

Chapter 10

Sources of Information about Matters of Race

10.1 Police Investigation	10-2
A. Online Court Records	
B. Court “Shucks”	
C. Division of Criminal Statistics	
D. Traffic Stop Data Search Tool under Development by the Southern Coalition for Social Justice	
E. U.S. Bureau of Justice Statistics	
F. The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System (NC-CRED)	
G. Lippard and Page Study of Traffic Stop Data	
H. Expert Witnesses on the Subject of Racial Profiling	
I. North Carolina Public Defender Committee on Racial Equity (NC PDCORE)	
J. Other Tools Related to Racial Profiling Data	
10.2 Pretrial Release	10-8
A. Local Databases	
B. NC-CRED’s Pretrial Release Subcommittee	
10.3 Plea Negotiations	10-8
10.4 Charging Decisions	10-9
A. Court Records	
B. Defense Attorney Records	
C. Task Force Reports	
10.5 Jury Composition	10-10
A. Census Data	
B. Records Maintained by the Court or Jury Commission	
10.6 Jury Selection: Peremptory Challenges	10-11
A. Recent North Carolina Studies Regarding Peremptory Strikes	
B. Data Collection Before Trial	
C. Data Collection During Trial	
10.7 Sentencing	10-13
A. North Carolina Sentencing Commission	
B. Reports Prepared by the North Carolina Advocates for Justice’s Racial and Ethnic Bias in the Criminal Justice System Task Force	
C. North Carolina Office of Indigent Defense Services	

10.8 Miscellaneous

10-13

- A. Additional Sources of State Data
 - B. Additional Sources of National Data
-

10.1 Police Investigation

Multiple sources of data are available to assist attorneys investigating claims of selective enforcement in violation of the state and federal guarantees of equal protection, or of unlawful search or seizure in violation of the Fourth Amendment and the parallel state constitutional provision, N.C. CONST. art. I, § 20. This section identifies the type of data available to support claims relating to unconstitutional law enforcement practices, and explains how such data can be located and analyzed.

A. Online Court Records

Information about charging patterns can be obtained from online resources maintained by the North Carolina Administrative Office of the Courts (AOC). Attorneys can conduct a search of criminal cases through the AOC's Criminal Information System (terminals are available in each courthouse). See AOC Computer Instructions in the Race Materials Bank at www.ncids.org (select "Training and Resources"). They may also query the AOC's online criminal calendar, by officer or agency, to produce a list of cases for a particular officer or agency. Once they obtain case numbers and other identifying information, they can access additional court records. See [Statewide Officer Court Appearance Query](#), NCCOURTS.ORG (last visited Sept. 25, 2014).

For example, in the case of *State v. Villeda*, 165 N.C. App. 431 (2004), after a conversation with a trooper in which he mentioned that he believed most Hispanic males drive drunk over the weekend, attorney Leonor Childers searched an AOC criminal computer for cases in which the trooper at issue was identified as the "complainant." This search provided her with a list of the trooper's citations, which allowed her to pull the corresponding court "shucks" described below.

B. Court "Shucks"

Using records maintained in the courthouse by the clerk of court, and without employing expert assistance, attorneys have been able to determine stopping patterns of particular law enforcement officers. They have done so by pulling the "shuck" in each case (the envelope or folder containing the court records in each case) and looking at all of the citations that a particular officer has issued over a given time period. With these records, attorneys have been able to gather information about the race or ethnicity of drivers stopped by a particular officer, the specific geographic area where the stops occurred, and even the age and model of the vehicles stopped, which they then can compare with

census data to determine whether the evidence suggests that the officer may be targeting minorities. An example of such an analysis appears in *State v. Villeda*:

[Defense attorney] Childers further testified that, following her discussion with Trooper Carroll, she began looking into his citation history. She pulled up all of Trooper Carroll's citations from 1 January 2001 to 24 March 2002, a total of 716 citations, and found that 71% of DWI citations issued by Trooper Carroll involved Hispanic individuals. Only 16% of DWI stops were of Caucasians, 9% of African-Americans, and 2% of other racial backgrounds. After Trooper Carroll came under investigation by Internal Affairs in the spring of 2002 for racial profiling, no Hispanics were cited by him for DWI violations.

