

# Guess Who's Coming to Jury Duty?

HOW THE FAILURE TO COLLECT JUROR DEMOGRAPHIC DATA CONTRIBUTES TO WHITEWASHING THE JURY BOX



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Founded in 2001, the Berkeley Law Death Penalty Clinic seeks justice for individuals facing capital punishment by providing high-quality representation and offers students a rich opportunity for meaningful, hands-on experience in high stakes, complex litigation. The clinic also tackles problems endemic to the administration of the death penalty and the criminal legal system. More information about the clinic is available at [law.berkeley.edu/experiential/clinics/death-penalty-clinic/](http://law.berkeley.edu/experiential/clinics/death-penalty-clinic/).

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In 2020, we published *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors*. It was our goal that the report “serve as a catalyst for reform that results in vigorous enforcement of the constitutional rights of those

whose lives depend upon and a fair and equitable jury selection system and of those who are eligible to serve on juries.” We hope that *Guess Who’s Coming to Jury Duty?* helps expedite the systemic changes necessary to guarantee these constitutional rights.

*Cover illustration by Ojima Abalaka*  
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# Executive Summary

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*Guess Who's Coming to Jury Duty?* expands on the Berkeley Law Death Penalty Clinic's 2020 publication, *Whitewashing the Jury Box: How California Perpetuates the Exclusion of Black and Latinx Jurors*.<sup>1</sup> The report presented the results of the first investigation into the exercise of peremptory challenges in California criminal trials under the three-step framework established by the state supreme court in 1978 and the United States Supreme Court in 1986. See *People v. Wheeler*, 22 Cal. 3d 258, 583 P.2d 748 (Cal. 1978); *Batson v. Kentucky*, 476 U.S. 79 (1986).<sup>2</sup> The report concluded, “[T]he California Supreme Court went from a judiciary that championed the eradication of race-based strikes to a court that resists the United States Supreme Court’s limited efforts to enforce *Batson* [even as it remains] a woefully inadequate tool to end racial discrimination in jury selection.”<sup>3</sup>

*Whitewashing the Jury Box* recommended the passage of legislation, California Assembly Bill 3070, to replace the *Batson-Wheeler* inquiry with a procedure modeled on Washington Supreme Court General Rule 37.<sup>4</sup> The bill was signed into law in 2020, adding section 231.7 to the California Code of Civil Procedure.<sup>5</sup> The new statute was implemented on January 1, 2022.<sup>6</sup>

California trial courts do not systematically collect demographic information from prospective jurors.<sup>7</sup> The status quo thus hamstring researchers’ ability to determine, as an empirical matter, whether the state’s *Batson-Wheeler* reform is increasing representativeness on seated juries. This deficiency and our broader interest in ending the exclusion of persons of color, particularly Black and Latinx Americans, from jury service prompted this study, which aims to answer the following questions:

1. Which federal district courts and state trial courts collect prospective jurors’ self-identified race and ethnicity as a matter of statutory authority, judicial rule, or formal policy?
2. If there is a statute, rule, or policy, at what stage of the jury selection proceedings and in what manner does the court collect the information?
3. If there is a statute, rule, or policy, is prospective jurors’ race/ethnicity information available to judges and counsel for the parties before jury selection commences?

The premise of the study, which we discuss in the [Introduction](#) and [Section II](#), is that racial/ethnic representation and diversity matter to jury decision-making and hence justice — and that they cannot be achieved unless courts take a race-conscious approach to jury service and selection. If adopted, our recommendations alone will neither ensure that juries are drawn from a fair cross-section of the community nor eliminate implicit, explicit, and institutional racial bias in the selection of the seated jury. They are, however, essential steps towards these goals and the larger racial justice project.<sup>8</sup>

Among the states whose courts ask prospective jurors to identify their race and ethnicity, there is no consistency in the form of the questions. We used “race/ethnicity” as a stand-in for the variety of ways state and federal courts collect, analyze, and make available jurors’ self-identified race and ethnicity.



Acquiring the answers to our research questions proved more difficult than we anticipated for the following reasons:

- By “collect,” we mean that the state has an optional or mandatory collection system. In the former, the prospective juror is given a choice whether to provide race/ethnicity information in response to a question. In a few states, the race/ethnicity question is on the driver’s license or state identification application form, and the responsive data is included in the jury source lists.<sup>9</sup> In most states, the question is in a form provided to prospective jurors at the time of summons or appearance for service.
- In many states that collect race/ethnicity data from prospective jurors, the fact that they do so is generally ascertainable from the state’s applicable jury statutes or court rules. However, there are states whose statutory schemes give no indication that race/ethnicity data are collected, but whose juror qualification questionnaires show that the information is in fact requested or required. Overall, the relevant statutes, rules, and policies, and the questionnaires themselves were more difficult to locate than they should have been.
- Even in states that collect race/ethnicity data, it can be burdensome to determine whether the collecting authority — such as the state administrative office of the courts or the local court administration — provides the information to the trial judge and counsel. State statutes and judicial rules do not uniformly address the issue, which necessitated extensive outreach to court administrators and trial attorneys.
- Determining that a state does *not* collect race/ethnicity data was similarly challenging. We did not identify any state that has an explicit policy or rule prohibiting collection or advising against it. We therefore looked beyond statutes and judicial rules to jury plans and management guidelines, if available, and, of course, to juror questionnaires. In states with a uniform statewide qualification questionnaire, we could determine that the form does not request race/ethnicity and the relevant statutes and rules give no indication the information is otherwise required. However, many states apparently leave the contents of juror qualification questionnaires to the discretion of each judicial district or to individual trial judges. As our objective was to determine federal and statewide practices, we did not attempt to ascertain the number of local judicial districts whose juror questionnaires inquire about race/ethnicity.

With these limitations, we made the following findings:

- The national trend over the past several decades has been toward the collection of race/ethnicity information from prospective jurors. However, the long-term pace has been glacial. As of 2023, a few more states appeared to be moving in this direction. Washington enacted legislation that requires the administrative office of the courts to “provide all courts with a method to collect data on a juror’s race, ethnicity” and other demographic characteristics. California passed legislation to launch a two-year pilot

in at least six counties, which will include data collection as part of a program to grow jury participation and diversity by increasing juror compensation. Two states, Michigan and North Carolina, are considering legislation that would require race/ethnicity data collection.

- Nineteen states, the District of Columbia, and the federal district courts collect race and ethnicity data on a state- or — in the District of Columbia and the federal courts — on a district-wide basis, either from source lists or directly from prospective jurors. Nebraska’s statewide juror qualification forms ask for race/ethnicity information, but no agency has collected the information from the questionnaires since 2010. By statute, Utah reviews the master jury list for “inclusiveness,” but does not employ a statewide questionnaire that obtains race/ethnicity information. For these reasons, we categorized Nebraska and Utah as states that do not collect.
- Of the 19 states that collect prospective jurors’ race/ethnicity data, 16 states do so directly from prospective jurors. Three states, Alabama, Georgia and South Carolina, obtain the data from their jury pool sources, such as their department of motor vehicles. Race/ethnicity information is included in Wisconsin’s source lists and collected through its juror questionnaires.
- Of the 19 states, the District of Columbia, and the federal district courts that collect racial/ethnic identification from prospective jurors, 16 states share this information with trial judges and counsel, either as a matter of statutory law, statewide judicial rule or policy, at the request of counsel, or in the discretion of individual judicial districts or trial judges.

In the report, we describe the research and analysis that led to the following recommendations:

1. Every state should adopt a uniform questionnaire that obtains prospective jurors’ self-identified race/ethnicity when they respond to a summons. A copy of the uniform questionnaire should be publicly available online.
2. To ensure that judicial districts can accurately determine composition at all stages of jury selection, the questionnaire should ask prospective jurors to identify their race and ethnicity, employing the same categories and definitions used in the U.S. Census as a starting point.<sup>10</sup>
3. The questionnaire should include an advisement informing prospective jurors that the purpose of asking them to identify their race/ethnicity is to ensure the presence of a representative cross-section of the community on juries, to prevent discrimination in jury selection, and thereby to improve the quality of decision-making. The advisement should assure prospective jurors that their answers to the race/ethnicity questions will have no bearing on their qualifications as a juror.



4. Prospective jurors should be required to answer questions regarding their race/ethnicity.
5. Each prospective juror's self-identified race/ethnicity should be available to the trial court and counsel for the parties prior to the commencement of jury selection. However, courts should implement procedures to ensure access to the questionnaires is restricted to their use in litigation, including on appeal and in post-conviction, and otherwise protect the confidentiality of the questionnaires.
6. Aggregate, anonymized race/ethnicity data should be published annually by each judicial district and should be readily available to litigants investigating jury composition or selection challenges.
7. Court administrators for each judicial district should regularly review the collected race/ethnicity data as part of a formal process that examines the composition of juries from source lists through selection.
8. In states that have uniform policies and procedures regarding juror questionnaires and the collection and assessment of juror demographic data, this information — including the statutory and/or other authority on which the policies and procedures are based — and the form questionnaire should be available on the judicial branch web page.

# I. Introduction

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In recent years, public awareness of structural racism in the criminal legal system has sparked numerous reform initiatives.<sup>11</sup> The murder of George Floyd in 2020 served to further catalyze the movement for structural transformation.<sup>12</sup> More than the numerous police killings of Black men, women, and children that preceded it, George Floyd's murder provoked responses from public, corporate, and other institutional actors, including an open letter by the Supreme Court of Washington with the following acknowledgment:<sup>13</sup>

The devaluation and degradation of black lives is not a recent event. It is a persistent and systemic injustice that predates this nation's founding. But recent events have brought to the forefront of our collective consciousness a painful fact that is, for too many of our citizens, common knowledge: the injustices faced by black Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.

Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed. The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.

Much of the public discourse in the aftermath of George Floyd's murder centered around reforms to policing, including the defunding of some traditional police functions.<sup>14</sup> The conversation has, as we discuss below, also generated momentum to reconsider jury selection, from composition of the venire to empanelling the 12 seated jurors and the alternates.<sup>15</sup>

As noted above, this study grew out of the Berkeley Law Death Penalty Clinic's 2020 report, *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors*.<sup>16</sup> Of relevance here, *Whitewashing the Jury Box* began with a historical overview of the exclusion of people of color, especially Black Americans, from juries across the country and, specifically, in California.<sup>17</sup> The report published the results of the first investigation into the exercise of peremptory challenges in California criminal trials under the three-step framework established by the state supreme court in 1978 and the United States Supreme Court in 1986.<sup>18</sup> See *People v. Wheeler*, 22 Cal. 3d 258, 583 P.2d 748 (Cal. 1978); *Batson v. Kentucky*, 476 U.S. 79 (1986).<sup>19</sup> Based on the study's quantitative and qualitative analyses, the authors concluded:

[P]rosecutors across California use peremptory strikes to disproportionately remove African-American and Latinx citizens. Further, California appellate courts seldom reverse trial court decisions for *Batson* error, instead upholding prosecutors' reasons for striking Black and Latinx jurors as race-neutral and credible. Taken

together, these findings suggest both that California has a serious *Batson* problem and lacks an effective judicial mechanism (or the judicial will) to address it.<sup>20</sup>

*Whitewashing the Jury Box* also examined decades of empirical studies on *Batson*'s efficacy in the state and federal courts,<sup>21</sup> a half-century of scholarly research on implicit bias in the criminal legal system,<sup>22</sup> the manner in which prosecutors are trained to rely on racial and ethnic stereotypes to make and justify their peremptory strikes,<sup>23</sup> and the calls for reform from jurists, legal scholars, and social scientists.<sup>24</sup> The report recommended the passage of legislation, California Assembly Bill 3070 (A.B. 3070), to replace California's *Batson-Wheeler* inquiry with a procedure modeled on Washington Supreme Court General Rule 37 (GR 37).<sup>25</sup>

Assembly Bill 3070 was signed into law in 2020, adding section 231.7 to the California Code of Civil Procedure.<sup>26</sup> The new statute was implemented on January 1, 2022.<sup>27</sup> California thus became the second state to abandon *Batson* and the first to adopt a framework similar to Washington's. For information on *Batson*-reform developments since the publication of *Whitewashing the Jury Box*, see *Batson Reform: State by State* and Thomas Ward Frampton & Brandon Charles Osowski, *The End of Batson?*<sup>28</sup>

Our initial impetus for investigating the statewide collection of prospective jurors' race/ethnicity came from the impossibility of studying the impact of A.B. 3070 at the trial level. California does not systematically collect demographic information from prospective jurors.<sup>29</sup> Given the Death Penalty Clinic's experience litigating *Batson* claims and advocating for *Batson* reform, we were cognizant of the importance of gathering data about prospective jurors' self-identified race and ethnicity and the necessity of making this information available to trial judges and litigants.

