



2021-015 k

DIVISION OF PUBLIC DEFENDER SERVICES
State of Connecticut

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December 6, 2021

Attorney Joseph Del Ciampo
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Superior Court Rules Committee
100 Washington Street, 3rd Floor
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Dear Attorney Del Ciampo:

I write in support of proposed new **Rule 2021-015** relating to the use of peremptory challenges in jury selection. As a member of the Jury Selection Task Force and the Implicit Bias in the Jury Selection Process and Batson Challenges, I had the privilege of participating in the crafting of the proposal and the subsequent debate over its contents. The proposed new rule on Jury Selection represents an important step towards providing litigants in Connecticut with juries that represent the diversity of thought and backgrounds present in our communities.

The new rule seeks to address situations where the State's proffered "race neutral" reason for a peremptory challenge cannot be separated from race, regardless of the prosecutor's stated intention. In these instances, the impact of the proffered "race neutral" reasoning has a chilling impact on a party's ability to seat jurors of color. This proposed rule is consistent with *Batson v. Kentucky*, 476 U.S. 79 (1986) where the Court acknowledged that "purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure."

Caselaw contains guidance but no specific definition of what "purposeful discrimination" entails, however, a challenge or pattern of challenges that creates a condition where venirepersons are struck because of characteristics related to race, can also be

forbidden by the Equal Protection Clause. “The core guarantee of equal protection, ensuring citizens that their State will not discriminate on account of race, would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the jurors' race”. Batson v. Kentucky at page 98.

The new Rule allows the court to recognize that assumptions based on race and racial bias can be so inherently intertwined with a peremptory challenge that it violates a litigant’s right to equal protection of the law. For example, current application of the Batson factors allows the use of a peremptory challenge based on a prospective juror’s opinion of the police.

Communities of color, particularly Black communities, have experienced generations of systemic disadvantage, including a history of negative experience with law enforcement. A Black American’s view of the police will be impacted by their exposure to over-policed neighborhoods, violence and disparate enforcement of laws based on race. Their experience may disproportionately lead people of color to believe that their family members and neighbors are treated harshly by the criminal legal system. There is data from Connecticut to support their beliefs. Years of studies on traffic stops show that Black and Latino individuals are more likely to be arrested¹. Other studies indicate that people of color are disproportionately represented in our criminal legal system². Prosecutors will offer a juror’s negative experience with law enforcement or skeptical opinion of the criminal legal system as race neutral reasons to challenge a juror of color. The effect of this has been to limit the seating of jurors of color who because of their life experience are more likely to have had negative interaction and thus negative opinions of law enforcement and the criminal legal system.

The proposed new Rule will allow the Court to consider these, and other race-related factors, when determining if peremptory challenge is based on a venire person’s race. This is an important step towards giving each litigant access to a fair and impartial jury of their peers. Adoption of this proposed Rule will also increase the public’s confidence in the fairness of our criminal process and will ensure that people of color are not unduly excluded from serving on Connecticut juries. I urge the Rules Committee to favorably consider adoption of this new Rule.

¹ University of Connecticut (formerly CCSU) Institute for Municipal Research and Policy, Traffic Stop Analysis and Findings, 2013-2018

² Division of Criminal Justice Report to Criminal Justice Policy Advisory Committee, September 2021.
<https://portal.ct.gov/-/media/DCJ/2DCJ-CJPAC-Presentation-September-2021.pdf>

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Very truly yours,


Christine Perra Rapillo
Chief Public Defender

CPR