In plotting the DWI stops on a map, Childers noted “two fairly concentrated areas”: Area 1—the U.S. 70–Hillsborough Road–Main Street area in Durham (within a two-to-three-mile radius of La Maraca), and Area 2—encompassing Miami Boulevard, East Durham, Geer Street, and Holloway Street (including Circle K). According to the 2000 census data Childers reviewed, the Hispanic population in Durham County amounts to approximately 7% of the general population. However, the census data for LaSalle Street in the city of Durham, which is located in Area 1 and a quarter mile from La Maraca, reveals a population of 32% Hispanics and 36% African-Americans.

165 N.C. App. 431, 433–34 (2004).

C. Division of Criminal Statistics

The North Carolina Attorney General, through its Division of Criminal Statistics in the North Carolina Department of Justice, is required to collect information about criminal law administration, including crimes committed, arrests made, convictions, acquittals, and punishment, including the race of offenders. *See* G.S. 114-10(1). G.S. 114-10.01 mandates the collection of traffic stop data, including “[i]dentifying characteristics of the drivers stopped, including the race or ethnicity” and “the race or ethnicity . . . of each person searched.” Pursuant to this law, the Division of Criminal Information of the North Carolina Department of Justice must collect statistics on traffic stops by state troopers and other state law enforcement officers. *Id.* This statute also requires the Division to collect statistics on many local law enforcement agencies. *Id.* A law enforcement officer subject to the provisions of G.S. 114-10.01 must record traffic stop data on State Bureau of Investigation Form SBI-122, which he or she must file with his or her local agency. The officer’s agency must then electronically forward the information collected on the SBI-122 forms to the SBI Traffic Stops Unit.

Traffic stop reports reflecting traffic stop data collected pursuant to G.S. 114-10, including reports identifying the race and ethnicity of drivers or passengers stopped and/or searched, may be accessed on the [North Carolina Traffic Stop Statistics](#) section of the Division's website. This web-based tool allows users to create reports reflecting stops, searches, and enforcement actions taken by various law enforcement agencies during time periods designated by the user.

Attorneys may also request data collected on SBI-122 forms from the SBI Traffic Stops Unit. A subpoena or court order should not be necessary to obtain these records. Unless a specific statutory exception exists, records maintained by state and local government agencies are public records. *See generally News and Observer Publishing Co. v. Poole*, 330 N.C. 465 (1992). Counsel may tailor the request by asking for data for all stops made by the law enforcement agency in question during the time period and in the geographic location in which the client was stopped. Alternatively, counsel may submit a public records request to the relevant law enforcement agency for the traffic stop data sought. *See Request for Public Records and Affidavit in Support of Motion to Suppress Illegal Stop and Illegal Search* (noting that the contents of the affidavit were based in part on materials provided by the sheriff's department in response to a public records request) in the Race Materials Bank at www.ncids.org (select "Training and Resources").

In recent years, officers have begun to use additional numeric codes when entering the required data on the SBI-122 forms. For example, a motorist's race may be recorded as "3" and sex may be identified as "1". Therefore, attorneys must use a glossary of codes to decipher the recent forms. A glossary may be found in the Race Materials Bank at www.ncids.org (select "Training & Resources").

The officer's name is not included on the SBI-122 forms. In place of a name, the officer enters a number that is assigned by the officer's employing agency. G.S. 114-10.01(d) provides that the "correlation between the identification numbers and the names of the officers shall not be a public record." Although this information is not available to the public generally, the statute allows the officer's employing agency to disclose this information when required by a court order to resolve a claim or defense before the court. Motions for disclosure of an officer's identification number may be made before or alongside motions to suppress evidence arising out of a stop or search. *See Motion to Suppress Illegal Stop and Search and Motion to Disclose Officer's ID Number* in the Race Materials Bank at www.ncids.org (select "Training & Resources"). In addition to seeking disclosure of such information through a court order, some North Carolina attorneys have determined the identity of individual stopping officers associated with the SBI-122 numbers by comparing public court files with the data collected on SBI-122 forms. For example, Durham attorney Kerstin Walker Sutton has compared data from SBI forms, ACIS, and court files to determine an officer's SBI-122 number and analyze whether the evidence supported a claim of selective enforcement. Her approach to analyzing available sources of traffic stop data, along with materials from two cases in which she employed this approach, may be found in the Race Materials Bank at www.ncids.org (select "Training & Resources"). In these cases, identifying the officer

listed on the SBI-122 forms allowed her to examine possible patterns by the officer, not just those that resulted in the filing of formal charges. *See id.*