*Batson* remains the dominant procedure for assessing the lawfulness of peremptory challenges.<sup>30</sup> Several years ago, jury scholars Catherine M. Grosso and Barbara O'Brien called on "criminal courts to . . . expand the standard trial court record to include jury selection data."<sup>31</sup> They were prompted by a decade of Supreme Court decisions that, in their view, "strengthen[ed] the *Batson* framework by recognizing valid claims and expand[ed] the evidentiary framework."<sup>32</sup> Professors Grosso and O'Brien argued that courts could neither implement the new line of cases nor "test their effectiveness in diminishing the influence of race without a clear record of jury selection."<sup>33</sup> They stated: "At minimum, the record must include the race of potential jurors and a description of what happened to them."<sup>34</sup> As we discuss in Section II.C, collection and dissemination of prospective jurors' race/ethnicity information to judges and counsel is likewise vital to enforcing new peremptory-challenge frameworks in individual trials and to trial-level empirical analyses of their results.

Our investigation took several procedural steps back on the jury selection continuum to demonstrate that courts cannot comply with federal fair cross-section guarantee<sup>35</sup> if they do not collect and analyze jurors' self-identified race and ethnicity.<sup>36</sup> There is nothing novel about the proposition that courts should routinely gather demographic information from prospective

jurors, including their race and ethnicity. Federal district courts have been doing so since 1972.<sup>37</sup> Almost two decades ago, the American Bar Association proposed that courts “periodically review the jury source list and the assembled jury pool for representativeness and inclusiveness of the eligible population in the jurisdiction.”<sup>38</sup> In 2020, the Conference of Chief Justices and the Conference of State Court Administrators observed that “courts in many states . . . have initiated efforts. . . to collect, maintain and report court data regarding race and ethnicity that enables courts to identify and remedy racial disparities.<sup>39</sup> A number of reports commissioned by state judiciaries to study reforms to the jury selection process and the criminal legal system more generally recommended obtaining this information from prospective jurors.<sup>40</sup> Jury scholars likewise advised that “[b]est practices . . . require courts to (A) collect race and ethnicity data and (B) conduct periodic examinations of racial and ethnic diversity in the jury pool.”<sup>41</sup> Collecting this data accurately, reliably, and with reasonable frequency is the “first step to ensuring the inclusiveness and representativeness of the jury pool.”<sup>42</sup> Indeed, the refusal to do so obscures the extent to which jury pools do not reflect the communities from which they are drawn and frustrates litigants’ ability to challenge those constitutional inequities through jury composition challenges.

To be sure, collecting such data risks treating race as a biological fact. But ignoring race because it is a social invention is no solution. Though race is a social construct,<sup>43</sup> it continues to permeate the American legal system,<sup>44</sup> just as “race mediates every aspect of our lives.”<sup>45</sup> We therefore acknowledge the need for a race-conscious approach.<sup>46</sup> This approach contrasts with the “intentional blindness”<sup>47</sup> that defines the current United States Supreme Court Fourteenth Amendment intent doctrine jurisprudence<sup>48</sup> in which context and discriminatory impact are irrelevant.<sup>49</sup>

Before the Supreme Court’s recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (SFFA)*,<sup>50</sup> we thought it would be sufficient to explain the reasons underlying our call for a race-conscious approach in the footnotes. We suspect, however, that *SFFA* will be top of mind for some judges, lawyers, judicial administrators, and legislators. We therefore address it directly here. Asking jurors to self-identify by race and ethnicity, compiling data about their responses, and employing the data for the purposes we propose can coexist quite easily with the Court’s holding in *SFFA*. First, college admissions are altogether different from jury selection. College admissions are, in the eyes of the *SFFA* majority, a zero-sum proposition.<sup>51</sup> That is, the admission of a Black or Latinx student because of a race-conscious admissions program denies admission to a student of Asian descent.<sup>52</sup> By contrast, in the jury-selection process, racial/ethnic identification is being used to determine whether courts are complying with federal and state fair cross-section guarantees<sup>53</sup> and whether *Batson* and other anti-discrimination approaches are being effectuated. Second, although the majority opinion in *SFFA* makes frequent use of the terms “colorblind” and “colorblindness,” the Court held that the schools’ admissions programs were unconstitutional because Harvard and the University of North Carolina could not tell the Court the precise shape and weight of the educational benefits that were being generated by student body diversity.<sup>54</sup> We, however, are proposing to use race/ethnicity information *to measure* outcomes, that is, generate the data that will let us know whether the litigants and the courts are complying with existing law.<sup>55</sup>

The opinions of experts such as those named above and in Section II informed our conclusion that questions to prospective jurors about their race/ethnicity should not be optional. We acknowledge that ours is not a universal view<sup>56</sup> and urge courts to be attentive to the well-founded reluctance among some people of color, especially Black Americans, to self-identify by race/ethnicity on a government form.<sup>57</sup> We concur with the authors of the *Final Report of the Washington Statewide Juror Summons Demographic Survey Project*:

[W]e understand and are conscious of the nuances surrounding identity constructs (i.e., racial, ethnic, sexual, gender identity, etc.) and related harms that marginalized groups face due to racism, bias, and discrimination within society as a whole and the criminal justice system specifically. Despite our attempts to be as inclusive as possible, the subcategorizations used in this research are still imperfect and may not capture all combinations of self-reported identity or orientation.<sup>58</sup>

It is imperative juror questionnaires include an advisement that is transparent about the purpose and use of the race/ethnicity data. Examples of federal and state advisements are included in Appendices B and D. We do not endorse any specific example. Rather, each state should engage in a consultative process to develop language that is responsive to historical and present-day concerns about the collection of race/ethnicity demographic data.



# II. Reference Points, Premises, and Priorities

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## A. THE CRIMINAL LEGAL SYSTEM, RACE, AND THE JURY

Police are more likely to stop, search, arrest, and use force against Black people than white people.<sup>59</sup> Prosecutors charge Black defendants more severely and are less likely to offer them a favorable plea bargain than white defendants.<sup>60</sup> Judges are more likely to order pre-trial detention, impose higher bail, and deliver harsher sentences on Black defendants than white defendants.<sup>61</sup> The United States incarcerates people at a higher rate than any other country<sup>62</sup> and incarcerates Black people at roughly five times the rate of whites.<sup>63</sup> Racism infects the criminal legal process at every stage, with the result that Black people comprise 38% of the men and women behind bars, but only 12% of the total population.<sup>64</sup> In this way, the country's racist past endures in the present, enabled by formally race-neutral laws that permit racial inequalities in policing, prosecution, and sentencing.<sup>65</sup>

Although the criminal legal system disproportionately impacts people of color, most police officers,<sup>66</sup> prosecutors,<sup>67</sup> and judges are white.<sup>68</sup> The stark imbalance between those who make decisions in the criminal legal system and those who suffer the consequences of these decisions highlights the importance of diverse representation on juries.

Legally sanctioned or tacitly approved systems of racial subjugation all but shut Black Americans out of jury service in many states until the latter part of the 20th century.<sup>69</sup> They operated to keep Black citizens off jury rolls and to ensure that, if summoned, they would not be seated.<sup>70</sup> This history of exclusion and removal is beyond debate. The Supreme Court has declared, “Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process.”<sup>71</sup> Yet, racially representative juries are no more the norm than is racial representation elsewhere in the legal system. Too often, jury members and defendants come from completely different communities.<sup>72</sup>

## B. JURY REPRESENTATIVENESS AND DIVERSITY

The United States Supreme Court has repeatedly proclaimed that “the Sixth Amendment right to a jury trial is ‘fundamental to the American scheme of justice.’”<sup>73</sup> In 1940, addressing the exclusion of Black citizens from Texas grand juries, the Court acknowledged, “It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.”<sup>74</sup> In *Taylor v. Louisiana*, the Court announced that “the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.”<sup>75</sup> The Court explained:

The purpose of a jury is to guard against the exercise of arbitrary power — to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge. This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool.<sup>76</sup>

A half-century ago, the Court defined the harm to the deliberative process when juries are unrepresentative:

When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.<sup>77</sup>

When people of color are excluded from jury service, “the jury’s role as a hedge against government oppression is undermined by the absence of a perspective that may be particularly attentive to how the government can abuse its power.”<sup>78</sup>

Social science confirms that diverse representation on juries improves their collective decision-making processes.<sup>79</sup> For example, one study found that racially heterogeneous juries, as compared to all-white juries, “deliberated longer and considered a wider range of information.”<sup>80</sup> White participants in the racially heterogeneous groups “raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related issues.”<sup>81</sup> Another research paper showed that racial diversity motivated white jurors to contribute more fact-based, unbiased observations during jury deliberations, thereby reducing racial disparity in trial outcomes.<sup>82</sup>

Much of the empirical research on race and juries has examined juror attitudes and deliberations in capital trials.<sup>83</sup> In cases involving a Black defendant and a white victim, having even one seated Black juror significantly reduced the likelihood of receiving a death sentence.<sup>84</sup> Studies show that white men are likely to sentence Black defendants to death more frequently than white defendants; white jurors are significantly less receptive to mitigating evidence; and white jurors are more likely than Black jurors to evaluate aggravating and mitigating evidence through the lens of the defendant’s race.<sup>85</sup> Put differently, Black jurors “are *more* likely to be impartial” than white jurors, especially in cases involving Black defendants.<sup>86</sup> The research unmistakably shows that when juries include Black members, Black defendants are more likely to receive a fair trial.<sup>87</sup>

### C. THE IMPORTANCE OF COLLECTING JURORS’ SELF-IDENTIFIED RACE/ETHNICITY INFORMATION AND PROVIDING IT TO TRIAL COURTS AND LITIGANTS

We conclude that the collection and analysis of jurors’ self-identified race/ethnicity are essential to ensuring jury venires are composed of a fair cross-section of the community and to eliminating the use of racially discriminatory peremptory challenges, whether those strikes are based on conscious or unconscious bias.

In addition to the federal fair cross-section guarantee, all 50 states expressly ensure this right by statute and/or case law.<sup>88</sup> To mount a successful fair cross-section challenge, a criminal defendant “must have access to the jury system’s own data about the racial make-up of the jury pool and the operation of the selection system.”<sup>89</sup> Jury scholars have dissected the flawed and counterproductive approaches too often taken by states that have the information but resist defendants’ discovery requests.<sup>90</sup> In the 31 states that do not collect prospective jurors’ race/ethnicity on a statewide level, a discovery request “necessitates a new and time-consuming research effort.”<sup>91</sup> These jurisdictions are willfully ignorant of the composition of their venires, effectively rejecting their constitutional obligation to ensure a fair cross-section and hamstringing defendants’ efforts to vindicate their Sixth and Fourteenth Amendment rights.

