

I write to nominate the Center for Death Penalty Litigation ([CDPL](#)) for the National Consortium on Racial and Ethnic Fairness in the Courts' 2022 Equity Award. Founded as an organization dedicated to representing people facing the death penalty, CDPL has in the past decade led efforts to expose racism in North Carolina's criminal punishment system.

CDPL played a critical role in the 2009 enactment of the Racial Justice Act (RJA), the first law in the country giving people sentenced to death obtain relief by challenging racial disparities, including in the exercise of peremptory strikes against citizens called for jury duty.

CDPL worked with experts to collect and analyze data demonstrating that Black citizens are twice as likely to be excluded from jury service as whites, and that Black defendants charged with murder are more likely to face the death penalty, especially when the victim is white. The data also showed that nearly half of the people on death row were condemned to execution by all-white juries or juries with a single person of color.

Through myriad legal proceedings over the course of more than a decade, even after repeal of the RJA, CDPL's commitment to exposing racism in the death penalty never flagged. In 2020, four of CDPL's RJA clients saw their death sentences vacated. One of the opinions was penned by then-Chief Justice Cheri Beasley, who wrote a [sobering catalogue](#) of discrimination against African Americans in the criminal punishment system, particularly in jury selection. Also in 2020, the NC Supreme Court ruled that the legislative repeal could not retroactively strip away the right to challenge racism in the death penalty. Currently, more than 100 people on death row are challenging racial disparities in their cases.

In addition to coordinating the RJA litigation and arguing the cases in court, CDPL has also worked assiduously to educate the public about the importance of jury service in a democracy and the harm wrought by race discrimination in jury selection - to the individual facing trial, to the citizen turned away from the courthouse because of skin color, and to the integrity and legitimacy of our system of justice as a whole. CDPL has produced a powerful website documenting the [Racist Roots](#) of North Carolina's death penalty, and has collaborated on the publication of [news stories](#), [op-eds](#), and [investigative pieces](#) exposing how discrimination against African American and other prospective jurors of color undermines the ideal of equal justice under law.

A natural outgrowth of CDPL's RJA work has been to challenge the failure of the courts to do anything about racism in jury selection. In 1986, the US Supreme Court established in *Batson v. Kentucky*, 476 U.S. 79 (1986), that the racially discriminatory use of peremptory strikes in a single case violates the Sixth Amendment. However, for more than a quarter century after *Batson*, North Carolina's appellate courts had *never* found intentional discrimination against a person of color called for jury duty.

Beginning in 2015, CDPL attorneys worked with a broad coalition of advocates to publish articles in [law reviews](#) and [legal journals](#) highlighting the NC courts' abysmal record in enforcing *Batson*. CDPL planned and presented numerous CLE sessions on *Batson* and produced and distributed sample motions. CDPL also helped to build a coalition of civil rights groups including the NC Advocates for Justice, the National Association for Public Defense, Common Cause, Center on Race, Inequality, and the Law at New York University, National Association of Criminal Defense

Lawyers, LatinoJustice PRLDEF, Southern Center for Human Rights, ACLU Racial Justice Program, and NC Black Lawyers Association, to appear as *amici* in the cases with strong *Batson* claims. CDPL attorneys worked with criminal defense practitioners and academics to write and file compelling amicus briefs.

We began to see a glimpse of progress in 2020, when the NC Supreme Court remanded two *Batson* claims for evidentiary hearings, *State v. Hobbs*, 374 N.C. 345 (2020), and *State v. Bennett*, 374 N.C. 579 (2020). These decisions, which directed trial courts to take seriously evidence of the history of jury discrimination in North Carolina, and to meaningfully consider comparisons between struck Black and passed white venire members, often closely tracked arguments made in the amicus briefs.

Finally, in February of this year, the NC Supreme Court for the first time in its history reversed a criminal conviction after finding that a Black citizen was excluded from jury service because of her race, *State v. Clegg*, 867 S.E.2d 885 (NC 2022). It is notable that in the initial petition for review Mr. Clegg filed in the NC Supreme Court, he cited the *UNC Law Review* and *State Bar Journal* articles about the court's complicity in rendering *Batson* a nullity. After the Court ordered a remand in the case, a CDPL staff attorney represented Mr. Clegg. And on appeal from that decision, CDPL filed yet another amicus brief detailing how denying African Americans the right to serve on juries undermines their citizenship. In its decision, granting *Batson* relief, the Court cited both the *UNC Law Review* study and also two news stories about jury discrimination in CDPL cases, one in [Asheville](#) and the other in [Raleigh](#).

NC Supreme Court Associate Justice Anita Earls wrote a concurring opinion in *Clegg*, in which she wrote:

The fact that the first time this Court has ever vacated a conviction on Batson grounds occurs here where Mr. Clegg has already completely served his time is indicative of why the Batson framework has failed [T]his appeal presents us with an occasion to consider whether further action on our part is necessary to promote public confidence in the perception of our state's judicial system with respect to fairness to both litigants and their fellow citizens. If we are to give more than lip service to the principle of equal justice under the law, we should not bury our heads in the sand and pretend that thirty-five years of experience with Batson will magically change. There are a variety of tools at our disposal, we urgently need to use them.

Surely Justice Earls is right; there is much more to do to root out racism in our system of criminal punishment. That said, it is certainly appropriate to mark the progress that has been made, and to honor those who have labored for that progress. I urge the NCREFC to bestow its 2022 Equity Award on CDPL.