D. Traffic Stop Data Search Tool under Development by the Southern Coalition for Social Justice

An additional resource for lawyers seeking North Carolina traffic stop data is currently under development by the Southern Coalition for Social Justice (“SCSJ”). SCSJ is developing a website to help users analyze possible racial disparities in traffic stops, searches, and arrests conducted by North Carolina law enforcement officers. The website will allow users to:

- generate statistical reports, drawn from the aggregate data reported to the SBI pursuant to G.S. 114-10.01, detailing the relative probability of Black, White, and Latino motorists being searched when stopped by a particular department for a given offense;
- access statewide averages for comparative purposes;
- generate reports on contraband discovery rates, broken down by race, age, and gender;
- identify any departments in North Carolina that are not in compliance with the requirements imposed by the data collection statute; and
- use the website as a management tool within law enforcement agencies to identify officers generating the largest racial disparities.

The website, which will be available beginning in late 2014 or early 2015 and updated regularly, will include all reported traffic stops that have occurred in the state of North Carolina since January 1, 2000—currently an estimated 14 million. Questions about the website may be directed to SCSJ attorney and Soros Justice Fellow Ian A. Mance at ianmance@southerncoalition.org, who, at the time of publication of this manual, was available to assist attorneys in analyzing traffic stop data as necessary. SCSJ also periodically releases reports analyzing North Carolina traffic stop data. *See, e.g.*, PowerPoint Slides of Ian A. Mance, [Racial Profiling in Durham](#), NCIDS.COM (last visited Sept. 22, 2014).

E. U.S Bureau of Justice Statistics

The Bureau of Justice Statistics (BJS), a part of the Office of Justice Programs in the U.S. Department of Justice, provides a tool for accessing and analyzing arrest data, including the race, age, and sex of arrestees. This tool allows the user to generate tables and graphs of arrests for various offenses. The data, which is reported by law enforcement agencies themselves, can be broken down by agency or state. For example, the user can generate the number of Black adults arrested by the Durham Police Department in 2008 for the offense of breaking or entering, and compare that to the number of White adults arrested for the same offense. *See* Bureau of Justice Statistics, [Arrest Data Analysis Tool](#), BJS.GOV (last visited Sept. 22, 2014).

Additionally, the BJS conducts traffic stop surveys, collects data on state traffic stop data collection practices, and publishes reports concerning police behavior during traffic stops. The Bureau's traffic stop materials are available online. *See* Bureau of Justice Statistics, [Traffic Stops](#), BJS.GOV (last visited Sept. 22, 2014).

F. The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System (NC-CRED)

NC-CRED is a collaborative, research-based organization whose mission is to identify, document, and alleviate racial and ethnic disparities in the criminal justice system. The Commission grew out of the North Carolina Advocates for Justice's Racial and Ethnic Bias in the Criminal Justice System Task Force (Task Force), a group of attorneys, policy makers, community leaders, and scholars who examined traffic stop data, drug and habitual felon convictions, and prison populations. The members of the subsequently-formed Commission include judges, police chiefs, public defenders, private defense attorneys, prosecutors, and professors. The history of the Commission and the Task Force is described on its website. *See* North Carolina Advocates for Justice, [Task Force History](#), NCAJ.COM (last visited Sept. 22, 2014). Data collected and analyzed by NC-CRED and the Task Force may prove useful to attorneys litigating claims of racial profiling. For example, the Task Force has published reports on the prison population, the habitual felon prison population, and the drug prison population. Task Force and Commission publications are available online. *See* North Carolina Advocates for Justice, [NC-CRED Publications](#), NCAJ.COM (last visited Sept. 22, 2014).

Baumgartner study. In 2012, the Task Force partnered with UNC professor Frank Baumgartner to publish a report analyzing state-wide traffic stop data, including approximately eleven years of traffic stop data. *See* FRANK R. BAUMGARTNER & DEREK EPP, [NORTH CAROLINA TRAFFIC STOP STATISTICS ANALYSIS: FINAL REPORT TO THE NORTH CAROLINA ADVOCATES FOR JUSTICE TASK FORCE ON RACIAL AND ETHNIC BIAS 5](#) (2012) [hereinafter "Baumgartner Study"]. The study's authors concluded that, compared to White motorists, Black and Latino motorists and passengers in North Carolina are almost twice as likely to be searched and twice as likely to be arrested following a traffic stop. Using the data collected on SBI-122 forms, attorneys may be able to conduct their own small scale studies of patterns within a particular agency or of a particular officer. *See supra* § 10.1C, Division of Criminal Statistics. Traffic stop data study author Frank Baumgartner may be able to either assist attorneys in analyzing traffic stop data or direct attorneys to someone else who can do so.