Ending the use of discriminatory peremptory challenges requires that courts collect prospective jurors’ self-identified race/ethnicity and distribute the information to the judge and counsel for the parties in every criminal and civil trial. Both are necessary, whether the jurisdiction follows *Batson* or one of the new procedures. Parties cannot effectively litigate and trial courts cannot fairly adjudicate an objection to a peremptory challenge without a clear, accurate, and complete record of the race/ethnicity of every prospective juror who enters the courtroom. First, under every framework, the objecting party must show, as a threshold matter, that the challenged juror is a member of a cognizable group.<sup>92</sup> Second, beginning with *Batson*, statistical evidence has been central to the three-step inquiry.<sup>93</sup> Third, in the past two decades, comparative juror analysis has been the linchpin in the Supreme Court’s favorable *Batson* step-three determinations.<sup>94</sup> In 2019, in *Flowers v. Mississippi*, the Court offered an illustrative list of factors the trial judge may consider in ruling based on its prior *Batson* decisions.<sup>95</sup> The list includes the following circumstances that require a record of the race/ethnicity of the jurors in the venire:

- statistical evidence about the prosecutor’s use of peremptory strikes against Black prospective jurors as compared to white prospective jurors in the case;
- evidence of a prosecutor’s disparate questioning and investigation of Black and white prospective jurors in the case;
- side-by-side comparisons of Black prospective jurors who were struck and white prospective jurors who were not struck in the case;
- relevant history of the State’s peremptory strikes in past cases.<sup>96</sup>

Jurors’ *self-identified* race/ethnicity must be obtained, as the alternative is to rely on physical characteristics and other aspects of a juror’s appearance to determine the juror’s race/ethnicity. In the absence of juror self-identification, the trial judge and the parties, consciously or unconsciously, will likely select a prospective juror’s group membership based on characteristics that are often tied to stereotypes of race and ethnicity.

We think we “see” race when we encounter certain physical differences among people such as skin color, eye shape, and hair texture. What we actually “see” . . . are the learned social meanings, the stereotypes, that have been linked to those physical features by the ideology of race and the historical legacy it has left us.<sup>97</sup>

*McDaniels v. Kirkland*, a Ninth Circuit opinion, offers a fairly typical use of racial stereotyping to identify a juror based on appearance.<sup>98</sup> The case involved *Batson* objections to the prosecutor’s use of peremptory challenges to remove four Black prospective jurors.<sup>99</sup> In support of his strike, the prosecutor described one of the excluded jurors as “hesitant,” “intimidated,” “and weird,” adding, “[T]he only way we would even know that she’s African-American is because she put on her questionnaire that she’s of Caucasian race, African-American, [and], I think American Indian [sic.] But physically, to look at her, you would not be able to tell that she’s any parts African-American.”<sup>100</sup> The court rejected McDaniels’s argument that the prosecutor’s description of the juror was itself evidence of purposeful discrimination.<sup>101</sup> The circuit panel held that the description was not the reason for the prosecutor’s challenge, but simply an “unpersuasive attempt to dispel the inference of racial motivation.”<sup>102</sup> Put aside for a moment the court’s failure to consider the prosecutor’s statement itself as part of “all [the] evidence with a bearing” on his credibility at step three of the *Batson* inquiry.<sup>103</sup> The prosecutor was most assuredly relying on racial stereotypes to extricate himself.

*State v. Smalley*, a recent Washington Court of Appeals opinion, illustrates how disputes about the racial or ethnic identity of a prospective juror in the context of peremptory challenges play out, usually to the detriment of the accused.<sup>104</sup> Counsel for the co-defendant objected to the prosecutor’s strike of juror 32. When the trial court stated that the juror “did not appear to be a person of color or a minority,” counsel replied that “she is of part minority” based on “looking at the hair color, her skin was a little bit darker, whether that was tan or natural melanin.”<sup>105</sup> The prosecutor described juror 32 as “white as snow” and “just as white as the day is long.”<sup>106</sup> Defense counsel countered that the juror was “of some mixed race.”<sup>107</sup> Commenting that General Rule 37 offers “no guidance on how to determine whether someone is a racial or ethnic minority, the court denied the objection, ruling that it had identified “six [other] jurors it believed were racial or ethnic minorities.”<sup>108</sup> The Washington Court of Appeals affirmed, holding that “there is nothing in the record to establish that juror 32 is a member of a cognizable racial or ethnic group.” The court found that “neither the State nor the court identified juror 32 as a member of a racial or ethnic group” and that defense counsel’s description of the juror’s hair and skin color was insufficient to make the showing.<sup>109</sup>

In *United States v. Ochoa-Vasquez*, there was considerable debate during jury selection about the racial/ethnic identity of struck and seated jurors after the federal district court denied the defense request for juror demographic information.<sup>110</sup> The Eleventh Circuit found that the parties and the district court had made incorrect judgments about several of the jurors’ ethnicities based on the jurors’ appearance or accent.<sup>111</sup> The court concluded, “[T]he only alternative to identifying the self-reported race or ethnicity of the venire members is to

establish it based on appearance, demeanor, accent, and other physical features.”<sup>112</sup>

Empirical evidence confirms the finding in *Ochoa-Vasquez* that observers rely on factors such as phenotype to racially classify others. “[S]ocial psychological research strongly supports the conclusion that . . . [w]hen a lawyer sees a potential juror, she will almost instantly categorize that person . . . on the basis of race,” whether consciously or not, and that she will “encode” this information differently and “recall it more easily.”<sup>113</sup> Skin color, hair, nose and lip shapes, and body types contribute to the racial categorization process, with skin color playing the biggest role in this categorization.<sup>114</sup> Observers’ own characteristics, such as gender and race, also shape racial categorization.<sup>115</sup>

Racial categorizations based on characteristics such as appearance, accent, and name are the tip of the implicit-bias iceberg. Encoding a prospective juror as non-white also encodes a cascade of largely negative explicit and implicit biases about the prospective juror, particularly if the juror is Black.<sup>116</sup> A central critique of *Batson*, beginning with Justice Thurgood Marshall’s observations, is its failure to acknowledge, much less preclude, peremptory challenges based on “unconscious racism.”<sup>117</sup> The Justice wrote:

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.<sup>118</sup>

The legal throughline to the consensus that *Batson* has failed<sup>119</sup> flows from Justice Marshall’s concurring opinion, including his prediction that prosecutors would have no difficulty producing explanations for their strikes, which courts would accept as “race neutral.” If the institutions and individual actors in the legal system are finally intent on ending racially discriminatory peremptory challenges, we will require trial-level data to evaluate whether changes to the *Batson* regime are changing behaviors and outcomes.



# III. Methodology

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Our goal was to identify which courts — federal and state — collect the race and ethnicity of prospective jurors and, if so, whether the information is made available to judges and counsel before jury selection commences.

There is no consistency in the way state courts ask prospective jurors to identify their race and ethnicity. As Appendix B shows, Arizona and Connecticut give prospective jurors a list of options to select regarding race and include a yes-or-no question that asks whether the individual identifies as “Hispanic or Latino.” States such as New Mexico and Texas use a fill-in-the-blank format. The District of Columbia and states such as New Jersey, New York, and North Dakota include an explicit multiracial option; most do not. Many states include the option to select “Native American or Alaska Native” and “Native Hawaiian or Pacific Islander”; states such as Alabama, Delaware, New York, and Pennsylvania do not. However, a proposed rule change in Pennsylvania would increase the number of categories to include “American Indian or Alaska Native” and “Native Hawaiian or Other Pacific Islander.”<sup>120</sup> Given the lack of consistency, we included states that ask the prospective juror to self-identify their race, whether or not the term is defined on the form and whether or not the form breaks out “ethnicity” as a separate category. As noted in the Executive Summary, “race/ethnicity” is a shorthand for the variety of ways states collect jurors’ self-identified race and ethnicity.

A comparison of race/ethnicity terminology in juror questionnaires was beyond the scope of this report. However, the wide range of racial and ethnic categories we identified underscores the need for a measure of uniformity that begins with the most recent U.S. Census questions but is responsive to “the large and growing understanding of the nuances in how people self-identify.”<sup>121</sup>

To determine federal, state, and local juror demographic data collection practices, we analyzed publicly available data and information submitted directly to the Death Penalty Clinic’s research team upon request.

We relied upon resources such as the following:

- Federal and state statutes, judicial rules, court orders, and judicial opinions
- State standards, guides, and handbooks on jury management
- Federal, state, and local jury service websites
- Reform task force or committee reports and recommendations
- Legislative bills and correspondence
- News articles
- General counsel for judicial districts, statewide and local jury administrators, and court clerks
- National Center for State Courts
- Members of the bench and bar
- Legal and social science literature

In each state, we attempted to identify the statutes, rules of court, judicial orders, jury management publications, and juror questionnaires that explain whether juror race/ethnicity information is collected, and, if so, identify the data that are collected; the governmental entities responsible for collecting the data; and the mechanisms by which the data are collected. It was often difficult to locate this information online. This necessitated consultation with jury commissioners, court clerks, and local counsel. Information we obtained through direct communication with these individuals is identified as such and is on file with the Berkeley Law Death Penalty Clinic.

We also aimed to identify the states that require aggregation and analysis of the juror race/ethnicity data in some manner and, as a separate matter, make the data available to trial courts and the parties for use in jury selection.

# IV. Findings & Conclusion

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obtain race and ethnicity data from their jury pool sources, such as their departments of motor vehicles and secretaries of state, to the extent the data is available.<sup>129</sup> Race/ethnicity information is included in Wisconsin’s source lists and collected through its juror questionnaires.<sup>130</sup>

## 2. States that do not collect juror race/ethnicity data.

Thirty of the 31 states below do not collect juror race/ethnicity data pursuant to a statute, statewide judicial rule, or statewide policy. We found nothing in these provisions indicating that the sources of these states’ master lists furnish juror race/ethnicity information. As we explain, Nebraska is an anomaly in that its statewide juror qualification form includes race/ethnicity questions, but the data is no longer collected.

- Alaska<sup>131</sup>
- Arkansas<sup>132</sup>
- California<sup>133</sup>
- Colorado<sup>134</sup>
- Florida<sup>135</sup>
- Hawaii<sup>136</sup>
- Idaho<sup>137</sup>
- Illinois<sup>138</sup>
- Indiana<sup>139</sup>
- Kansas<sup>140</sup>
- Kentucky<sup>141</sup>
- Louisiana<sup>142</sup>
- Maine<sup>143</sup>
- Maryland<sup>144</sup>
- Michigan<sup>145</sup>
- Mississippi<sup>146</sup>
- Montana<sup>147</sup>
- Nebraska<sup>148</sup>
- New Hampshire<sup>149</sup>
- North Carolina<sup>150</sup>
- Ohio<sup>151</sup>
- Oklahoma<sup>152</sup>
- Oregon<sup>153</sup>
- Rhode Island<sup>154</sup>
- South Dakota<sup>155</sup>
- Tennessee<sup>156</sup>
- Utah<sup>157</sup>
- Vermont<sup>158</sup>
- Virginia<sup>159</sup>
- Washington<sup>160</sup>
- Wyoming<sup>161</sup>

We offer the following clarifications about Nebraska and Utah:

Nebraska’s statewide juror qualification form was adopted by the Nebraska Supreme Court.<sup>162</sup> All district and county courts are required to use this form when a statute mandates use of a juror qualification form unless the state supreme court has approved a request for approval of any amendments to the form.<sup>163</sup> Part VII of the form, captioned “Confidential Juror Information,” includes questions about race and ethnicity.<sup>164</sup> No one is permitted to access the confidential juror information except for an “approved research agent of the Nebraska Supreme Court.”<sup>165</sup> The rule lists two approved research agents.<sup>166</sup> Although prospective jurors provide their race/ethnicity information when completing the questionnaire, “no organization has been collecting or reviewing the information since 2010.”<sup>167</sup> The juror qualification form states that responses “will not be shared with the parties or attorneys to any case.”<sup>168</sup> Nebraska’s Administrative Office of the Courts and Probation confirmed that “the Nebraska Judicial Branch does not have any useable (current or historical) race and ethnicity data for jurors.”<sup>169</sup>

Utah Code section 78B-1-103(1)(a) requires that “persons selected for jury service be selected at random from a fair cross section of the population of the county.” Utah Code section 78B-1-106(2) provides: “The Judicial Council shall by rule provide for the biannual review of the master jury list to evaluate the master jury list’s inclusiveness of the adult

population.” The directive to the Utah Judicial Council was to promulgate rules to assess “the inclusiveness (not representativeness) of master jury lists.”<sup>170</sup> We identified one county in Utah that collects race/ethnic information; all other judicial districts appear to use the same form, which does not ask for race or ethnicity.<sup>171</sup>

We identified four states — Illinois, Louisiana, Mississippi, and Utah — in which at least one local judicial district collects juror race/ethnicity information. We did not determine whether any of these local judicial districts share the information with trial judges and parties or whether they aggregate or analyze the data.

