Attachment D

Batson Questioned; Peremptories Challenged

1. Judicial Opinions

In the decades since Batson, judges seeking to follow Supreme Court precedent have repeatedly expressed frustration with the Batson test's inefficacy.

In People v. Randall, 671 N.E.2d 60 (Ill. App. Ct. 1996), for example, an appellate court expressed dismay at the ease with which the second step -- the assertion of a race-neutral explanation -- could be overcome. The footnotes have been omitted from the passage below, but each explanation offered is a real example taken from an actual case:

> [W]e now consider the charade that has become the Batson process. The State may provide the trial court with a series of pat race-neutral reasons for exercise of peremptory challenges. Since reviewing courts examine only the record, we wonder if the reasons can be given without a smile. Surely, new prosecutors are given a manual, probably entitled, "Handy Race-Neutral Explanations" or "20 Time-Tested Race-Neutral Explanations." It might include: too old, too young, divorced, "long, unkempt hair," free-lance writer, religion, social worker, renter, lack of family contact, attempting to make eye-contact with defendant, "lived in an area consisting predominantly of apartment complexes," single, over-educated, lack of maturity, improper demeanor, unemployed, improper attire, juror lived alone, misspelled place of employment, living with girlfriend, unemployed spouse, spouse employed as school teacher, employment as part-time barber, friendship with city council member, failure to remove hat, lack of community ties, children same "age bracket" as defendant, deceased father and prospective juror's aunt receiving psychiatric care.

> Recent consideration of the Batson issue makes us wonder if the rule would be imposed only where the prosecutor states that he does not care to have an African-American on the jury. We are reminded of the musing of Justice Cardozo, "We are not to close our eyes as judges to what we must perceive as men." People v. Knapp, 129 N.E. 202, 208 (1920).
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> [Id. at 65-66 (footnotes omitted).]

Judge Constance Baker Motley, confronted with similarly unpersuasive race-neutral explanations, banned the use of peremptory challenges in her courtroom in Minetos v. City University of New York, 925 F. Supp. 177 (S.D.N.Y. 1996).

In Minetos, Judge Motley "[held] that judicial experience with peremptory challenges proves that they are a cloak for discrimination and, therefore, should be banned." Id. at 185. In that case, the plaintiff sought a new trial on the discrimination claims she had brought against her employer in part on the basis of the defendants' Batson error. In Judge Motley's view, Minetos "illustrate[d] the bedevilling problems associated with peremptory challenges which, by their very nature, invite corruption of the judicial process." Id. at 183.

The plaintiff in Minetos succeeded in her Batson challenge against the defendants, whom she argued to be "using their peremptory challenges to strike African-American and Hispanic venirepersons based on their race and ethnicity." Id. at 181. After the court found the plaintiff had "made a prima facie showing that defendants were exercising their peremptory challenges in a race-based fashion," the court considered the defendants' proffered race-neutral justifications, which were as follows: "Eddie Rosa indicated that he didn't feel that people necessarily needed to speak English on the job," which was tied to plaintiff's claim that she "was identified as Hispanic on account of her accent"; "the black woman, her name was Victoria Simmons, and she was a teacher in the New York City public school system which is exactly what the plaintiff is"; and "Mr. Judd is a blue collar worker with no office experience whatsoever, which is a factor for us. People who have never worked in an office we feel would have difficulty understanding the office dynamics which are very important to this case." Id. at 181-82.

Noting that "defendants struck exclusively Hispanic and African-American venirepersons," Judge Motley "determined that their race-neutral explanations hid discriminatory intent." Id. at 182.

But the defendants then objected "that plaintiff had likewise committed Batson error by striking only white male members from the prospective jury." Ibid. Judge Motley agreed, noting that "[t]his court does not find plaintiff's proffered reason for striking the white males credible. In New York City the business community is overwhelmingly and disproportionately white. Thus the 'pro-management' excuse offers easy cover for those with discriminatory motives in jury selection." Ibid. Judge Motley explained that "plaintiff's discriminatory use of her peremptory challenges defies the only reason for having them and violates each excluded juror's rights, irrespective of the final racial makeup of the jury." Id. at 183. Ultimately, Judge Motley denied the plaintiff's motion "given plaintiff's own Batson error." Id. at 185.