G. Lippard and Page Study of Traffic Stop Data

In 2011, researchers conducted a study of available traffic stop data from 32 randomly selected North Carolina law enforcement agencies and concluded that minorities had higher stop rates than whites in over 50% of the sampled agencies. *See* Cameron D. Lippard & Amy Dellinger Page, [Driving While Non-White: Exploring Traffic Stops and Post-Stop Activities in North Carolina](#), 2005–2009, 9 SOCIATION TODAY (Fall/Winter

2011) (Sociation Today is a peer-reviewed web-based publication of the North Carolina Sociological Association).

H. Expert Witnesses on the Subject of Racial Profiling

In some cases, attorneys may be able to enlist academics, researchers, consultants, or graduate students to assist with statistical analyses. The following is a brief list of researchers who have provided expert assistance in analyzing claims of racial profiling:

- [Dr. Katherine Beckett](#), Professor, Law, Society & Justice Program and Department of Sociology, University of Washington
- [Dr. Jeffrey Fagan](#), Isidor and Seville Sulzbacher Professor of Law, Columbia University
- [Dr. John Lamberth](#), CEO of Lamberth Consulting
- [Dr. Ralph B. Taylor](#), Professor of Criminal Justice, Temple University
- [Dr. Frank Baumgartner](#), Richard J. Richardson Distinguished Professor of Political Science, University of North Carolina at Chapel Hill

I. North Carolina Public Defender Committee on Racial Equity (NC PDCORE)

The mission of NC PDCORE, a committee of the North Carolina Public Defender Association, is to reduce and ultimately eliminate racial and ethnic disparities in the criminal justice system through education, collaboration, and litigation. The NC PDCORE website contains a collection of litigation materials, data, publications, reports, books, links, and other tools regarding racial disparities in the criminal justice system, along with regular updates distributed to NC PDCORE members and posted on the committee's website. See [NC PDCORE](#), NCIDS.COM/PD-CORE/ (last visited Sept. 22, 2014) (select "Resources").

J. Other Tools Related to Racial Profiling Data

If your client believes that she may have been subjected to racial profiling at a vehicle checkpoint, she may want to report this concern to the ACLU of North Carolina by completing a [racial profiling checkpoint form](#). Such reports may facilitate data collection on this subject. The ACLU of North Carolina has recently published a report detailing the traffic stop data collection procedures in North Carolina and elsewhere, analyzing possible limitations of the collection procedures, and suggesting avenues for reform. See ACLU OF NORTH CAROLINA, [ROAD WORK AHEAD](#) (2014). The report may be useful in understanding the scope and limitations of the available data. In addition, some law enforcement agencies may have police civilian review boards, which may provide an avenue for filing complaints or providing feedback about policing practices. See *supra* § 2.8, Beyond Litigation.

10.2 Pretrial Release

A. Local Databases

Local databases are a source of data for claims of disparate treatment in the pretrial stage of a criminal prosecution. Some counties maintain their own repositories of data. For example, the City County Bureau of Identification (CCBI) for Wake County contains data on arrestees' race, ethnicity, sex, place of residence, country of origin, employment, prior arrests, and court appearance history. The Wake County Sheriff's Office also maintains a database on pretrial release conditions and offenses charged. In 2008, a student in the UNC School of Government's Masters of Public Administration program used these databases to conduct a study of variability in pretrial release conditions based on race, ethnicity, and sex for arrestees. See *Striving for Equity in Criminal Justice - An Analysis of Variability of Bail Bonds in the Tenth Judicial District of North Carolina* in the Race Materials Bank at www.ncids.org (select "Training and Resources"). Another example of a local database is the Bureau of ID of Buncombe County, which creates and maintains electronic records of warrants, citations, arrests, detention, and criminal history records, including mug shots.

