

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, May 01, 2017 8:54 AM
To: Tracy, Mary
Subject: FW: GR 36 comment

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From: Jon Walker [mailto:jwalker@marysvillewa.gov]
Sent: Sunday, April 30, 2017 1:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: GR 36 comment

I am writing to oppose the revisions to GR 36 proposed by the ACLU. My comments are personal and my client has not taken any position on this issue.

Batson works. Any competent attorney considers *Batson* in exercising a peremptory challenge. In *Saintcalle*, the Court -- rather shockingly -- just assumes that discrimination "almost certainly exists" in the exercise of peremptory challenges by Washington lawyers. *State v. Saintcalle*, 178 Wn.2d 34, 46, 309 P.3d 326, 335 (2013). The Court bases this on studies from Philadelphia and Washington, D.C. and because trial courts have not been reversed in denying *Batson* challenges.

Philadelphia and Washington, D.C. do not remotely mirror the demographics in any Washington jurisdiction. Consequently, these studies cannot help us draw conclusions about Washington state and their severe limitations should have been recognized by the Supreme Court in *Saintcalle*. Studies that lack validity should not be used to change our court rules.

Trial courts and the lawyers that serve in them take their responsibilities as courts and officers of the court very seriously. So it is not surprising that trial courts have not been reversed in denying *Batson* challenges. Lawyers are very careful -- in light of *Batson* -- to use peremptories responsibly. It is disappointing that our Supreme Court sees this as evidence of bias rather than evidence that lawyers in this state do a good job.

Peremptory challenges play an important role in reaching just results in trials. I used a peremptory to strike a juror who would not shut up in voir dire. He would have driven the other jurors crazy in the jury room, so I struck him because I believed he very significantly increased my chances of a hung jury. When I talked to the jurors after the trial, they were grateful that individual had been struck. He was white, but under the proposed rule I could not utilize that peremptory on an African American juror in the same circumstances because the risk of reversal would be too high. I also used a peremptory on an African American woman in a case where the defendant was African American. The judge would not strike her for cause despite the fact that she had engaged in a near riot in another courtroom a few weeks before when a family member was convicted of armed robbery. If she had remained on the jury, the State would not have received a fair trial and it would have been a hung jury.

The proposed rule is far too broad, with race needing to be only a "factor" in the decision to strike. Any attorney will consider race as a factor in deciding whether to exercise a peremptory because attorneys are required to do so under *Batson*.

The Court should trust attorneys in this state to act professionally and represent their clients vigorously within the confines of the rules of professional conduct. It's already a violation of RPC 8.4(g) and (h) to utilize peremptories for discriminatory purposes.

If the Court believes that there are not enough minority jurors serving on our state's juries, it should use its energies to reform the way all jurors are treated. Juror pay is embarrassing and has not increased in decades. Increasing the daily pay based on inflation would recognize the hardships faced by many jurors. Mandating the way in which local courts call jurors is also ripe for reform. Some jurisdictions keep citizens called for jury duty on call for an extended period of time. Jurors should be called in for one day and be placed in a venire. If they are selected they serve and if not, they are released. Finally, local courts should be required to provide parking or transit to those on jury duty (and the juror able to select which works for him or her). Jurors should not have an additional headache of searching for parking or paying bus fare to serve.

Thank you for considering these comments.

Jon Walker
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