In Illinois, at least one judicial district, Kankakee County, has a juror qualification form that asks for the prospective juror’s race.<sup>172</sup>

In Louisiana, at least one parish, East Baton Rouge, has a juror qualification form that asks for the prospective juror’s “race.”<sup>173</sup>

In Mississippi, at least one judicial district, Monroe County, has a juror qualification form that asks for the prospective juror’s “race.”<sup>174</sup>

In Utah, at least one judicial district, San Juan County, has a juror qualification form that includes juror four racial/ethnic categories as well as “other.”<sup>175</sup>

On a more forward-looking note, recent developments in California and Washington suggest that they may be moving toward statewide collection of juror race/ethnicity information.

As mentioned above, in 2022, the California Supreme Court Jury Selection Work Group recommended that jurors provide their “race, ethnicity, and gender” when they respond to a summons.<sup>176</sup> That year, California Governor Gavin Newsom signed Assembly Bill 1981 into law.<sup>177</sup> The statute requires the California Judicial Council to sponsor a two-year pilot program in at least six courts to “study whether increasing juror compensation and mileage/public transit reimbursement improves diversity and participation.”<sup>178</sup> The government funded the pilot program, which the Judicial Council will design and implement.<sup>179</sup> The study will measure a variety of demographic metrics, including race and ethnicity.<sup>180</sup> The participating county superior courts are Alameda, El Dorado, Fresno, Imperial, Monterey, San Bernardino, and Shasta.<sup>181</sup> The pilot program will begin this year.<sup>182</sup>

In the last decade, the Washington Supreme Court has been a national leader in interrogating and addressing racial discrimination in jury selection.<sup>183</sup> The court adopted a forceful new peremptory-challenge rule<sup>184</sup> and rejected federal and state precedent, which had entrenched explicit and implicit bias and constrained the court’s “inherent authority . . . to further the administration of justice.”<sup>185</sup> Washington temporarily collected prospective jurors’ race/ethnicity as part of the *Statewide Juror Summons Demographic Survey Project*, a research

project funded by the legislature and overseen by the Washington State Administrative Office of the Courts (AOC).<sup>186</sup> The goal was to determine “whether summoned jurors are representative of the county populations from which they are selected.”<sup>187</sup> In June 2023, the project released its final report on data collected from participating courts.<sup>188</sup> The report found the trends in racial representation “are similar” compared to earlier Washington State surveys, including underrepresentation of “Black, American Indian, and Alaskan Native” jury-eligible citizens.<sup>189</sup>

At the request of the Washington Administrative Office of the Courts (AOC), Senate Bill 5128 was introduced in January 2023.<sup>190</sup> Section 1 provides:

The administrative office of the courts shall provide all courts with a method to collect data on a juror’s race, ethnicity, age, sex, employment status, educational attainment, and income, as well as any other data approved by order of the chief justice of the Washington state supreme court. Data collection must be conducted and reported in a manner that preserves juror anonymity. The administrative office of the courts shall publish this demographic data in an annual report to the governor.<sup>191</sup>

The legislation passed, was signed by the governor, and went into effect on July 23, 2023.<sup>192</sup> The new statute does not mandate statewide collection.<sup>193</sup> However, it “create[s] a mechanism within the AOC to provide courts with an electronic survey and a paper survey they can distribute to jurors so that the AOC can collect and report the data.”<sup>194</sup> As of January 2024, at least 27 courts were participating in the collection of juror demographic data through the use of the survey.<sup>195</sup> Prospective jurors complete the online survey as part of the online juror summons check-in.<sup>196</sup> Courts that do not have an online check-in process provide the survey to prospective jurors when they appear for jury duty.<sup>197</sup> The AOC’s goal has been that courts interested in participating would be able to do so by January 2024.<sup>198</sup>

In addition, Michigan and North Carolina are considering statewide collection juror race/ethnicity information. Michigan does not collect information regarding the race or ethnicity of prospective jurors through its source lists or statewide juror questionnaire.<sup>199</sup> During the 2021–22 legislative term, Senator Adam Hollier introduced Senate Bill No. 1175.<sup>200</sup> The bill would have required the secretary of state to transmit to the state court administrative office a full list of driver’s license and state identification card holder information, including gender, race, and ethnicity.<sup>201</sup> Senate Bill 1175 would also have required the circuit court administrator or the clerk of the circuit court to collect and record “[t]he name, sex, race, ethnicity, and religion” of all prospective jurors who are “selected and summoned from the first jury list” and to provide annual reports to the state court administrative office.<sup>202</sup> The bill did not pass.<sup>203</sup> However, there is ongoing interest in introducing a similar bill during the 2023–2024 legislative term.<sup>204</sup>

Each North Carolina county has a three-person jury commission that prepares a master list of prospective jurors using the list of registered voters and persons with driver's licenses supplied by the Commissioner of Motor Vehicles.<sup>205</sup> The jury commission then merges the list of names from each source and randomly selects the desired number of names from the master list.<sup>206</sup>

In June 2020, then-North Carolina Governor Roy Cooper established the Task Force for Racial Equity in Criminal Justice (TREC) to focus on “existing policies and procedures that disproportionately affect communities of color and developing solutions to ensure racial equity in North Carolina’s criminal justice system.”<sup>207</sup> In December 2020, the task force issued a report with recommendations for reform, including a proposal to eliminate racial disparities in the courts by “[i]ncreas[ing] representation of North Carolinians serving on juries through expanded and more frequent sourcing, data transparency, and compensation.”<sup>208</sup> TREC recommended that the Commissioner of Motor Vehicles include race data on jury lists provided to county jury commissions to monitor compliance with the fair cross-section guarantee.<sup>209</sup> TREC proposed that the North Carolina Supreme Court adopt a rule requiring “consistent self-identification of race and gender and complete recordation of jury selection.”<sup>210</sup> TREC also recommended that the senior resident superior court judge convene annual meetings to review the numbers reflected in the jury data with stakeholders and discuss any disparities between the adult population of the community and the jury pools or seated juries.<sup>211</sup>

TREC issued an interim progress report in December 2022, categorizing the implementation effort for its recommendation for increasing representation on juries as a “Study” and the status as “In Development.”<sup>212</sup> TREC also created a “Suggested Jury Practices” information sheet for North Carolina superior and district court judges recommending that their local executive committees “develop transparent jury data collection efforts to enable oversight of the fair cross-section guarantee” by collecting race, ethnicity, gender, age, and zip code associated with jurors at all stages of the jury selection process.<sup>213</sup>

As we explained in the Executive Summary, the accessibility of information about juror demographic data collection policies and practices varies significantly from state to state. This information should be readily available online. If a state uses a standard juror questionnaire, it also should be readily available online, not, as is often the case, available only through the juror portal. The state courts are in a period of investigation into existing jury composition and selection procedures. We encourage courts and jury administrators to keep the Center for Jury Studies at the National Center for State Courts apprised of changes to their statutes, rules, and policies.

## C. CONCLUSION

Citizens of color, particularly those who are Black or Latinx, have been and continue to be underrepresented in jury source lists, jury venires, and petit juries. Social science offers considerable guidance on how to ascertain the extent of the underrepresentation, including collecting and reviewing race and ethnicity data. Our investigation revealed, however, that most states still choose not to collect this information at any stage in the jury selection process. Scholarly literature and empirical studies provide tools for increasing the representativeness and diversity of jury pools through changes to eligibility requirements, source lists, the summons process, and juror compensation. The utility of these tools will remain speculative as long as the race/ethnicity of jurors in the pool is unknown. Even when the data are available, history shows that most courts do not move voluntarily towards a reexamination of jury representativeness; the data must be accessible to litigants who will challenge the status quo.

The volume has also been turned up on the need to replace the *Batson* three-step inquiry with a procedure that takes implicit bias into account and precludes or disfavors the use of reasons historically associated with race discrimination. However, the efficacy of these reforms in the courtroom and our ability to assess them over time require that the trial judge and counsel for the parties know the self-identified race/ethnicity of all jurors in the venire.

Systematic, consistent, and transparent collection and analysis of prospective jurors' race/ethnicity data may fairly be characterized as an incremental measure in the larger racial justice project. The process is, however, foundational to acknowledging and dismantling the structures of racial and ethnic exclusion in our nation's juries.





# APPENDIX A

## Excerpts of statewide legislation, judicial rules, and policies regarding the collection of juror demographic data and information regarding the availability of the demographic data to trial judges and parties

STATE/DISTRICT	TYPE	RELEVANT TEXT
Alabama	Rule <sup>i</sup> and Statute <sup>ii</sup>	<p><b>Collection:</b> The relevant authorities regarding the alphabetical “Master List” of all persons in the county who can be called for jury duty are Alabama Code section 12-16-57 and Rule 40 of the Alabama Rules of Judicial Administration. Each judicial circuit determines whether it wants its “Master List” to include the list of registered voters or the list of licensed drivers and state identification card holders or both, and whether to supplement the “Master List” with names identified from other sources, such as public utility companies. Pursuant to Rule 40 and section 12-16-57, the various counties’ alphabetical “Master List” of jurors is a public record. The Alabama Administrative Office of the Courts (AOC) compiles and maintains the master list for each judicial circuit. The Secretary of State (registered voters) and the Department of Safety of the Alabama Law Enforcement Agency (driver’s licenses and identification cards) provide source lists to the AOC. Self-identified “race” and “gender,” along with other demographic information, are included in the source lists and the master lists.<sup>iii</sup></p> <p><b>Availability:</b> The trial court and counsel are provided with a “Master Strike List,” which consists of a list of the names of those who have been summoned and verified as qualified by the judge to serve as jurors for a particular trial.<sup>iv</sup> However, based on a review of various master strike lists and information from Alabama practitioners, it appears that, in some circuits, counsel routinely receive a “Master Strike List” that includes the race and gender of each prospective juror.<sup>v</sup></p>

- i ALA. R. JUD. ADMIN. 40 <https://judicial.alabama.gov/docs/library/rules/ja40.pdf> [<https://perma.cc/BE73-DCA9>]; ALA. R. CRIM. PROC., 12.2 (d) [https://judicial.alabama.gov/docs/library/rules/cr12\\_2.pdf](https://judicial.alabama.gov/docs/library/rules/cr12_2.pdf) [<https://perma.cc/59HU-B7AB>].
- ii ALA. CODE § 12-16-57, <https://law.justia.com/codes/alabama/2006/12057/12-16-57.html> [<https://perma.cc/TM3Y-DHYU>]; § 12-16-70, <https://law.justia.com/codes/alabama/2013/title-12/chapter-16/section-12-16-70> [<https://perma.cc/6RU2-6Q95>].
- iii E-mails and telephone conversation with Pub. Info. Officer, Ala. Admin. Off. of Cts. (Jan. 12 and 19, 2024) (on file with the Berkeley L. Death Penalty Clinic).
- iv ALA. R. CRIM. PROC., 12.2 (d); e-mails and telephone conversation with Pub. Info. Officer, Al. Admin. Off. of Cts. (Jan. 12 and 19, 2024) (on file with the Berkeley L. Death Penalty Clinic).
- v (Information on file with the Berkeley L. Death Penalty Clinic).