B. NC-CRED's Pretrial Release Subcommittee

NC-CRED's Pre-Trial Release Subcommittee is currently analyzing pretrial release data in Halifax and Guilford counties for the purpose of determining whether racial disparities may be present in the counties' respective pretrial release processes. The data collected by the Subcommittee includes bond amounts and conditions of release imposed on defendants charged with Class H felonies. This effort involves data collection and analysis by race and ethnicity across a range of variables, including age, sex, economic status, employment, mental and physical health, case disposition, length of time in custody, bond amount, method of posting bond, criminal history, and failure to appear history. The project is supported in part by the [American Bar Association's Racial Justice Improvement Project](#), which has supported similar efforts elsewhere in the country. A report documenting NC-CRED's findings concerning pretrial release in Guilford and Halifax counties will be posted on [the Commission's website](#) when it becomes available.

10.3 Plea Negotiations

In 2002, the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) conducted a statewide study of sentencing practices under North Carolina's sentencing laws, focusing on two areas of discretion: plea negotiations and sentencing. NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, [SENTENCING PRACTICES UNDER NORTH CAROLINA'S STRUCTURED SENTENCING LAWS](#) (2002). The Sentencing Commission examined both legal and extralegal factors, such as race, affecting outcomes for defendants at those two stages. In the context of plea negotiations, the Commission examined whether similarly situated offenders received certain "breaks," such as a reduction from a felony charge to a misdemeanor, or imposition of a suspended

sentence of imprisonment instead of an active one. The study did not conclude that race was a factor in sentence outcomes in North Carolina. In the spring of 2011, a candidate for the Masters of Public Administration degree at the UNC School of Government undertook a similar study, using more recent data to determine the extent to which legal and extralegal factors influenced sentencing outcomes, and concluded that race was a significant factor in discretionary decisions to impose an active sentence of imprisonment. *See* Michelle L. Hall, [Disparity under Structured Sentencing in North Carolina: Do Similarly Situated Offenders Receive Different Outcomes Based on Legally Irrelevant Factors?](#) (Spring 2011) (unpublished UNC School of Government MPA Thesis). Additional information on sentencing is discussed below.

10.4 Charging Decisions

Conducting a broad study of prosecutors' exercise of charging discretion is a complex and potentially costly undertaking. More targeted analyses of charging decisions can be conducted, however. An attorney representing an indigent client may apply to the court for expert funds to hire a law clerk or statistician to perform a targeted analysis. Attorneys also have enlisted the assistance of doctoral students at no charge to conduct data analyses.

A. Court Records

Attorneys may obtain data from a variety of sources, including the ACIS computer system maintained by the Administrative Office of the Courts, which includes the race of defendants; and the superior court docket sheets maintained by the Clerk of Court. *See* Habitual Felon Motion and Affidavit (using such sources in a motion to dismiss based on selective enforcement and selective prosecution) in the Race Materials Bank at www.ncids.org (select "Training & Resources").

In one case, an attorney enlisted the help of a law student as well as a doctoral student in statistics to examine court records on local prosecutors' exercise of discretion to charge people as habitual felons, and to determine whether the decision to "habitualize" was based on extralegal factors such as race. *See id.* The law student examined every superior court docket sheet in the relevant Superior Court Clerk's office and recorded every pending habitual felon indictment shown on those docket sheets. These were then compared to a District Attorney's Screening List, which listed the defendants' names, charges, and prosecutors assigned to the cases, and to computer records generated from ACIS. Based on the study, the attorney moved to dismiss and for further discovery. *See id.*

B. Defense Attorney Records

When analyzing charging patterns, information contained in client records may provide a good starting point. Internal data reflecting (1) the racial and ethnic makeup of clients facing drug charges or habitual felon sentencing enhancements, and (2) which clients

receive favorable and unfavorable pleas, may be useful in litigating selective prosecution claims. *See supra* § 5.3G, Gathering Evidence to Support Selective Prosecution Claims. For example, one public defender's office maintained a "too good to be true" file of favorable plea arrangements that could be consulted by attorneys engaged in plea negotiations to ensure full awareness of the range of plea arrangements that might be possible in a certain type of case. This sort of information could be collected by an administrative assistant, or included within the case management system (CMS) used by public defender offices. The version of CMS currently under development will capture data reflecting the race of defendants but will not collect (1) data reflecting defendants' ethnicity; or (2) witness/victim race or ethnicity. Nevertheless, individual public defender offices could choose to populate a field in CMS with this data. Additionally, existing data on prosecutions for similar crimes in state and federal court, broken down by race, may provide evidence of differential treatment by state or federal prosecutors of similarly situated offenders. *See* Bureau of Justice Statistics, [Federal Criminal Case Processing Statistics](http://www.bjs.gov), BJS.GOV (last visited Sept. 22, 2014) (a searchable database maintained by the U.S. Department of Justice); *United States v. Tuitt*, 68 F. Supp. 2d 4 (D. Mass. 1999). Coordination with regional federal defender offices may facilitate gathering and analysis of such data.

