

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	Total No. Jurors	Black Jurors	White Jurors	Latino Jurors	Asian Jurors	Women Struck by State
1							Questioned by State	Struck by State	Struck by State	Struck by State	Struck by State	Struck by State	
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").