STATE/DISTRICT	TYPE	RELEVANT TEXT
Arizona	Order <sup>vi</sup> and Statute <sup>vii</sup>	<p><b>Collection:</b> In April 2021, the Arizona Supreme Court issued an administrative order directing all Arizona courts to collect information about prospective jurors’ gender, ethnicity, and race.</p> <p><b>Availability:</b> “To reduce the time required for voir dire, basic background information regarding panel members . . . shall be made available to counsel for each party on the day on which jury selection is to begin.” The information provided to trial courts and counsel includes panel member race and ethnicity.<sup>viii</sup></p>
Connecticut	Statute <sup>ix</sup>	<p><b>Collection:</b> “The Jury Administrator shall send to a prospective juror . . . a confidential juror questionnaire. Such questionnaire shall include questions eliciting the juror’s name, age, race and ethnicity . . . .”</p> <p><b>Availability:</b> “Copies of the completed questionnaires shall be provided to the judge and counsel for use during voir dire or in preparation therefor.”</p>

vi Collection of Juror Biographical Information, Admin. Ord. No. 2021-54, Ariz. Sup. Ct. (2021), <https://www.azcourts.gov/Portals/22/admorder/Orders21/2021-54.pdf?ver=2021-04-21-133441-553> [<https://perma.cc/RQS4-HMCA>].

vii ARIZ. REV. STAT. ANN. § 5-203(I) (2023), <https://perma.cc/MRQ2-K7QR>.

viii E-mail from L. Professor, Ariz. State Univ. Sandra Day O’Connor College of L. (Mar. 9, 2023) on file with the Berkeley L. Death Penalty Clinic.

ix CONN. GEN. STAT. § 51-232(c) (2023), [https://www.cga.ct.gov/2022/sup/chap\\_884.htm](https://www.cga.ct.gov/2022/sup/chap_884.htm) [<https://perma.cc/3VER-FRME>].

STATE/DISTRICT	TYPE	RELEVANT TEXT
Delaware	Jury Plan <sup>x</sup>	<p><b>Collection:</b> Delaware’s statewide Juror Qualification Form asks for the prospective juror’s race, ethnicity, and gender.<sup>xi</sup></p> <p><b>Availability:</b> “The contents of jury qualification forms completed by persons summoned to serve . . . shall be made available to attorneys or unrepresented parties in cases to be tried before those jurors upon request before voir dire examination begins, unless the court determines in any instance that this information should be kept confidential or its use limited in whole or in part in the interest of justice.”</p>
Georgia	Statute <sup>xii</sup>	<p><b>Collection:</b> (b) “[U]pon the [Council of Superior Court Clerks of Georgia]’s request, the Department of Driver Services shall provide the council data showing the full name of all persons who are at least 18 years of age and residents of this state who have been issued a driver’s license or personal identification card. . . . [T]he Department of Driver Services shall include . . . whenever racial information is collected by the Department of Driver Services, racial information.”</p> <p>(c) (1) “[U]pon request by the council, the Secretary of State shall provide to the council, without cost, data showing: The list of registered voters, including the voter’s . . . gender . . . and when it is available, the voter’s race.”</p> <p><b>Availability:</b> “[U]pon the request of a party or his or her attorney, the clerk shall make available for review by such persons the county master jury list.” The county master juror list includes juror race when available.<sup>xiii</sup></p>

x Order Appointing Revised Petit Jury Plan, Del. Super. Ct. 4-5 (2014), [https://courts.delaware.gov/superior/pdf/petitjury\\_plan\\_order\\_rev\\_2014.pdf](https://courts.delaware.gov/superior/pdf/petitjury_plan_order_rev_2014.pdf) [<https://perma.cc/YLF6-MZ4K>].

xi See Appendix D.

xii GA. CODE ANN. § 15-12-40.1(b) & (c) (2023), <https://law.justia.com/codes/georgia/2021/title-15/chapter-12/article-3/section-15-12-40-1/> [<https://perma.cc/GDK6-UT2C>]; GA. CODE ANN. § 15-12-43.1 (2023), <https://law.justia.com/codes/georgia/2021/title-15/chapter-12/article-3/section-15-12-43-1/> [<https://perma.cc/CGM8-4EN3>].

xiii E-mail from Project Manager, Council of Super. Ct. Clerks of Ga. (Oct. 25, 2022) (on file with the Berkeley L. Death Penalty Clinic).

STATE/DISTRICT	TYPE	RELEVANT TEXT
Iowa	Administrative Decision (2018) <sup>xiv</sup>	<p><b>Collection:</b> Iowa’s statewide questionnaire asks prospective jurors their race and gender.<sup>xv</sup> The Iowa Judicial Branch web page states that questions on “race” and “gender” “are asked on the questionnaire because they help us ensure our jury panels are representative of the community at large.”<sup>xvi</sup></p> <p><b>Availability:</b> “The questionnaires can be shared with the trial judge and case parties if requested before voir dire.”<sup>xvii</sup></p>

xiv E-mail from State Ct. Adm’r, Iowa Jud. Branch (Apr. 25, 2023) (on file with the Berkeley L. Death Penalty Clinic).

xv See Appendix D.

xvi *Juror Questionnaire*, IOWA JUD. BRANCH <https://www.iowacourts.gov/juror/juror-questionnaire> [<https://perma.cc/BC3D-PPVB>].

xvii E-mail from State Ct. Adm’r, Iowa Jud. Branch (Apr. 25, 2023) (on file with the Berkeley L. Death Penalty Clinic).

STATE/DISTRICT	TYPE	RELEVANT TEXT
Massachusetts	Statute <sup>xviii</sup>	<p><b>Collection:</b> “[T]he jury commissioner shall issue an annual report for the previous calendar year. . . . The report shall contain demographic and financial data and data on juror management and jurors’ satisfaction with the jury system. . . . The report shall be a public document.”</p> <p>The jury commissioner aggregates the race/ethnicity data from responses to the juror confirmation form for inclusion in quarterly and annual demographic reports.<sup>xix</sup></p> <p>For example, the Fiscal Year 2019 Annual Report for the Court System states, “The Office of Jury Commissioner collected demographic survey data that indicate that in FY19, Massachusetts juries and jury pools tracked closely to their communities as to race and ethnicity to ensure that the courts are receiving appropriately diverse and representative jury pools.”<sup>xx</sup></p> <p><b>Availability:</b> Trial judges and counsel do not receive copies of the juror confirmation form, which contains individual juror’s race/ethnicity information.<sup>xxi</sup></p>

xviii MASS. GEN. LAWS ch. 234A, § 79 (2023), <https://malegislature.gov/laws/generallaws/partiii/titleii/chapter234a/section79> [<https://perma.cc/N5S9-V85K>].

xix See MASS. CT. SYS., OFF. MASS JURY COMM’R, JUROR DEMOGRAPHICS – QUARTERLY AND ANNUAL, <https://www.mass.gov/lists/juror-demographics-quarterly-and-annual> [<https://perma.cc/S7GM-FLPX>].

xx MASS. CT. SYS., ANNUAL REPORT ON THE STATE OF THE MASSACHUSETTS COURT SYSTEM, FISCAL YEAR 2019, <https://www.mass.gov/doc/fy-2019-annual-report-for-the-court-system/download> [<https://perma.cc/EY2L-Q8VM>].

xxi E-mail from Jury Comm’r, Commw. of Mass. (Mar. 7, 2023) (on file with the Berkeley L. Death Penalty Clinic).

STATE/DISTRICT	TYPE	RELEVANT TEXT
Minnesota	Rule <sup>xxii</sup>	<p><b>Collection:</b> Each county jury commissioner is required to “collect and analyze information regarding the performance of the jury system on a regular basis in order to evaluate: (1) the inclusiveness of the jury source lists and the representativeness of the jury pool.”</p> <p>Each county jury commissioner “shall mail to every prospective juror whose name has been drawn a juror qualification questionnaire and summons.”</p> <p>“The questionnaire . . . should request . . . (3) . . . basic background information including age, race, gender . . .”</p> <p><b>Availability:</b> “Unless the court orders otherwise after a hearing, the court administrator must furnish to any party, upon request, a list of persons on the jury panel, including name, . . . reported race and whether or not of Hispanic origin, gender, . . .”</p>
Missouri	Order <sup>xxiii</sup>	<p><b>Collection:</b> All Missouri judicial districts use the statewide e-juror questionnaire that asks for the prospective juror’s race.<sup>xxiv</sup> A response to the race/ethnicity question is optional.<sup>xxv</sup></p> <p><b>Availability:</b> Practices seem to vary between judicial districts. In the City of St. Louis, for example, the jury supervisor compiles a jury panel information list, including the race of each prospective juror, and provides the list to the trial judge and parties before voir dire.<sup>xxvi</sup></p>

xxii MINN. GEN. R. PRAC. 803(b)(1) (2023), [https://www.revisor.mn.gov/court\\_rules/gp/id/803/](https://www.revisor.mn.gov/court_rules/gp/id/803/) [<https://perma.cc/9GB8-KKMT>]; MINN. GEN. R. PRAC. 807(a) & (d) (2023), [https://www.revisor.mn.gov/court\\_rules/rule/gp-807/](https://www.revisor.mn.gov/court_rules/rule/gp-807/) [<https://perma.cc/KU9R-WHVG>]; MINN. R. CRIM. P. 26.02, subd. 2(1) (2023), [https://www.revisor.mn.gov/court\\_rules/cr/id/26/#26.02](https://www.revisor.mn.gov/court_rules/cr/id/26/#26.02) [<https://perma.cc/R7TT-3KZY>].

xxiii Order of the Missouri Supreme Court re: Forms Relating to Jury Qualification and Summons (Oct. 19 2017), <https://www.courts.mo.gov/page.jsp?id=118800>. See Question 13 in Appendix B and Appendix D.

xxiv Telephone Interviews with Assoc. Legal Couns., Mo. Off. of State Cts. (Apr. 6 and Dec. 1, 2023) (information on file with the Berkeley L. Death Penalty Clinic).

xxv *Id.*

xxvi Telephone Interview with Jury Supervisor, City of St. Louis, Mo. (Feb. 15, 2023) (information on file with the Berkeley L. Death Penalty Clinic). A redacted sample of the City of St. Louis’s jury panel information list is on file with the Berkeley L. Death Penalty Clinic.

STATE/DISTRICT	TYPE	RELEVANT TEXT
Nevada	Statute <sup>xxvii</sup>	<p><b>Collection:</b> Nevada county jury commissioners compile master lists from information provided by a list of registered voters in the county; the Department of Motor Vehicles; the Employment Security Division of the Department of Employment, Training, and Rehabilitation; and a statutorily designated public utility.</p> <p>Each county jury commissioner is required to keep a record of each juror who is selected or appears for service that includes the juror’s “race.”</p> <p>Each county jury commissioner is required to prepare and submit a yearly report to the Court Administrator that provides statistics about jurors who served or appeared for service, including the “race” of each juror.</p> <p><b>Availability:</b> Demographic information, including race and ethnicity, is provided to judges and counsel in all criminal cases. This information is also available upon request in civil cases.<sup>xxviii</sup></p>

xxvii NEV. REV. STAT. §§ 6.045(3)(a)–(d), 6.045(5)(a)–(c) (2023), <https://www.leg.state.nv.us/nrs/NRS-006.html> [<https://perma.cc/E55L-XWXX>].

xxviii E-mail from Jury Comm’r, Eighth Jud. Dist. Ct., Nev. (Mar. 15, 2023) (on file with the Berkeley L. Death Penalty Clinic).



