

Nine of the ten members of Yavapai County Superior Court bench submit this comment in support of Petition R-21-0020.¹ This Petition asks the Arizona Supreme Court to eliminate peremptory challenges during jury selection in civil and criminal cases. The basis for the original petition focuses primarily on the racial injustice inspiring the modern form of peremptory challenges and their historic abuse. This misuse of peremptory strikes has required court intervention in attempting to correct these wrongs. (*See, Batson v. Kentucky*, 476 U.S. 79 (1986)). *Batson* and its progeny have been difficult for the courts to enforce and often leads to accusations of racial animus against lawyers. This alone supports ending these strikes. However, in conjunction with the problems outlined above, nearly unanimously, the Judges of the Yavapai County Superior Court would like to suggest there are additional pragmatic and significant benefits created by eliminating the use of peremptory strikes.

In response to the outbreak of COVID-19, the Yavapai County Superior Court was required to suspend all jury trials in March of 2020. Yavapai County, using mitigation efforts, was able to resume jury trials in criminal cases in July. However, we remain unable to conduct civil jury trials. The main mitigation strategy used by the Court to restart our criminal trials addresses limiting the number of jurors present in the Courthouse at any given time.

Ordinarily, the Rules of Criminal Procedure allow each side in a criminal case six peremptory strikes. In order to seat an eight-person jury with two alternates the Court must qualify at least 22 jurors. For a twelve-person jury that number is 26. These numbers require the jury commissioner to summons between 65-95 citizens in order to ensure there are enough potential jurors to meet this 22/26 requirement. Practically speaking, the use of peremptory challenges requires the jury commissioner to summons 3 times the number of needed jurors and the court to qualify 2 times the needed jurors. This over inflation is unnecessary and has consequences.

¹ The Judges and Pro Tems signing on to this Comment are: John Napper Presiding Judge Yavapai County Superior Court (Div. II), Michael McGill (Div. I), Tina Ainley (Div. III), Krista Carman (Div. IV), Cele Hancock Presiding Family Law Judge (Div. V), Anna Young Juvenile Presiding Judge (Div. VI), Debra Phelan (Div. PTA), Linda Wallace (Div. PTB), Joseph Goldstein (Div. FLC). Judge Michael Bluff (Div. VII) strongly objections to any attempt to eliminate peremptory challenges. Judge Bluff handles a majority of the criminal trials in the Verde Valley Judicial District.

Throughout the pandemic, other than death penalty cases, the Arizona Supreme Court has severely limited the number of peremptory challenges. Currently, each side has two challenges. So, in order to seat 10 jurors we only need 14 and to seat 14 jurors we need 18.

In Yavapai County, we have employed the use of a jury questionnaire in every criminal case. The use of this questionnaire allows us to eliminate jurors who cannot serve (hardship/cause) early in the process. These jurors are often not required to come to the Courthouse.

The remaining jurors are called into the courthouse in panels. These panels ordinarily number between 15-25 jurors. Using the current limited number of peremptory challenges, we are often able to seat a jury using only the first panel arriving at the courthouse. Further, the time needed to select a jury has dropped significantly. Several of our juries have been selected within an hour.

Currently, we are often able to select a jury and only significantly impact the lives of a single panel of 15-25 people. This impact is for a much shorter period of time for those citizens who are not selected to serve. If peremptory challenges are eliminated, experience has shown, a single panel of 15-25 potential jurors will be sufficient to select a jury in the typical case. A return to the old number of challenges will undoubtedly double this time and the number of jurors needed to appear.

COVID-19 has required the Court to find new ways to be efficient and safe. We created a way to use less jurors in jury selection and lessen the time commitment required of potential jurors. The benefits of the process include saving in travel costs for jurors, speeding up jury selection and trials, preserving the ability to conduct trials throughout a pandemic, and happier jurors. These benefits are significant for the Court and the citizenry. From our perspective, it makes little sense to abandon these hard-fought gains to preserve a tool as problematic and of such dubious efficacy as peremptory challenges.