Judge Motley also offered a firm repudiation of Batson:

> A brief review of the case law shows that judicial interpretations of Batson are all over the map. This is particularly true of Batson's requirement that courts guess at what facially race-neutral reasons are, in fact, pretextual for discriminatory motives. See, e.g., Hernandez v. New York, 500 U.S. 352 (1991) (striking all Spanish-speaking Latino venirepersons because they would not accept court interpretor's translation of Spanish-speaking witnesses was not pretextual); United States v. Alvarado, 951 F.2d 22 (2d Cir. 1991) (striking African-American and Hispanic venirepersons for being young or for being social workers was not pretextual); Polk v. Dixie Ins. Co., 972 F.2d 83 (5th Cir. 1992) (striking African-American venirepersons for lack of "eyeball contact" was not pretextual), cert. denied, 506 U.S. 1055 (1993); United States v. Clemons, 843 F.2d 741 (3d Cir.) (striking all African-American venirepersons for being single and young was not pretextual), cert. denied, 488 U.S. 835 (1988); United States v. Tucker, 836 F.2d 334 (7th Cir. 1988) (striking all African-American venirepersons for lack of education and business experience was not

pretextual); but cf. Garrett v. Morris, 815 F.2d 509 (8th Cir.) (striking all African-American venirepersons for lack of education and knowledge was pretextual), cert. denied, 484 U.S. 898 (1987); Splunge v. Clark, 960 F.2d 705 (7th Cir. 1992) (striking African-American venireperson based on "feelings . . . that she would not be a good juror" was pretextual); United States v. Bishop, 959 F.2d 820 (9th Cir. 1992) (striking African-American venirepersons for living in low-income neighborhood was pretextual).

It is even possible to defeat a Batson claim where the attorney has stated on the record that race was a factor in the decision to strike a prospective juror, if that attorney can show that he or she would have struck the individual for "race-neutral" reasons anyway. See Howard v. Senkowski, 986 F.2d 24 (2d Cir. 1993).

In an effort to lend method to the madness, the New York Appellate Courts have drawn up some "Guidelines" to help trial courts apply Batson's second step. Under these guidelines, certain reasons for striking jurors, offered in response to a challenge of Batson error, will be presumed pretextual on their face and certain reasons will be presumed not pretextual. . . .

. . . .

Subjective reasons offered by counsel to justify peremptory challenges (such as the juror's hairstyle, bad facial expression, body language, or over-responsiveness to opposing counsel) will be evaluated by the trial court and the peremptory challenge will be sustained if the trial court confirms there is a sound and credible basis for it. Of course, listing in this manner has the unfortunate effect of creating a how-to guide for defeating Batson challenges. Such guidelines do not ensure that juror strikes are not racially motivated -- only that advocates are on notice of which reasons will

best survive judicial review. Further, as observed by Mr. Justice Marshall ten years ago:

> "It is even possible that an attorney may lie to himself in an effort to convince himself that his motives are legal." A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is "sullen" or "distant," a characterization that would not have come to his mind if a white juror had acted identically. A judge's own conscious or unconscious racism may lead him to accept such an explanation as well supported. . . . Even if all parties approach the Court's mandate with the best of conscious intentions, that mandate requires them to confront and overcome their own racism on all levels -- a challenge I doubt all of them can meet. It is worth remembering that "114 years after the close of the War Between the States and nearly 100 years after Strauder, racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole."

It took twenty years of judicial experience with the Supreme Court's decision in Swain v. Alabama, 380 U.S. 202 (1965), for the Supreme Court to realize that its decision regarding peremptory challenges placed a "crippling burden of proof" on defendants. See Batson, 476 U.S. at 91-92. And while the Supreme Court has often recognized that peremptory challenges can be exercised in a manner contravening the equal protection clause of the Fourteenth Amendment, the Court has never explicitly considered whether peremptory challenges per se violate equal protection. This court holds that they do.

> It is time to put an end to this charade. We have now had enough judicial experience with the Batson test to know that it does not truly unmask racial discrimination. In short, lawyers can easily generate facially neutral reasons for striking jurors and trial courts are hard pressed to second-guess them, rendering Batson and Purkett's protections illusory. After ten years, this court joins in Justice Marshall's call for an end to peremptory challenges and the racial discrimination they perpetuate.
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> [Id. at 183-85 (footnotes and some internal citations omitted) (quoting Batson, 476 U.S. at 106-07 (Marshall, J., concurring)).]