C. Task Force Reports

The North Carolina Advocates for Justice's Racial and Ethnic Bias in the Criminal Justice System Task Force (Task Force) conducted a comparison of habitual felons and drug offenders incarcerated within North Carolina prisons to determine whether racial disparities were reflected in such populations. Their findings are broken down by county and available online. *See* North Carolina Advocates for Justice, [NC-CRED Publications](http://www.nc-cred.org), NCAJ.COM (last visited Sept. 22, 2014). The data collected for these reports was obtained from the North Carolina Department of Correction Office of Research and Planning, which is now the [North Carolina Department of Public Safety Office of Rehabilitative Programs and Services](http://www.nc-crs.org).

10.5 Jury Composition

A. Census Data

When challenging the jury pool or "venire," the defendant may present census figures that the representation of Black people in the pool does not reflect the number of such people in the community. Census data is available online. *See* [United States Census Bureau website](http://www.census.gov), CENSUS.GOV (last visited Sept. 22, 2014). Certified copies of census data available online can be obtained from the U.S. Census Bureau.

B. Records Maintained by the Court or Jury Commission

In raising fair cross-section or equal protection challenges to the jury pool, attorneys will generally compare census data to current and former records reflecting the names and

demographic information of those included on master jury lists and on jury venires. Most of the time, defense counsel will need to seek such information through discovery. In some cases, counsel may be able to obtain records from the clerk of superior court regarding the demographic information of past jurors and juror panelists. *See, e.g., State v. Cofield*, 320 N.C. 297, 299 (1987) (defendant “introduced a report prepared by Mr. R.J. White, Northampton County’s Clerk of Superior Court, listing all who had served as grand jury foreman since 1960 by name, race, and sex”). To determine the identity of potential jurors before jury selection in a particular case, attorneys can check the list of jurors on a defendant’s jury panel in the clerk’s office approximately one week before trial. Attorneys can review that list to ensure that there are no obvious violations of the randomness requirement (e.g., not all people have last names beginning with the same letters), and may try to discover the race of the people listed on the jury panel by searching on the [North Carolina Board of Election’s website](#) or on LexisNexis peoplefinder. The master jury list is available to the public in the clerk of superior court’s office. Attorneys need to create a record of juror race by asking the judge to instruct potential jurors to self-report their race and ethnicity at the outset of questioning. *See infra* § 10.6C, Data Collection During Trial.

10.6 Jury Selection: Peremptory Challenges

A. Recent North Carolina Studies Regarding Peremptory Strikes

Recent analyses conducted in the wake of the North Carolina Racial Justice Act (RJA) of 2009 may serve as sources of data for non-capital cases and also as models for smaller scale analyses. Two in-depth statistical studies ([Radelet-Pierce study](#) and [Michigan State University study](#)) were conducted to examine the imposition of the death penalty in North Carolina and specifically the role of race in those cases. The authors of these reports relied on multiple sources of data, including Supplemental Homicide Reports from the FBI and records from the North Carolina Department of Adult Corrections and the State Office of the Chief Medical Examiner. The data, analyzed at the state, judicial division, prosecutorial district, and county levels, could be pertinent in non-capital cases to show historic disparities in the exercise of peremptory strikes during jury selection. While data is not required to support a claim of racial discrimination in the exercise of peremptory challenges, it may bolster a claim.

B. Data Collection Before Trial

Attorneys may want to review data from the Michigan State University (MSU) study before trial. For example, attorneys may review the statewide, county, and district strike ratios, and determine whether any individual strike rate ratios for the prosecutors involved in your case are included in the study.

Attorneys also may consider calculating the strike rate for serious felony cases within a given jurisdiction. This can be done by collecting transcripts, jury questionnaires, clerk records, and summons lists for prior cases. Cassandra Stubbs, Senior Staff Attorney for

the ACLU Capital Punishment Project, has laid out a step-by-step guide for calculating strike ratios. See Cassandra Stubbs, *Strengthening Batson Challenges with the MSU Study* in the Race Materials Bank at www.ncids.org (select “Training and Resources”). Once obtained, strike data can be recorded and strike rates calculated by using a spreadsheet such as the following:

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Trial Date	Prosecutors	Defendant Name	Case No.	Presiding Judge	Defense Counsel	Total No. Jurors Questioned by State	Total No. Jurors Struck by State	Black Jurors Struck by State	White Jurors Struck by State	Latino Jurors Struck by State	Asian Jurors Struck by State	Women Struck by State
1													
2													
3													

Id.

