



SUPREME COURT OF CALIFORNIA

350 McAllister Street
San Francisco, CA 94102

In *People v. Wheeler* (1978) 22 Cal.3d 258, this court held that racial discrimination in the exercise of peremptory challenges is unconstitutional — a conclusion subsequently embraced by the United States Supreme Court in *Batson v. Kentucky* (1986) 476 U.S. 79. Racial discrimination in the selection of jurors, *Batson* said, “harms not only the accused whose life or liberty they are summoned to try,” but also “the excluded juror” who is denied an important opportunity to participate in civic life, as well as “the entire community” upon whose confidence the fairness of our justice system depends. This principle, which also applies to civil cases and extends to other forms of invidious discrimination, has been repeatedly affirmed by the high court and this court.

For more than 30 years, courts have applied the legal framework set forth in *Batson/Wheeler* for ferreting out impermissible discrimination in the use of peremptory challenges. In recent years, some states have adopted or begun to consider additional measures designed to address perceived shortcomings in the practical application of the *Batson* framework and to better ensure that juries represent a cross-section of their communities. Today we join this dialogue with the creation of the California Jury Selection Work Group.

The purpose of this work group is to undertake a thoughtful, inclusive study of how *Batson/Wheeler* operates in practice in California and whether modifications or additional measures are warranted to address impermissible discrimination against cognizable groups in jury selection. Key questions include but are not limited to the following:

- In light of the goal of eliminating improper discrimination in jury selection, does a purposeful discrimination standard impose an appropriate burden on litigants who attempt to show that a peremptory challenge was motivated by improper considerations or on advocates called upon to explain the basis for their peremptory challenges? What are the pros and cons of possible alternatives?
- To what extent does unconscious bias affect the jury selection process? Can this unconscious bias be effectively addressed in jury selection, and if so, how?

- Does allowing peremptory challenges based on a prospective juror's negative experiences or views of law enforcement or the justice system result in disproportionate exclusion of jurors of certain backgrounds? Does accepting other facially neutral grounds for peremptory challenges have such an effect? If so, how if at all should these practices be addressed?
- Do current standards of appellate review of peremptory challenges in California adequately serve the goals of *Batson/Wheeler* jurisprudence?
- Are there other impediments to eliminating impermissible discrimination in jury selection and better ensuring that juries represent a cross-section of their communities? If so, how can these impediments be addressed?
- What kinds of training or guidance would assist advocates and judges in promoting fairness in this area and in making a record that facilitates sound appellate review?
- Should the standard jury instructions that address bias be modified or supplemented to provide more guidance to jurors in addressing bias during the deliberation process?

In the coming weeks, the Chief Justice will appoint a diverse work group of stakeholders from across the state — including judges, prosecutors, defense counsel, and other practitioners in criminal and civil litigation — to study these questions through an inclusive process with opportunities for public input and participation.