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Attachment J below features resources related to the systemic jury reforms that the Supreme Courts of Arizona, Connecticut, and Washington have undertaken, in part in response to deficiencies in the Batson test.

California has likewise reformed the use of peremptory challenges through the California Legislature's enactment of Cal. Civ. Proc. Code § 231.7 (eff. Jan. 1, 2021). Among other reforms, the new statute adopts an "objectively reasonable person standard" for assessing challenges. The California Legislature incorporated the following findings in 2020 Cal. Legis. Serv. Ch. 318 (A.B. 3070):

> SECTION 1. (a) It is the intent of the Legislature to put into place an effective procedure for eliminating the unfair exclusion of potential jurors based on race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, through the exercise of peremptory challenges.
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> (b) The Legislature finds that peremptory challenges are frequently used in criminal cases to exclude potential jurors from serving based on their race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups,

> and that exclusion from jury service has disproportionately harmed African Americans, Latinos, and other people of color. The Legislature further finds that the existing procedure for determining whether a peremptory challenge was exercised on the basis of a legally impermissible reason has failed to eliminate that discrimination. In particular, the Legislature finds that requiring proof of intentional bias renders the procedure ineffective and that many of the reasons routinely advanced to justify the exclusion of jurors from protected groups are in fact associated with stereotypes about those groups or otherwise based on unlawful discrimination. Therefore, this legislation designates several justifications as presumptively invalid and provides a remedy for both conscious and unconscious bias in the use of peremptory challenges.
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> (c) It is the intent of the Legislature that this act be broadly construed to further the purpose of eliminating the use of group stereotypes and discrimination, whether based on conscious or unconscious bias, in the exercise of peremptory challenges.

And jurists in other states have filed separate opinions calling for the reform or abolition of peremptories, including:

State v. Veal, 930 N.W.2d 319, 359-61 (Iowa 2019) (Appel, J., concurring in part and dissenting in part) (expressing the views that (1) "our system's approach to achieving a fair cross section of the community in the jury pool and in ensuring African-Americans receive a fair trial is in need of an overhaul"; (2) "the experience of over thirty years demonstrates not that Batson is worthless, but rather that it is very ineffective"; (3) "[g]iven all the problems of Batson, it may well be that an adjustment here and there may not be enough"; (4) "[t]he elimination of peremptory challenges . . . is a substantial proposition and no one has asked for it in this case"; and (5) "we should be giving the elimination of the last minority juror through a peremptory challenge greater scrutiny than other Batson challenges ordinarily require");

Commonwealth v. Maldonado, 788 N.E.2d 968, 975 (Mass. 2003) (Marshall, C.J., concurring) ("This case illustrates, once again, the difficulties confronting defense counsel and prosecutors, . . . trial judges and appellate courts, who struggle to give meaning to the constitutional mandate 'that a jury be drawn from a fair and representative cross-section of the community.' Despite vigilant efforts to eliminate race-based and other impermissible peremptory challenges, it is all too often impossible to establish whether a peremptory challenge has been exercised for an improper reason. I am therefore persuaded that, 'rather than impose on trial judges the impossible task of scrutinizing peremptory challenges for improper motives,' it is time either to abolish them entirely, or to restrict their use substantially." (citations omitted));

