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## *Connecticut Supreme Court Jury Taskforce*

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In light of the systemic concerns identified by the CT Supreme Court in *State of Connecticut v. Evan Jaron Holmes* (SC20048), regarding the failure of Batson to address the effects of implicit bias and the disparate impact that certain race neutral explanations for peremptory challenges have on minority jurors, the Connecticut Supreme Court announced that it would convene a Jury Selection Task Force (herein after “Task Force”) to study the following:

- ❖ Racial discrimination in the selection of juries;
- ❖ To consider measures intended to promote the selection of diverse jury panels; and
- ❖ To propose necessary changes to the jury selection process in Connecticut, to be implemented by court rule or legislation.

The expertise of Connecticut’s Jury Administration, past and current practices, as well as the work of other states, shall inform the work of the Task Force and provide guidance throughout. The Task Force chairs shall submit a written report to the Chief Justice with its findings, prioritized recommendations for immediate action, and long-term recommendations for future improvements to Connecticut’s jury process.

In support of the work of the Task Force, the following subcommittees shall be established:

- ❖ Data, Statutes & Rules
- ❖ Juror Summoning Process
- ❖ Implicit Bias in the Jury Selection Process and *Batson* Challenges
- ❖ Juror Outreach & Education

### **Data, Statutes & Rules**

This subcommittee will undertake a review of relevant statutory authority, including, but not limited to 51-232(c), and Practice Book rules, if applicable, that govern the confirmation form and juror questionnaire provided to prospective jurors, to determine if revisions to the confirmation form and/or questionnaire should be made in support of the Task Force charge.

As part of the review of the CT General Statutes and Practice Book rules, the subcommittee shall consider the feasibility of collecting juror demographic information. Currently, no demographic information is collected on jurors, and there is no way to determine the race of individuals that are actually appearing for jury service. The type and nature of juror demographic information will need to be discussed, taking into consideration the very limited information collected pursuant to 51-232(c) on the juror questionnaire. The Task Force should also examine, whether revisions through the legislative process to the type and nature of the juror demographic information sought, should be proposed. The subcommittee shall undertake an exhaustive review of the data collection practices in other states.

## Juror Summoning Process

This subcommittee will undertake a review of the current process by which we summon jurors in Connecticut in order to ensure that venires are drawn from a fair cross section of the community that is representative of its diversity. This review shall include a study of relevant statutory authority including but not limited to qualifications of jurors as defined in 51-217(a), the summoning of jurors pursuant to 51-222a , and a review of the process used for gathering the source lists in preparation of the master file in accordance with 51-222a. Further, this review shall include a study of the available data. The subcommittee shall further study the source lists from which jurors are summoned in Connecticut and elsewhere, and also a review of the existing body of work on how other states summon jurors to ensure representative and diverse jury panels. Why are minorities so underrepresented on jury panels? What are the factors that prevent jurors from serving? Factors like economic hardships, such as employment, child care, transportation, and other more personal factors such as physical or mental disabilities and Limited English Proficiency (LEP) may adversely impact our jury pool in Connecticut.

## Implicit Bias in the Jury Selection Process and Batson Challenges

This subcommittee will study the extensive body of work relating to implicit bias and its impact on the jury selection process. Implicit bias is everywhere and it exists both inside and outside the jury box. How does implicit bias impact our jury selection process and ultimately the jurors who are empaneled?

The subcommittee will examine how the court can play a role in addressing implicit bias through the use of peremptory challenges and the creation of model jury instructions

In the discussion of peremptory challenges, the subcommittee should consider how their use may contribute to imbedding implicit bias in the jury selection process. Should peremptory challenges be eliminated or at least severely limited? Should jurors instead be “conditionally stricken” and their status revisited at the conclusion of the voir dire process? Through the study of practices in other states, the subcommittee shall give consideration to the feasibility and impact of judges presiding over the civil jury selection process and what impact their presence may have on the use of peremptory challenges.

When it comes to Batson challenges, most judges are loathe to make a finding of purposeful discrimination in concluding that the attorney in question has acted unethically and has willfully violated a potential juror’s constitutional rights. Further, the reputation, and integrity of the attorney may be called into question under the prongs of Batson, resulting in a referral to statewide bar counsel. This subcommittee will study all standards under Batson and whether the Batson rule should be divorced from the court’s requirement to find purposeful discrimination in upholding a Batson challenge.

Further, this subcommittee should examine whether in practice, Batson serves to contribute to the implicit bias and discrimination it seeks to overcome. Does Batson in fact encourage the voir dire process to look the other way and ignore the very issues of race, stereotype and discrimination it is designed to guard against? Consider, *“The current Batson rule constitutes a placebo that purports to solve the problem of discrimination by juries but really focuses only on purported discrimination against jurors. Not only does it fail to address the real issues, it also actively distracts from them. The Batson rule represents the culmination of the [United States] Supreme Court’s desire to solve the intractable and unconscionable*

*problem of racism in our criminal justice system by ordering everyone in the courtroom to ignore it.”* T. Tetlow, *supra*, 56 Wm. & Mary L. Rev. 1946 The subcommittee will examine in detail, the relationship between Batson and implicit bias and make recommendations for sweeping and systemic changes to the jury selection process through a variety of remedies, including the legislative process and statutory revisions.

In developing model jury instructions, the subcommittee shall conduct focus groups with stakeholders to be identified, to determine how the model jury instructions can be drafted to educate jurors about implicit bias and how to avoid it in their deliberations.

## Juror Outreach & Education

This subcommittee will review the current Jury Outreach Program, study jury related public service campaigns from other states, look at the feasibility of partnering with community organizations from minority communities, and study whether there is a role that community colleges and universities can play in educating our citizens about jury service. In addition the subcommittee will identify resources needed for an outreach program that specifically targets minority communities.

Jury Outreach & Education continues to be an important component of the jury process. Misinformation and negative perceptions of the criminal justice system can impact whether or not an individual will show up for jury service, particularly individuals from minority populations and those with LEP. As it is written, the statute requires that an individual summoned for jury service must be able to speak and understand English to serve on a jury. This subcommittee should explore whether this statutory provision warrants revision and how the availability of court interpreters in the voir dire and trial process might impact the diversity of potential jurors who appear for jury service.