Other relevant information that may be collected before trial in anticipation of *Batson* challenges includes RJA motions filed in your client’s county; census data about race in the county or district; and evidence of past discrimination in jury selection. Attorneys may also consider making public records requests or discovery motions for information about the District Attorney’s Office’s jury selection policies and trainings.

C. Data Collection During Trial

In order to identify and raise equal protection violations, counsel should develop a system for recording the prosecutor’s conduct and exercise of strikes during voir dire. One effective practice is to use a spreadsheet to record each venire member’s race, gender, physical appearance, marital status, employment, and other notable attributes; the number of questions asked of the juror; the type of questions asked of the juror; and all statements made by that juror. If possible, it may be advantageous to develop ahead of time a chart of basic information about every venire member. This will assist with comparative juror analysis. Durham attorney Scott Holmes has created a spreadsheet that automatically calculates strike rates, which can be used during jury selection at trial. See Scott Holmes’s Spreadsheet for Calculating Juror Strike Ratios and Cassandra Stubbs’s Strike Data Spreadsheet, both in the Race Materials Bank at www.ncids.org (select “Training and Resources”). Ideally, these notes should be compiled by a member of the defense team who can focus on creating them, such as an attorney, paralegal, administrative assistant, intern, or investigator who has been trained ahead of time in how to quickly and accurately record all relevant data. Precise, accurate records are essential for noting similarities between venire members struck and passed on, for comparing any patterns with historical data, and for making quick strike rate calculations. Susan Jackson Balliet & Bruce P. Hackett, *Litigating Race in Voir Dire*, THE ADVOCATE, May 2008, at 42, 46. Additionally, during jury selection, counsel should ensure that the race and gender of every venire member struck is preserved on the record.

North Carolina attorneys have also been able to present statistical evidence of disparities in the jury selection process without an extensive study. One attorney handling a post-conviction case enlisted a doctoral student, who examined the “strike” ratio by prosecutors in the case and determined that they excused 77% of the eligible Black

prospective jurors and 21% of eligible White prospective jurors. The student then examined the probability of the disproportionate strike ratio occurring by chance. The same attorney also obtained funds from the court to retain an expert to do a broader statistical study of the pattern of strikes by prosecutors in that county over a 20-year period. See Affidavits Regarding Peremptory Strike Patterns in Capital Cases in a Single North Carolina County and Examples of Juror Questionnaires in the Race Materials Bank at www.ncids.org (select “Training and Resources”).

10.7 Sentencing

A. North Carolina Sentencing Commission

The North Carolina Sentencing Commission is a source of data on sentencing outcomes. Each year, the Sentencing Commission publishes its “Structured Sentencing Statistical Report for Felonies and Misdemeanors,” which includes figures on the characteristics of offenders, broken down by race. See, e.g., North Carolina Sentencing and Policy Advisory Commission, *Structured Sentencing Statistical Report for Felonies and Misdemeanors-Fiscal Year 2009/10 (July 1, 2009 - June 30, 2010)*, 9–10 (2011).

B. Reports Prepared by the North Carolina Advocates for Justice’s Racial and Ethnic Bias in the Criminal Justice System Task Force

The North Carolina Advocates for Justice’s Racial and Ethnic Bias in the Criminal Justice System Task Force is also a source of data analysis on imprisonment in North Carolina. For example, the Task Force collected and analyzed data from the North Carolina Department of Justice and Department of Correction, sorted by race and compared to county populations, on: (1) the overall North Carolina prison population; (2) drug convictions in North Carolina; and (3) habitual felon convictions in North Carolina. See North Carolina Advocates for Justice, *NC-CRED & Task Force Publications*, NCAJ.COM (last visited Oct. 8, 2014).

C. North Carolina Office of Indigent Defense Services

The North Carolina Office of Indigent Defense Services (IDS) intends to study sentencing outcomes by analyzing sentences and sentence lengths for given offenses, broken down by race. IDS projects that they are a number of years away from completing an analysis, however.