Smulls v. State, 71 S.W.3d 138, 160-61 (Mo. 2002) (Wolff, J., concurring) ("The only way to eliminate completely racial profiling in jury selection is to eliminate the peremptory challenge . . . a drastic remedy, and one that I am reluctant to espouse. Instead of complete elimination, the legislature might consider at least a drastic curtailment of the number of peremptory challenges. Section 494.480 allows nine peremptory challenges per side in death penalty cases. These strikes occur after the challenges for cause remove any prospective jurors who would not impose capital punishment. . . . Then, from that "death penalty qualified" group, the state is permitted to strike nine of the prospective jurors for no reason. This may eliminate just about everyone who might even look like they could give a capital defendant the benefit of a reasonable doubt. Does the state really need to strike nine of its citizens in order for the state to receive a fair trial, even after a jury panel is "death penalty qualified"? A system that allows many peremptory challenges is open to manipulation by the defense as well. . . . In a death penalty case, at least 18 citizens show up and undergo voir dire examination and are sent away for no stated reason. This is a waste of time. For a juror to discern that his or her race may have been a factor is to add insult to the waste-of-time injury. This is not a proper way for the state to treat its citizens, especially those who come when summoned for service. If we, as a democratic society, believe the jury system is essential, then we ought to foster respect for this service. . . . [H]ow many safety valves are needed for a fair trial? Nine or even six peremptory challenges seem wildly excessive. On challenges for cause, as in many other trial events, the correctness of trial court rulings is appropriately assumed. One or two peremptory challenges should be enough. If the number of peremptory challenges were reduced to one or two, juries in racially diverse

counties would more likely be representative of the community. More importantly, such a move would drastically reduce the often subtle yet always insidious racial discrimination inherent in many peremptory challenges.");

Wamget v. State, 67 S.W.3d 851, 867 (Tex. Crim. App. 2001) (Meyers, J., concurring) ("Batson claims will inevitably grow in number, compelling hour upon hour of inquiry into venirepersons' ethnic backgrounds and heritage and further inquiry into the supposed thoughts and impulses of the proponent of the strike, issues that are irrelevant to juror impartiality. Moreover, peremptory challenges do not further the goal of an impartial jury, there is no historical rationale supporting their continued use and there is no constitutional right to them. The continued viability of peremptory challenges is not before this Court today. But I would urge the legislature to take a serious look at this issue.");

United States v. Chaney, 53 M.J. 383, 386 (C.A.A.F. 2000) (Sullivan, J., concurring) ("[T]he military justice system should eliminate the peremptory challenge. The peremptory challenge in the military, as it stands in the current of present Supreme Court and our Court's case law, may have outlived its usefulness and benefit. Congress and the President should relook this long established right to strike off a jury, a juror without a judicially sanctioned cause. Real and perceived racial and gender abuses lie beneath the surface of the sea of peremptory challenges." (citations omitted));

Thorson v. State, 653 So. 2d 876, 897 (Miss. 1994) (Sullivan, J., concurring) ("An otherwise qualified citizen should not be excluded from a jury based on a "gut" feeling of one side or the other. To allow exclusion of the juror without giving cause too easily provides the opportunity for racism or other impermissible bases to taint jury selection. If, as the law now exists, selection of jurors may be challenged when impermissible motives are suspected it is in the best interests of justice and efficiency to eliminate peremptory challenges completely, for both sides, and require that cause be given.");

Gilchrist v. State, 627 A.2d 44, 55-56 (Md. Ct. Spec. App. 1993) (Wilner, C.J., concurring) ("Occasionally, the Supreme Court starts a march that, years later, it realizes has led it into a swamp, and it reverses course. It may be too early

yet to know whether that will happen here, but I suspect that it will not. We then may have to face the prospect that, in a seriously contested case, no peremptory challenge will go unchallenged, that counsel will be called upon to explain the basis of every one, that the court will then have to consider (1) whether the reason advanced by counsel falls within the dramatically reduced scope of allowable ones, and (2) even if, facially, it does, whether the reason asserted is merely pretextual. A whole new area of appellate review will blossom; indeed, the buds are already growing. I recognize that the abolition of peremptory challenges would mark a dramatic change in the way our jury system has traditionally operated, and, if we were to do that, we would need to be more liberal in allowing challenges for cause and in permitting voir dire examination for the purpose of making those challenges. The question is whether that would be more, or less, efficient and whether it would produce a more fair, or less fair, result than the hoops we need to jump through now under Batson and its children. I don't know the answer to that, but I think it is a question we urgently need to address.");

People v. Bolling, 591 N.E.2d 1136 (N.Y. 1992) (Bellacosa, J., concurring) (noting that "[p]eremptories have outlived their usefulness and, ironically, appear to be disguising discrimination -- not minimizing it, and clearly not eliminating it," and adding that "[t]he proliferation of Batson-generated trial court colloquies, counterproductive diversions and appellate cases have confirmed William Pizzi's observation: 'If one wanted to understand how the American trial system for criminal cases came to be the most expensive and time-consuming in the world, it would be difficult to find a better starting point than Batson'" (quoting Pizzi, Batson v. Kentucky: Curing the Disease but Killing the Patient, 1987 Sup .Ct. Rev. 97, 155));

