“OBJECT ANYWAY”: Reviving Batson’s Promise

Elizabeth Hambourger
Center for Death Penalty Litigation
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Let the Sunshine In!
1986
Batson v. Kentucky

Podcast Episode:
"Object Anyway"
More Perfect
WNYC Radio
July 14, 2016
1990 to 2010
MSU RJA Study

Black Jurors
Struck

Black Jurors
Available

Non-Black Jurors
Struck

Non-Black Jurors
Available

“STRIKE RATIO”

\[
\frac{2}{3} \quad \text{versus} \quad \frac{4}{12}
\]

“STRIKE RATIO”
\[
\frac{2}{3} \div \frac{4}{12} = 2 \\
(66.67\%) \quad (33.33\%)
\]

\[
\ll 2/1
\]

2011
Jury Sunshine Project
WFU Jury Sunshine Project

Black/White Removal Ratios for Largest Cities in NC

Winston-Salem (Forsyth) 3.0
Durham (Durham) 2.6
Charlotte (Mecklenburg) 2.5
Raleigh (Wake) 1.7
Greensboro (Guilford) 1.7
Fayetteville (Cumberland) 1.7

So the question is not:

Are prosecutors violating Batson?

Prosecutors are violating Batson
ALL THE TIME
That is so old news.

Let the Sunshine In!

North Carolina Supreme Court

Years since Batson
Batson claims heard 31
Batson reversals 74
0
Purposeful Discrimination Reversals

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia</td>
<td>25%</td>
</tr>
<tr>
<td>Maryland</td>
<td>40%</td>
</tr>
<tr>
<td>Virginia</td>
<td>17%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>33%</td>
</tr>
</tbody>
</table>

Friendly SCOTUS Case Law!!

- Miller-El v. Dretke (Miller-El II), 545 U.S. 231 (2005)
- Foster v. Chatman, 136 S.Ct. 1277 (2016)

When to use Batson?

ALWAYS
Object!

- Create appellate issue (no need to exhaust peremptories)
- Settle the case
- Get future jurors passed
- Strengthen later Batson objections
- Educate the court/prosecutor
- Help prosecutor check implicit bias
- Work for your client
- Alert attentive jurors to flawed, racially biased system
- There to do battle
- Right thing to do

So, object anyway!

Batson Motions 101 - Essentials

- Record jury selection
- Record juror race
**Batson Motions 201**

- Notice of intent to object to Batson violations
- Discovery motion – training materials
- Memorandum in support of Batson objection
- Preserve state’s notes*

### 1986 Batson v. Kentucky

Three Step Framework
1. Prima facie case
2. Race neutral justification
3. Purposeful discrimination

### Step 1

"not intended to be a high hurdle for defendants to cross."

*State v. Hoffman, 348 N.C. 548, 553 (2008)*
Step 1

- Total Strikes
- Strike Rate
- Comparative Juror Analysis
- Lack of Info/Qs
- Historical Evidence
- Prosecutor's History
- Race of Parties

Step 2

Step 3

- Comparative Juror Analysis
- Use evidence from step 1
- Implausible and incredible reasons ≠ ok
- Prosecutor's pattern/history
- Not race-neutral, not ok.
Keys from the Supremes

- One is one too many.
- Historical evidence matters.
- A reason, not the sole reason.
- Don't have to disprove each reason provided.
- Jurors are not a set of cookie cutters.

You win! Relief?
“Reverse Batson”

- First, don’t do it! You’re not helping your client!
- Ask good questions and base your strike decisions on juror answers NOT stereotypes

Implicit bias

- What assumptions am I making about this juror?
- How would I interpret that answer if it were given by a juror of another race?