

# BATSON CHEAT SHEET

2008 Public Defender Seminar  
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## Batson Three-Step:

- Step 1: Defense (objecting party) shows Prima Facie case of discriminatory use of peremptories
  - Use evidence outside the trial record of State's discrimination
  - Use evidence in the voir dire, including, side by side comparisons of jurors struck and accepted, disparate questioning (in number or type), shared race of client and jurors, racially prejudicial treatment of jurors, peremptories used on prosecution-friendly jurors, and State's injection of race into other parts of trial.
  - *Important:* Step 1 becomes moot if the prosecutor skips to Step 2 and gives a reason for strikes
- Step 2: Prosecutor (opposing party) must provide race-neutral reason for challenged strike(s)
  - Make the prosecutor say more than race was not a factor
  - Implausible reasons suffice if race-neutral
- Step 3: Defense (objecting party) has burden of demonstrating intentional discrimination
  - Use same evidence in Step 1
  - Implausible and incredible reasons do not suffice
  - Use side by side comparisons (this time based on prosecutor's purported reasons for strike) to show a pretext for discrimination
  - Bring in evidence concerning credibility of prosecutor

## 2 Key Batson Cases Every Public Defender Should Know:

*Snyder v. Louisiana*, 128 S.Ct. 1203 (2007) (finding purposeful discrimination based on discrimination against a black single juror, and relying on side by side comparison with white jurors the prosecutor accepted for whom prosecution's rationale for exclusion applied equally).

*Miller-El v. Dretke*, 545 U.S. 231 (2005) (relying on "all relevant circumstances" to show purposeful discrimination as well as side by side analysis, and holding that jurors used in comparison need not be "identical").