Alen v. State, 596 So. 2d 1083, 1086 (Fla. Dist. Ct. App. 1992) (Hubbard, J. concurring) (discussing state law and opining that, "[r]ather than engage in a prolonged case-by-case strangulation of the peremptory challenge over a period of many years which in the end will effectively eviscerate the peremptory challenge or, at best, result in a convoluted and unpredictable system of jury selection enormously difficult to administer -- I think the time has come, as Mr. Justice Marshall has urged, to abolish the peremptory challenge as inherently discriminatory. I would, however, attempt to salvage the best of the peremptory challenge system by expanding the unduly narrow grounds for challenging a prospective juror for cause, so as to embrace the

type of objective reasons which are presently recognized for properly exercising a peremptory challenge [under the relevant state law test]. This latter result could, I think, be accomplished by some appropriate rule or statutory changes." (citation omitted)).

And judges have also considered -- and critiqued -- peremptory challenges in law reviews, calling for the elimination of peremptory challenges and other reforms:

- Hon. Mark W. Bennett, Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problem of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions, 4 Harv. L. & Pol'y Rev. 149 (2010);

- Hon. Morris B. Hoffman, Peremptory Challenges Should Be Abolished: A Trial Judge's Perspective, 64 U. Chi. L. Rev. 809 (1997); and

- Hon. Theodore McMillian, Batson v. Kentucky: A Promise Unfulfilled, 58 UMKC L. Rev. 361 (1990).

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2. Empirical & Legal Analyses

In addition to judicial critiques, a number of empirical studies, drawing data from actual trials or from controlled experiments, have shown that jurors of color have frequently been excluded through peremptory challenges.

For example, the Equal Justice Initiative's comprehensive 2010 report, Illegal Racial Discrimination in Jury Selection: A Continuing Legacy, available at https://eji.org/wp-content/uploads/2019/10/illeg al-racial-discrimination-in-jury-selection.pdf, chronicles the discriminatory exercise of

peremptory challenges in a number of states, as well as the far-reaching consequences of that discrimination on parties, prospective jurors, and the public perception of our system of criminal justice. The report also notes other avenues through which discrimination may infect the jury selection process during the creation of jury pools and the excusal of jurors for cause.

Professor Bryan Stevenson's Executive Summary describes the scope of the report, its findings, and its conclusions:

> Today in America, there is perhaps no arena of public life or governmental administration where racial discrimination is more widespread, apparent, and seemingly tolerated than in the selection of juries. Nearly 135 years after Congress enacted the 1875 Civil Rights Act to eliminate racially discriminatory jury selection, the practice continues, especially in serious criminal and capital cases.
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> The staff of the Equal Justice Initiative (EJI) has looked closely at jury selection procedures in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee. We uncovered shocking evidence of racial discrimination in jury selection in every state. We identified counties where prosecutors have excluded nearly 80% of African Americans qualified for jury service. We discovered majority-black counties where capital defendants nonetheless were tried by all-white juries. We found evidence that some prosecutors employed by state and local governments actually have been trained to exclude people on the basis of race and instructed on how to conceal their racial bias. In many cases, people of color not only have been illegally excluded but also denigrated and insulted with pretextual reasons intended to conceal racial bias. African Americans have been excluded because they appeared to have "low intelligence"; wore eyeglasses; were single, married, or separated; or were too old for jury service at age 43 or too young at 28. They have been barred for having relatives who attended historically black colleges; for the way they walk; for chewing gum; and, frequently, for living in predominantly black neighborhoods. These "race-neutral" explanations and the tolerance of racial bias by court officials have made jury selection for people of

> color a hazardous venture, where the sting of exclusion often is accompanied by painful insults and injurious commentary.
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> While courts sometimes have attempted to remedy the problem of discriminatory jury selection, in too many cases today we continue to see indifference to racial bias in jury selection. Too many courtrooms across this country facilitate obvious racial bigotry and discrimination every week when criminal trial juries are selected. The underrepresentation and exclusion of people of color from juries has seriously undermined the credibility and reliability of the criminal justice system, and there is an urgent need to eliminate this practice. This report contains recommendations we believe must be undertaken to confront the continuing problem of illegal racial bias in jury selection. We sincerely hope that everyone committed to the fair administration of law will join us in seeking an end to racially discriminatory jury selection. This problem has persisted for far too long, and respect for the law cannot be achieved until it is eliminated and equal justice for all becomes a reality.

