (extending to peremptory challenges in civil matters). Even to this day, there are lawyers who attempt to remove jurors because of the color of their skin and not because they are unable to assess fairly the facts of a given case.

The reason I ask, “Where do we go from here?” is because even without the use of peremptory challenges to remove potential African-American jurors, the current federal and state systems effectively exclude a sizeable portion of the African-American population. For instance, Florida state courts select jurors based on DMV records, such as a driver’s license or identification card. African Americans who do not have an identification card or a driver’s license—because they do not own a car—will simply never have the opportunity to serve on a jury. The federal system is equally at fault. At the federal level, courts ran-

domly select jurors from voter lists and sometimes drivers lists. African Americans who are not registered to vote because they do not have a driver's license or identification card are likewise excluded from serving on a federal jury.

The reason I ask, "Where do we go from here?" is because we must find a way to ensure that murder trials and potential civil cases on behalf of victims like George Floyd are comprised of jurors who truly reflect the communities of the defendant officers and the victims. Should the United States Supreme Court revisit portions of its *Virginia v. Rives*, 100 U.S. 313 (1879), decision regarding all-white juries? Should the court system develop a means of summoning potential jurors other than voter and DMV records? Should convicted felons be able to have their civil rights immediately restored upon successfully paying their debts to society?

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Eddie L. Holiday III is an associate in the Miami office of **Bowman and Brooke LLP**. Mr. Holiday's practice includes various aspects of complex civil litigation in state and federal courts. Recognized as a "Rising Star 40 Under 40" in the *Daily Business Review* and "Top 40 Under 40 in Florida" by the National Black Lawyers Top 100, his practice consists of representing Global 500 clients with a focus on defenses premises and product liability claims. He is on the board of directors for the League of Prosecutors, fundraising chair for the National Association of Black Prosecutors - South Florida Chapter, and Young Lawyers Liaison for the DRI Diversity and Inclusion Committee.