10.8 Miscellaneous

A. Additional Sources of State Data

Many North Carolina institutions are gathering data that may be useful in addressing possible racial disparities in criminal cases in North Carolina. For example, [CJ LEADS](#)

“integrates data found within the State’s [various criminal justice applications] and provides up-to-date criminal information about offenders in a centralized location via a secure connection for use by state and local government criminal justice professionals.” CJ LEADS is managed by the North Carolina Office of the State Controller. At the present time, defense attorneys do not have access to CJ LEADS.

The Governor’s Crime Commission and the Department of Juvenile Justice and Prevention also compile and analyze data on disproportionate minority contact with the juvenile justice system. Up until October 31, 2013, the Criminal Justice Analysis Center, housed within the Governor’s Crime Commission, collected, analyzed, and disseminated criminal justice data. While the Center no longer exists, its publications may still be found online. *See* North Carolina Department of Public Safety, [Publications](#), NCCRIMECONTROL.ORG (last visited Sept. 23, 2014). Additionally, in 2011, the North Carolina Office of the Juvenile Defender compiled a guidebook entitled [Addressing Disproportionate Minority Contact \(DMC\) in Juvenile Delinquency Court](#), which contains practical tips for defense attorneys on addressing racial bias and racial disparities.

B. Additional Sources of National Data

On the national level, the Justice Mapping Center recently launched the [National Justice Atlas of Sentencing and Corrections](#), “an online, interactive, mapping utility that gives policy makers, the media, researchers, and the public a neighborhood-level view of where prison inmates and offenders on probation and parole are from and where corrections spending is highest.” Justice Mapping Center, [Justice Mapping Center Launches First National Atlas of Criminal Justice Data](#), JUSTICEMAPPING.ORG (Oct. 5, 2010). For example, the atlas allows users to access data by state, county, zip code, or census area, reflecting prison admissions and release rates, demographic data, parolee and probationer rates, and costs of corrections.

Several national organizations have launched projects addressing race in the criminal justice system:

- The American Bar Association (ABA) launched a Racial Justice Improvement Project in 2010 to “identify and reform policies and practices that produce racial disparities in local criminal justice systems across the country.” *See* American Bar Association Criminal Justice Section, [Racial Justice Improvement Project](#), RACIALJUSTICEPROJECT.WEBLY.COM (last visited Sept. 23, 2014).
- The ABA’s Litigation Section created a Task Force on Implicit Bias and launched an Implicit Bias Initiative to educate lawyers, judges, and others about the “implications and effects of implicit bias.” *See* American Bar Association Litigation Section Task Force on Implicit Bias, [Implicit Bias Initiative](#), AMERICANBAR.ORG (last visited Sept. 23, 2014). The same section developed a “[toolbox](#)” of research and resources on implicit bias and strategies for “debiasing.”
- The ABA’s Judicial Division formed a Task Force on Perceptions of Justice in 2013, which has assembled resources and conducted training on racial bias and disparities

- in the courts. *See* American Bar Association Judicial Division, [Task Force on Perceptions of Justice](#), AMERICANBAR.ORG (last visited Sept. 23, 2014).
- The National Center for State Courts has developed a Gender and Racial Fairness Resource Guide, undertaken a project on implicit bias and judicial education, and developed resources such as a “Frequently Asked Questions” sheet to help court actors understand and address implicit bias. *See* National Center for State Courts, [Gender and Racial Fairness Resource Guide](#), NCSC.ORG (last visited Sept. 23, 2014); National Center for State Courts, [Helping Courts Address Implicit Bias: Frequently Asked Questions](#), NCSC.ORG (last visited Sept. 23, 2014).
 - The National Consortium on Racial and Ethnic Fairness in the Courts encourages the highest courts of each state “to create commissions to examine the treatment accorded minorities in their courts[,]” and educates “the legal profession, the law enforcement community, and the general public concerning racial and ethnic fairness in the courts.” *See* National Consortium on Racial and Ethnic Fairness in the Courts, [Mission](#), NATIONAL-CONSORTIUM.ORG (last visited Sept. 23, 2014).

Other potentially useful sources of national data include the [Institute on Race and Justice at Northeastern University](#); the National Institute of Justice’s collection of materials on [Race, Trust, and Police Legitimacy](#); and the [Kirwan Institute for the Study of Race and Ethnicity](#), which publishes annual reports collecting empirical data concerning the operation of implicit biases.