STATE/DISTRICT	TYPE	RELEVANT TEXT
New Jersey	Notice <sup>xxix</sup>	<p><b>Collection:</b> In <i>State v. Dancil</i>, the New Jersey Supreme Court directed the Administrative Office of the Courts to begin collecting jurors’ demographic information, including their self-identified race, ethnicity, and gender.<sup>xxx</sup></p> <p>On April 28, 2022, the Chief Justice of the New Jersey Supreme Court announced the Recommendations of the Committee of the Judicial Conference on Jury Selection.<sup>xxxix</sup> On July 14, 2022, the New Jersey Administrative Director of the Courts issued notice of a pilot program for the collection of “voluntary juror demographic information” in three counties and announced that collection throughout the state would commence “sometime in 2023.”<sup>xxxii</sup> The notice includes a court-approved questionnaire for use in the pilot counties, asks for each juror’s race, gender, and ethnicity, and includes the following advisement: “This information helps the Judiciary understand the diversity and representativeness of jury pools. Your responses to these questions are optional and will <b>not</b> affect your selection.”<sup>xxxiii</sup></p> <p><b>Availability:</b> “Jury management will compile the [juror questionnaire] responses and provide the electronic spreadsheet of those responses to the judge and attorneys (who are present in the courtroom). Counsel will receive an Excel spreadsheet with juror responses.”<sup>xxxiv</sup> The list is called the Rule 1:8-5 list.<sup>xxxv</sup></p> <p>“All counties will have demographic information available for jurors reporting on or after June 1, 2023. As juror demographic information becomes available in a particular county, court staff will provide that aggregate information if requested by an attorney in any jury trial (civil and criminal, judge-led voir dire and attorney-conducted voir dire) as part of the Rule 1:8-5 petit jury list.”<sup>xxxvi</sup></p> <p>As of January 2024, all New Jersey’s 21 counties are using the court-approved juror questionnaire for the collection of demographic data.<sup>xxxvii</sup></p>

xxix Glenn A. Grant, Admin. Dir. of the Cts, N.J., Notice re Collection of Voluntary Juror Demographic Data – Initial Implementation (July 14, 2022), <https://www.njcourts.gov/sites/default/files/notices/2022/07/n220715a.pdf> [<https://perma.cc/5SG2-ZH6B>].

xxx *State v. Dancil*, 248 N.J. 114, 256 A.3d 1016 (2021).

xxxix Stuart Rabner, Chief Just., N.J. Sup. Ct., Notice re Recommendations of the Committee of the Judicial Conference on Jury Selection (Apr. 28, 2022), <https://www.njcourts.gov/sites/default/files/notices/2022/04/n220428a.pdf> [<https://perma.cc/P4K9-NKQR>]. Information about statewide jury reforms in New Jersey is available at <https://www.njcourts.gov/sites/default/files/notices/2023/03/n230330b.pdf> [<https://perma.cc/A6GE-YSEQ>]; N.J. CTS., JURY REFORMS: CASE-SPECIFIC ELECTRONIC QUESTIONNAIRE 18–19 (Aug. 2022), <https://www.njcourts.gov/sites/default/files/attorneys/jury-reforms/acvdcseq.pdf> [<https://perma.cc/435N-JCCG>].

xxxii N.J. CTS., JURY REFORMS: PILOT PROGRAM ON ATTORNEY-CONDUCTED VOIR DIRE 12 (Aug. 2022), <https://www.njcourts.gov/sites/default/files/attorneys/jury-reforms/acvdvideovignettes.pdf> [<https://perma.cc/2XHD-GVC5>].

xxxiii *Id.*

xxxiv *Id.*

xxxv *Id.*

xxxvi Glenn A. Grant, Admin. Dir. of the Cts., N.J., Notice re Jury Reforms — Expanded Availability of Aggregate (Not Individual) Juror Demographic Information (Mar. 28, 2023), <https://www.njcourts.gov/sites/default/files/notices/2023/03/n230330b.pdf> [<https://perma.cc/A6GE-YSEQ>].

xxxvii Information on file with the Berkeley L. Death Penalty Clinic.

STATE/DISTRICT	TYPE	RELEVANT TEXT
New Mexico	Rule <sup>xxxviii</sup>	<p><b>Collection:</b> New Mexico’s Juror Qualification Form asks for the prospective juror’s “race or ethnic background.”</p> <p><b>Availability:</b> The questionnaire specifies that the information “will be provided to the attorneys, parties, and judges in all cases you may be selected to hear as a juror.”</p>
New York	Statute <sup>xxxix</sup>	<p><b>Collection:</b> “The commissioner of jurors shall collect demographic data for jurors who present for jury service, including each juror’s race and/or ethnicity, age and sex, and the chief administrator of the courts shall submit the data in an annual report to the governor, the speaker of the assembly, the temporary president of the senate and the chief judge of the court of appeals.”</p> <p><b>Availability:</b> Trial judges and counsel do not receive juror’s self-identified race/ethnicity information.<sup>xl</sup></p>
North Dakota	Order <sup>xli</sup>	<p><b>Collection:</b> North Dakota juror qualification questionnaires ask prospective jurors for their race, but the response is optional, and the non-response rate is around 40%.</p> <p><b>Availability:</b> “[T]he contents of jury qualification forms” are “exempt records.”</p> <p>“Exempt record[s]” are “all or part of a record that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the court.”</p>

xxxviii N.M. CODE R. 4-602C (LexisNexis 2023), <https://nmonesource.com/nmos/nmra/en/5661/1/document.do> [<https://perma.cc/7VD6-QPHC>].

xxxix N.Y. JUD. LAW § 528 (McKinney 2023), <https://www.nysenate.gov/legislation/laws/JUD/528>.

xl Information on file with the Berkeley L. Death Penalty Clinic.

xli Minority Just. Implementation Comm., N.D. Sup. Ct., Minutes of March 16, 2022 Meeting 4 (Mar. 16, 2022), [https://www.ndcourts.gov/Media/Default/Committees/MinorityJustice/2022/MJI\\_Minutes - March 16, 2022\\_meeting.pdf](https://www.ndcourts.gov/Media/Default/Committees/MinorityJustice/2022/MJI_Minutes_-_March_16,_2022_meeting.pdf) [<https://perma.cc/9SA3-G42V>]; N.D. SUP. CT. ADMIN. R. 41 §§ 3(7)(A) & 2(c) (2023), <https://www.ndcourts.gov/legal-resources/rules/ndsuptadmir/41> [<https://perma.cc/J9UM-TZ3G>].

STATE/DISTRICT	TYPE	RELEVANT TEXT
Pennsylvania	Rule <sup>xlii</sup>	<p><b>Collection:</b> Section (H) of Rule 632 sets out the state’s confidential juror information questionnaire. The questionnaire asks for “race.”</p> <p><b>Availability:</b> “The trial judge and the attorneys shall receive copies of the completed questionnaires for use during <i>voir dire</i> . . .”</p>
South Carolina	Statute <sup>xliii</sup>	<p><b>Collection:</b> “In September of each year, the Department of Motor Vehicles shall furnish the State Election Commission an electronic file of the name, . . . sex, and race of persons who are over the age of eighteen years and citizens of the United States residing in each county who hold a valid South Carolina driver’s license, or an identification card . . . .”</p> <p>“In October of each year, the State Election Commission shall furnish a jury list to county jury commissioners consisting of a file or list derived by merging the list of registered voters in the county with county residents appearing on the file furnished by the department, but only those licensed drivers and identification cardholders who are eligible to register to vote may be included in the list.”</p> <p><b>Availability:</b> Practices vary among counties, but some provide jury lists with race and gender data to trial judges and counsel upon request.<sup>xliv</sup></p>

xlii 234 PA. CODE § 632(A)(3) & (H) (2023), <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter6/s632.html&d=reduce> [<https://perma.cc/R2HQ-CYA6>].

xliii S.C. CODE ANN. § 14-7-130 (2023), <https://www.scstatehouse.gov/code/t14c007.php> [<https://perma.cc/4XNW-P9LX>].

xliv E-mail from Deputy Chief Att’y, S.C. Comm’n on Indigent Def., Cap. Trial Div. (Feb. 28, 2023) (on file with the Berkeley L. Death Penalty Clinic).

STATE/DISTRICT	TYPE	RELEVANT TEXT
Texas	Statute <sup>xlv</sup>	<p><b>Collection:</b> “The Office of Court Administration of the Texas Judicial System shall develop and maintain a questionnaire to accompany a written jury summons.”</p> <p>“The questionnaire must require a person to provide biographical and demographic information that is relevant to service as a jury member, including the person’s: (1) name, sex, race, and age . . . .”</p> <p><b>Availability:</b> “The information contained in a completed questionnaire may be disclosed to:</p> <ul style="list-style-type: none"> <li>(1) a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;</li> <li>(2) court personnel;</li> <li>(3) a litigant and a litigant’s attorney in a cause of action in which the respondent to the questionnaire is a potential juror . . . .”</li> </ul>

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xlv TEX. GOV’T CODE ANN. § 62.0132(a), (c), & (g) (2023), <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.62.htm> [<https://perma.cc/M8MP-KNMY>].

STATE/DISTRICT	TYPE	RELEVANT TEXT
West Virginia	Statute <sup>xlvi</sup>	<p><b>Collection:</b> “The juror qualification form is subject to approval by the circuit court as to matters of form and shall elicit the following information concerning the prospective juror: (1) The juror’s name, sex, race, age and marital status . . . .” The questionnaire asks for “ethnicity” and “race” and specifies the options available to answer each question.<sup>xlvi</sup></p> <p>“The clerk shall make an annual report no later than March 1 of each year to the Supreme Court of Appeals setting forth the following information: Whether the clerk employed a jury box or jury wheel for the year reported, and the age, race and gender of each person for whom a juror qualification form has been received.”</p> <p><b>Availability:</b> “Upon the clerk’s receipt of the juror qualification questionnaires of persons selected as prospective petit jurors, he or she shall make the questionnaires of the persons so selected available, upon request, to counsel of record in the trial or trials for which the persons have been selected as prospective jurors.”</p>

xlvi W. Va. Code §§ 52-1-5(a)(1) & (e), 52-1-16 (2023), <https://code.wvlegislature.gov/52-1-5A/> [<https://perma.cc/7UVS-S52B>].

xlvi See Appendix D.

STATE/DISTRICT	TYPE	RELEVANT TEXT
Wisconsin	Statute <sup>xlviii</sup>	<p><b>Collection:</b> The office of the director of state courts is required to compile a master list of potential jurors on an annual basis for the use of each county’s circuit courts. Also annually, the department of transportation must “compile a list that includes the name, . . . race, gender, . . . of each person residing in the state who is licensed as a motor vehicle operator . . . or who has received an identification card . . . and social security number.” The department of transportation then transmits the list to the office of the director of state courts.</p> <p>In addition to the list from the department of transportation, the office of the director of state courts is permitted to use any of the following lists provided by state agencies specified in the statute: registered voters; state income tax filers; child support payors and payees; recipients of unemployment compensation; residents of specified state-issued approvals or licenses.</p> <p>“The lists of prospective jurors provided to the clerks of circuit courts shall contain only the name, address, gender, date of birth, race and county of residence of each prospective juror.”</p> <p>The clerk of each circuit court mails every prospective juror to be summoned a juror qualification form requesting statutorily enumerated information, including the prospective juror’s “race.”</p> <p><b>Availability:</b> “The completed juror qualification forms and supplemental information of jurors in the jury venire or jury panel when the trial is scheduled shall be made available to counsel and parties to the litigation upon request without a circuit court order. The information shall remain confidential and shall be used only for the purpose of the trial or any appeal.”</p>
Washington, D.C.	Rule <sup>xlix</sup>	<p><b>Collection:</b> The juror qualification form is enclosed with each summons. The form “shall require the juror to provide or confirm the following information: name, sex, age, race . . . .”</p> <p><b>Availability:</b> Trial judges and counsel do not receive jurors’ self-identified race/ethnicity information.<sup>1</sup></p>

xlviii Wis. STAT. §§ 756.04(2)(b), (c), & (e), 756.04(6)(am)(2), & 756.04(11)(a) (2023), <https://docs.legis.wisconsin.gov/statutes/statutes/756> [<https://perma.cc/LLB3-ZNDL>]. The Wisconsin Office of Courts Operations Forms Committee developed the juror qualification form (GF-132). Questions about race/ethnicity on the form are optional. Although the form is not statutorily required, because “it is built into the state’s juror management system, every county has adopted it as their standard questionnaire.” E-mail from Business Analyst, Wisc. Off. of Ct. Operations (Sept. 20, 2023) (information on file with the Berkeley L. Death Penalty Clinic).

xlix D.C. Jury Plan § 9 (2020), <https://perma.cc/X5H3-22JW>.