Earlier this year, the Equal Justice Initiative released another report on discrimination in jury selection practices, Race and the Jury: Illegal Discrimination in Jury Selection (2021), available at https://eji.org/report/race-and-the-jury/. That new report distills research from around the country and includes decisions and developments from the past ten years, which reveal that many of the problems identified in the earlier report persist today.

The 2021 report recounts the history of discriminatory jury selection practices and exposes current modes of discriminatory exclusion in the creation of juror pools, the establishment of juror qualifications, the exercise of for-cause and peremptory challenges, and the election of grand jury forepersons. It identifies the ways in which courts and both prosecutors and defense attorneys may contribute to the selection of non-representative juries, as well as the diverse harms that flow from a failure to achieve meaningful representation on juries.

Finally, the report offers four concrete recommendations for achieving greater representation: "remov[ing] procedural barriers to reviewing claims of racial bias in jury selection"; "commit[ting] to fully representative jury pools";

"creat[ing] accountability for decision makers who engage in racially discriminatory jury selection"; and "adopt[ing] a meaningful presumption of discrimination" "when faced with clear evidence of racial bias."

Other studies on the use of peremptory challenges include:

- April J. Anderson, Peremptory Challenges at the Turn of the Nineteenth Century: Development of Modern Jury Selection Strategies as Seen in Practitioners' Trial Manuals, 14 Stan. J. C.R. & C.L. 1 (2020);

- David C. Baldus et al., The Use of Peremptory Challenges in Capital Murder Trials: A Legal & Empirical Analysis, 3 J. Const. Law 1 (2001);

- Aliza Plener Cover, Hybrid Jury Strikes, 52 Harv. C.R.-C.L. L. Rev. 357 (2017);

- Whitney DeCamp & Elise DeCamp, It's Still About Race: Peremptory Challenge Use on Black Prospective Jurors, J. of Res. in Crim. & Delinq. 57 (2020), https://journals.sagepub.com/doi/full/10.1177/0022427819873943;

- Daniel Edwards, The Evolving Debate Over Batson's Procedures for Peremptory Challenges, National Association of Attorneys General (Apr. 14, 2020), https://www.naag.org/attorney-general-journal/the-evolving-debate-over-batsons-procedures-for-peremptory-challenges/;

- Ann M. Eisenberg, Removal of Women and African Americans in Jury Selection in South Carolina Capital Cases, 1997-2012, 9 Ne. U. L. Rev. 299 (2017);

- Roger Enriquez & John W. Clark III, The Social Psychology of Peremptory Challenges: An Examination of Latino Jurors, 13 Tex. Hisp. J. L. & Pol'y 25 (2007);

- Thomas Ward Frampton, The Jim Crow Jury, 71 Vand. L. Rev. 1593 (2018);

- Catherine M. Grosso & Barbara O'Brien, A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials, 97 Iowa L. Rev. 1531 (2012);

- Nancy S. Marder, Criminal Justice: Justice Stevens, the Peremptory Challenge, and the Jury, 74 Fordham L. Rev. 1683 (2006);

- Caren Myers Morrison, Negotiating Peremptory Challenges, 104 J. Crim. L. & Criminology 1 (2014);

- Samuel R. Sommers & Michael I. Norton, Race-Based Judgments, Race-Neutral Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure, 31 L. & Hum. Behav. 261 (2007);

- Ronald F. Wright et al., The Jury Sunshine Project: Jury Selection Data as a Political Issue, 2018 U. Ill. L. Rev. 1409;

- Hans Zeisel & Shari Seidman Diamond, The Effect of Peremptory Challenges on Jury and Verdict: An Experiment in a Federal District Court 30 Stan. L. Rev. 491 (1978).

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