



## MINNESOTA JUDICIAL TRAINING UPDATE



### JURY SELECTION “BATSON” CHALLENGE

**QUESTION: You’re In The Middle Of Jury Selection When One Party Raises A “Batson” Challenge. What Three-Step Analysis Must You Follow To Properly Rule On The Challenge? Does “Batson” Prohibit Both Racial and Gender Discrimination?**

**THE BATSON RULE:** Neither the state nor the defendant may make peremptory strikes on the basis of race or gender.

- Purported racial or gender discrimination in jury selection violates defendants' and jurors' right to equal protection of the laws. [Batson v. Kentucky](#), 476 U.S. 79 (1986); *F.E.B. v. Alabama*, 511 U.S. 127, 123-31 (1994); *State v. Brittany Michele Seaver*, 820 N.W.2d 627 (Minn.App.2012).

**Caution – Reversible Error:** If the District Court erroneously denies a defendant’s “Batson” challenge, defendant is automatically entitled to a new trial. Although Federal law does not require automatic reversal, the Minnesota Supreme Court has adopted a more restrictive rule mandating “automatic reversal”. *State v. Campbell*, 772 N.W.2d 858 (Mn App. 2009).

**THREE STEP ANALYSES:** In [Batson](#), the Supreme Court established a three-step process to analyze whether a peremptory strike was racially or gender motivated. See also [Minn. R.Crim. P. 26.02, Subd. 7](#).

- 1) **FIRST:** The objecting party must establish a prima facie case of purposeful discrimination (based on totality of relevant facts) showing that a member of a racial or gender group has been peremptorily excluded from the jury and that the circumstances of the case raise an inference that the exclusion was based on race or gender.
  
- 2) **SECOND:** If the party objecting to the strike establishes a prima facie case, then the proponent of the strike has the burden of articulating a race or gender-neutral reason for the exercise of the peremptory strike.
  - The explanation given need not be “persuasive or even plausible” and that absent an inherent discriminatory intent it will be considered race-neutral. The focus of the inquiry is on the facial validity of the explanation.
    - For example: Juror appeared less engaged; not receptive to questions; appeared to favor the state and/or the defense; juror’s hesitancy; relative’s involvement in law enforcement; preoccupation and anxiety about possible job loss and finances; lack of education; demeanor and tone; reluctance to sit in judgment, were all race or gender neutral reasons.
  
- 3) **THIRD:** The Court must determine whether the opponent of the strike has proven purposeful discrimination. This requires the objecting party to show both that the race-neutral reason was pre-textual and that the real reason for the strike was the prospective juror's race or gender.
  - i) One way to show purposeful discrimination is to show that a party’s proffered reason for striking a prospective juror (of one race or gender) applies equally to a similar prospective juror of a different race or gender who is permitted to serve.
  - ii) Sometimes the best evidence of the intent of the attorney exercising a strike is that attorney's demeanor. The Court’s disbelief of a race or gender-neutral reason put forward by the striking party might build upon the facts establishing the prima facie case to convince the Court that intentional discrimination has occurred.
  - iii) **Note on Juror Demeanor:** Where the explanation for a peremptory challenge is based on a prospective juror's demeanor, the judge should take into account, among other things, any observations of the juror that the judge was able to make during the voir dire; however, a demeanor-based explanation need not be rejected if the judge did not personally observe or cannot recall the juror's demeanor. *Thaler v. Haynes, 1305 S.Ct. 1171 (2010).*