1 E-mail from Staff Att’y, App. Div., Pub. Def. Serv. for D.C. (Feb. 27, 2023) (on file with the Berkeley L. Death Penalty Clinic).

# APPENDIX B

## Race/ethnicity questions on juror questionnaires from states with statewide questionnaires (mandatory or recommended) and from sample counties in states that do not have statewide questionnaires

\* Indicates no mandatory statewide questionnaire. Alabama has a Recommended Uniform Jury Questionnaire (Sample Form 56), which asks for the juror’s race. *See* Appendix D. The form states, “The questionnaire is for use by the judge and lawyers in selecting a jury.” *Id.* The questionnaire has not been adopted by the Alabama Supreme Court. *See* Ala. R. Crim P. 36.

\*\* The Washington Administrative Office of the Courts is providing this survey for use as the juror questionnaire to courts collecting juror race/ethnicity demographic data under S.B. 5128.

Note that Alabama, Georgia, South Carolina, and Wisconsin obtain juror race/ethnicity data from their jury pool sources, and that Wisconsin also does so from its statewide questionnaire.

STATE/ DISTRICT	RACE/ETHNICITY QUESTIONNAIRE
Alabama*	3. Race: ( ) Caucasian/White ( ) African-American/Black ( ) Hispanic ( ) Other_____
Arizona	<p>The following questions are required solely to avoid discrimination in juror selection and have absolutely no bearing on qualifications for jury service. By answering these questions, you help the court monitor the juror selection process so that discrimination does not occur. In this way the court can fulfill its legal obligation to provide jurors who are randomly selected from a fair cross section of this community.</p> <p>Please indicate gender <input type="text" value="Male"/></p> <p>Are you of Hispanic or Latino ethnicity? <input type="text" value="Yes"/></p> <p>Please indicate race <input type="text" value="Native Hawaiian/Pacific Islander"/></p>
Connecticut	<p>Pursuant to General Statutes section 51-232(c) information concerning race and ethnicity is required solely to enforce nondiscrimination in jury selection. The furnishing of this information is not a prerequisite to being qualified for jury service. This information need not be furnished if you find it objectionable to do so.</p> <p>Indicate Race:</p> <p><input type="checkbox"/> Alaska Native</p> <p><input type="checkbox"/> Asian American</p> <p><input type="checkbox"/> Black or African American</p> <p><input type="checkbox"/> Native American</p> <p><input type="checkbox"/> Native Hawaiian</p> <p><input type="checkbox"/> Other Pacific Islander</p> <p><input type="checkbox"/> White American</p> <p><input type="checkbox"/> Other</p> <p>Do you identify as Hispanic or Latino?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>



**STATE/  
DISTRICT**

**RACE/ETHNICITY QUESTIONNAIRE**

Delaware	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">NAME:</td> <td style="width:15%;">DATE OF BIRTH:</td> <td style="width:15%;">SEX: <input type="checkbox"/> FEMALE <input type="checkbox"/> MALE</td> <td style="width:37%; text-align: right;"></td> </tr> <tr> <td>EDUCATION COMPLETED: <input type="checkbox"/> LESS THAN HIGH SCHOOL <input type="checkbox"/> HIGH SCHOOL <input type="checkbox"/> COLLEGE <input type="checkbox"/> POST GRAD</td> <td>MARITAL STATUS: <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> WIDOWED</td> <td colspan="2" style="text-align: right; font-size: small;">1788593 TYPE: PETIT TRIAL Group #</td> </tr> <tr> <td colspan="2">YOUR JOB TITLE &amp; EMPLOYER: (Retired? List Last Employer &amp; Job Title) <input type="checkbox"/> RETIRED <input type="checkbox"/> UNEMPLOYED</td> <td colspan="2">SPOUSE'S JOB TITLE &amp; EMPLOYER: (Retired? List Last Emp)</td> </tr> <tr> <td>PRIMARY TELEPHONE NUMBER:</td> <td>RACE/ETHNICITY <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> WHITE <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER</td> <td colspan="2">ALTERNATE TELEPHONE NUMBER:</td> </tr> </table>	NAME:	DATE OF BIRTH:	SEX: <input type="checkbox"/> FEMALE <input type="checkbox"/> MALE		EDUCATION COMPLETED: <input type="checkbox"/> LESS THAN HIGH SCHOOL <input type="checkbox"/> HIGH SCHOOL <input type="checkbox"/> COLLEGE <input type="checkbox"/> POST GRAD	MARITAL STATUS: <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> DIVORCED <input type="checkbox"/> WIDOWED	1788593 TYPE: PETIT TRIAL Group #		YOUR JOB TITLE & EMPLOYER: (Retired? List Last Employer & Job Title) <input type="checkbox"/> RETIRED <input type="checkbox"/> UNEMPLOYED		SPOUSE'S JOB TITLE & EMPLOYER: (Retired? List Last Emp)		PRIMARY TELEPHONE NUMBER:	RACE/ETHNICITY <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> WHITE <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER	ALTERNATE TELEPHONE NUMBER:	
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PRIMARY TELEPHONE NUMBER:	RACE/ETHNICITY <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> WHITE <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER	ALTERNATE TELEPHONE NUMBER:															
Federal	<p>11. Federal law requires you to indicate your race in order to avoid discrimination in jury selection. (See note on reverse side). Please fill in completely one or more circles that describe your race.</p> <p> <input type="radio"/> Black/African American    <input type="radio"/> Asian    <input type="radio"/> American Indian/Alaska Native  <input type="radio"/> White    <input type="radio"/> Native Hawaiian/Pacific Islander  <input type="radio"/> Other (specify) _____         </p> <p>12. SEX:    Male <input type="radio"/>    Female <input type="radio"/></p>																
Illinois* (Kankakee County)	<p>13) RACE (based on U.S. Census Bureau definitions) <b>**see note on reverse side**</b></p> <p><input type="checkbox"/> WHITE: A person having origin in any of the peoples of Europe, North Africa, or the Middle East.</p> <p><input type="checkbox"/> AFRICAN-AMERICAN or BLACK: A person having origins in any of the black racial groups of Africa.</p> <p><input type="checkbox"/> AMERICAN INDIAN or ALASKAN NATIVE: A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community</p> <p style="text-align: center;"><b>QUESTION 13 NOTE:</b></p> <p>RACE: SELECT THE CHOICE THAT BEST DESCRIBES YOUR RACE TO ASSIST IN ENSURING THAT ALL PEOPLE ARE REPRESENTED ON JURIES. NOTHING DISCLOSED WILL AFFECT YOUR SELECTION FOR JURY SERVICE. FEDERAL LAW REQUIRES NO RACE DISCRIMINATION IN THE JUROR SELECTION PROCESS. THIS ANSWER IS REQUIRED SOLELY TO AVOID DISCRIMINATION IN JUROR SELECTION AND HAS ABSOLUTELY NO BEARING ON QUALIFICATIONS FOR JURY SERVICE. BY ANSWERING THIS QUESTION YOU HELP THE CIRCUIT COURT TO CHECK AND OBSERVE THE JUROR SELECTION PROCESS SO THAT DISCRIMINATION CANNOT OCCUR. IN THIS WAY, THE CIRCUIT COURT CAN FULFILL THIS POLICY, WHICH IS TO PROVIDE JURORS WHO ARE RANDOMLY SELECTED FROM A FAIR CROSS SECTION OF THE COMMUNITY.</p>																
Iowa	<p style="text-align: center; background-color: #e0e0e0; margin-bottom: 5px;">Your race, ethnicity, and gender information helps the court ensure jury panels are representative of the community.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;"> <p style="text-align: center; margin-bottom: 5px;"><b>Race (select all that apply)</b></p> <input type="checkbox"/> American Indian/Alaskan Native    <input type="checkbox"/> Native Hawaiian/Other Pacific Islander  <input type="checkbox"/> Asian    <input type="checkbox"/> Other  <input type="checkbox"/> Black/African American    <input type="checkbox"/> Unknown    <input type="checkbox"/> White         </td> <td style="width:25%; padding: 5px;"> <p style="text-align: center; margin-bottom: 5px;"><b>Ethnicity</b></p> <input type="checkbox"/> Hispanic/Latinx/Spanish Origin  <input type="checkbox"/> Not Hispanic/Latinx/Spanish         </td> <td style="width:25%; padding: 5px;"> <p style="text-align: center; margin-bottom: 5px;"><b>Gender</b></p> <input type="checkbox"/> Female  <input type="checkbox"/> Male  <input type="checkbox"/> Other         </td> </tr> </table>	<p style="text-align: center; margin-bottom: 5px;"><b>Race (select all that apply)</b></p> <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> Asian <input type="checkbox"/> Other <input type="checkbox"/> Black/African American <input type="checkbox"/> Unknown <input type="checkbox"/> White	<p style="text-align: center; margin-bottom: 5px;"><b>Ethnicity</b></p> <input type="checkbox"/> Hispanic/Latinx/Spanish Origin <input type="checkbox"/> Not Hispanic/Latinx/Spanish	<p style="text-align: center; margin-bottom: 5px;"><b>Gender</b></p> <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Other													
<p style="text-align: center; margin-bottom: 5px;"><b>Race (select all that apply)</b></p> <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> Asian <input type="checkbox"/> Other <input type="checkbox"/> Black/African American <input type="checkbox"/> Unknown <input type="checkbox"/> White	<p style="text-align: center; margin-bottom: 5px;"><b>Ethnicity</b></p> <input type="checkbox"/> Hispanic/Latinx/Spanish Origin <input type="checkbox"/> Not Hispanic/Latinx/Spanish	<p style="text-align: center; margin-bottom: 5px;"><b>Gender</b></p> <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Other															
Louisiana* (East Baton Rouge Parish)	<p><b>2. IN ORDER TO COMPLY WITH LOUISIANA LAW, AND IN ORDER TO ENSURE THAT PERSONS ARE NOT BEING EXCUSED FROM JURY SERVICE ON THE BASIS OF RACE, SEX, OR AGE, YOU ARE REQUIRED TO FURNISH THE FOLLOWING INFORMATION:</b></p> <p><b>RACE:    SEX:</b></p>																



**STATE/  
DISTRICT**

**RACE/ETHNICITY QUESTIONNAIRE**

Massachusetts	<p><b>6. Demographic Information</b></p> <p><b>REQUIRED: Answer both A and B</b></p> <p><b>A.</b></p> <table border="1"> <tr> <td>Black/African American <input type="checkbox"/></td> <td>White <input type="checkbox"/></td> </tr> <tr> <td>Native Hawaiian/ Pacific Islander <input type="checkbox"/></td> <td>American Indian/ Alaskan Native <input type="checkbox"/></td> </tr> <tr> <td>Asian <input type="checkbox"/></td> <td>Other (specify) <input type="checkbox"/></td> </tr> </table> <p><b>B.</b> Are you Hispanic/Latino? Yes <input type="checkbox"/> No <input type="checkbox"/></p>	Black/African American <input type="checkbox"/>	White <input type="checkbox"/>	Native Hawaiian/ Pacific Islander <input type="checkbox"/>	American Indian/ Alaskan Native <input type="checkbox"/>	Asian <input type="checkbox"/>	Other (specify) <input type="checkbox"/>
Black/African American <input type="checkbox"/>	White <input type="checkbox"/>						
Native Hawaiian/ Pacific Islander <input type="checkbox"/>	American Indian/ Alaskan Native <input type="checkbox"/>						
Asian <input type="checkbox"/>	Other (specify) <input type="checkbox"/>						
Minnesota	<p><b>SECTION B - STATISTICAL INFORMATION</b></p> <p>This information is requested pursuant to Court rule and has no bearing on qualification for jury service.</p> <table border="1"> <tr> <td><b>DATE OF BIRTH</b> Mo / Day Yr</td> <td><b>RACE (Mark an X in one or more boxes to indicate what race you consider yourself.)</b>  <input type="checkbox"/> American Indian or Alaska Native    <input type="checkbox"/> Black or African American    <input type="checkbox"/> White  <input type="checkbox"/> Asian    <input type="checkbox"/> Native Hawaiian or Other Pacific Islander    <input type="checkbox"/> Some Other Race</td> <td><b>A</b> Are you of Spanish/Hispanic/Latino Origin or Descent? <b>N</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>D</b></td> </tr> </table>	<b>DATE OF BIRTH</b> Mo / Day Yr	<b>RACE (Mark an X in one or more boxes to indicate what race you consider yourself.)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Some Other Race	<b>A</b> Are you of Spanish/Hispanic/Latino Origin or Descent? <b>N</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>D</b>			
<b>DATE OF BIRTH</b> Mo / Day Yr	<b>RACE (Mark an X in one or more boxes to indicate what race you consider yourself.)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Some Other Race	<b>A</b> Are you of Spanish/Hispanic/Latino Origin or Descent? <b>N</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>D</b>					
Mississippi* (Monroe County)	<p><b>MONROE COUNTY CIRCUIT COURT FOR OFFICIAL USE ONLY – PLEASE PRINT</b></p> <table border="1"> <tr> <td><b>JURORS NAME – please print</b> (Last)</td> <td>(First)</td> <td>(Middle)</td> <td>(Maiden)</td> <td><b>Race</b></td> <td><b>Sex</b></td> </tr> </table>	<b>JURORS NAME – please print</b> (Last)	(First)	(Middle)	(Maiden)	<b>Race</b>	<b>Sex</b>
<b>JURORS NAME – please print</b> (Last)	(First)	(Middle)	(Maiden)	<b>Race</b>	<b>Sex</b>		
Missouri	<p><b>13. Race:</b> <input type="checkbox"/> American Indian <input type="checkbox"/> Latino  <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian  <input type="checkbox"/> Black/African American <input type="checkbox"/> White <input type="checkbox"/> Other</p>						
Nebraska*	<p><b>Part VII CONFIDENTIAL JUROR INFORMATION.</b> (This information is requested to assist in ensuring that all people are represented on juries. Nothing disclosed will affect your selection for jury service. The information in this section will not be shared with the parties or attorneys to any case and may only be reviewed for research purposes as authorized by the Nebraska Supreme Court.)</p> <p>1. How do you classify your race? (select one or more)</p> <p><input type="checkbox"/> Black/African American  <input type="checkbox"/> Asian  <input type="checkbox"/> American Indian/Alaska Native  <input type="checkbox"/> Native Hawaiian/Pacific Islander  <input type="checkbox"/> White  <input type="checkbox"/> Other (specify) _____</p> <p>2. How do you classify your ethnicity? (select one)</p> <p><input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino</p> <p>3. Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female</p> <p>4. Date of Birth _____</p>						
Nevada	<p><b>SECTION B CONFIDENTIAL</b></p> <p><b>REMARKS:</b></p> <p><b>RACE:</b></p> <p><b>ETHNICITY:</b></p>						

**STATE/  
DISTRICT**

**RACE/ETHNICITY QUESTIONNAIRE**

<p>New Jersey</p>	<p><b>Demographic Information</b>                  This information helps the Judiciary understand the diversity and representativeness of jury pools. Your responses to these questions are optional and will <b>not</b> affect your selection.</p> <p>15. Selecting from the race categories used by the U.S. Census, please select the response that most closely aligns with your racial identity.</p> <p><input type="checkbox"/> American Indian or Alaska Native      <input type="checkbox"/> Native Hawaiian or Other Pacific Islander  <input type="checkbox"/> Asian      <input type="checkbox"/> White  <input type="checkbox"/> Black or African American      <input type="checkbox"/> More than one race</p> <p>16. Selecting from the ethnicity categories used by the U.S. Census, please also select the response that most closely aligns with your ethnic identity.</p> <p><input type="checkbox"/> Hispanic or Latino      <input type="checkbox"/> Not Hispanic or Latino</p> <p>17. Selecting from the gender categories used by the State of New Jersey, please select the response that most closely aligns with your gender.</p> <p><input type="checkbox"/> Female      <input type="checkbox"/> Male      <input type="checkbox"/> Non-Binary or Undesignated</p>																																																																											
<p>New Mexico</p>	<p>1. Legal name and former names: _____ 2. Gender: _____                  3. Birth Year: _____ 4. What is your race or ethnic background: _____</p>																																																																											
<p>New York</p>	<p><b>NEW YORK STATE UNIFIED COURT SYSTEM JUROR INFORMATION CARD</b>                  New York State Judiciary Law §528 requires the court to collect data about jurors. Thank you for your cooperation.</p> <table border="1"> <tr> <td data-bbox="479 856 678 1176"> <p>1. Today's date</p> <table border="1"> <tr> <td>M</td><td>M</td><td>D</td><td>D</td><td>Y</td><td>Y</td> </tr> <tr> <td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td> </tr> <tr> <td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td> </tr> <tr> <td>2</td><td>2</td><td>2</td><td>2</td><td>2</td><td>2</td> </tr> <tr> <td>3</td><td>3</td><td>3</td><td>3</td><td>3</td><td>3</td> </tr> <tr> <td>4</td><td>4</td><td>4</td><td>4</td><td>4</td><td>4</td> </tr> <tr> <td>5</td><td>5</td><td>5</td><td>5</td><td>5</td><td>5</td> </tr> <tr> <td>6</td><td>6</td><td>6</td><td>6</td><td>6</td><td>6</td> </tr> <tr> <td>7</td><td>7</td><td>7</td><td>7</td><td>7</td><td>7</td> </tr> <tr> <td>8</td><td>8</td><td>8</td><td>8</td><td>8</td><td>8</td> </tr> <tr> <td>9</td><td>9</td><td>9</td><td>9</td><td>9</td><td>9</td> </tr> </table> </td> <td data-bbox="695 856 1031 919"> <p>2. Here to serve as a</p> <p><input type="radio"/> Grand Juror or <input type="radio"/> Trial Juror</p> </td> <td data-bbox="1047 856 1383 919"> <p>3. You are</p> <p><input type="radio"/> Male or <input type="radio"/> Female</p> </td> </tr> <tr> <td colspan="3" data-bbox="695 940 1383 1060"> <p>4. Are you of Hispanic, Latino, or Spanish Origin?</p> <p><input type="radio"/> Yes (Mexican, Chicano, Puerto Rican, Cuban, Dominican or other Hispanic, Latino or Spanish Origin) *  <input type="radio"/> No (Not of Hispanic, Latino, or Spanish Origin)</p> </td> </tr> <tr> <td colspan="3" data-bbox="695 1081 1383 1176"> <p>5. Your race</p> <p><input type="radio"/> White    <input type="radio"/> Black or African American  <input type="radio"/> Asian    <input type="radio"/> Other/ Mixed (Please explain) _____</p> </td> </tr> </table>	<p>1. Today's date</p> <table border="1"> <tr> <td>M</td><td>M</td><td>D</td><td>D</td><td>Y</td><td>Y</td> </tr> <tr> <td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td> </tr> <tr> <td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td> </tr> <tr> <td>2</td><td>2</td><td>2</td><td>2</td><td>2</td><td>2</td> </tr> <tr> <td>3</td><td>3</td><td>3</td><td>3</td><td>3</td><td>3</td> </tr> <tr> <td>4</td><td>4</td><td>4</td><td>4</td><td>4</td><td>4</td> </tr> <tr> <td>5</td><td>5</td><td>5</td><td>5</td><td>5</td><td>5</td> </tr> <tr> <td>6</td><td>6</td><td>6</td><td>6</td><td>6</td><td>6</td> </tr> <tr> <td>7</td><td>7</td><td>7</td><td>7</td><td>7</td><td>7</td> </tr> <tr> <td>8</td><td>8</td><td>8</td><td>8</td><td>8</td><td>8</td> </tr> <tr> <td>9</td><td>9</td><td>9</td><td>9</td><td>9</td><td>9</td> </tr> </table>	M	M	D	D	Y	Y	0	0	0	0	0	0	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	3	3	3	4	4	4	4	4	4	5	5	5	5	5	5	6	6	6	6	6	6	7	7	7	7	7	7	8	8	8	8	8	8	9	9	9	9	9	9	<p>2. Here to serve as a</p> <p><input type="radio"/> Grand Juror or <input type="radio"/> Trial Juror</p>	<p>3. You are</p> <p><input type="radio"/> Male or <input type="radio"/> Female</p>	<p>4. Are you of Hispanic, Latino, or Spanish Origin?</p> <p><input type="radio"/> Yes (Mexican, Chicano, Puerto Rican, Cuban, Dominican or other Hispanic, Latino or Spanish Origin) *  <input type="radio"/> No (Not of Hispanic, Latino, or Spanish Origin)</p>			<p>5. Your race</p> <p><input type="radio"/> White    <input type="radio"/> Black or African American  <input type="radio"/> Asian    <input type="radio"/> Other/ Mixed (Please explain) _____</p>		
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<p>North Dakota</p>	<p>The Minority Justice Implementation Committee is doing a study of the jury selection process in an attempt to ensure that jury lists adequately represent all race and ethnic groups in North Dakota. The Committee requests that you fill out this survey to assist in this study.</p> <p>Your participation in this survey does NOT affect your eligibility for jury service. You are NOT required to answer this survey question.</p> <p>What is your race/ethnicity?</p> <p><input type="checkbox"/> Asian      <input type="checkbox"/> Multiracial      <input type="checkbox"/> White  <input type="checkbox"/> Black      <input type="checkbox"/> Native American/Alaskan      <input type="checkbox"/> Other  <input type="checkbox"/> Hispanic/Latino(a)      <input type="checkbox"/> Native Hawaiian or Pacific Islander      <input type="checkbox"/> No Response</p>																																																																											
<p>Pennsylvania</p>	<p>(H) The form of the juror information questionnaire shall be as follows:</p> <p style="text-align: center;"><b>JUROR INFORMATION QUESTIONNAIRE CONFIDENTIAL; NOT PUBLIC RECORD</b></p> <table border="1"> <tr> <td colspan="2">NAME: LAST</td> <td>FIRST</td> <td>MIDDLE INITIAL</td> </tr> <tr> <td colspan="2">CITY/TOWNSHIP</td> <td colspan="2">COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:</td> </tr> <tr> <td>MARITAL STATUS: MARRIED <input type="checkbox"/></td> <td>SINGLE <input type="checkbox"/></td> <td>SEPARATED <input type="checkbox"/></td> <td>DIVORCED <input type="checkbox"/> WIDOWED <input type="checkbox"/></td> </tr> <tr> <td colspan="2">OCCUPATION</td> <td colspan="2">OCCUPATION(S) PAST 10 YEARS</td> </tr> <tr> <td colspan="2">OCCUPATION OF SPOUSE/ OTHER</td> <td colspan="2">PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER</td> </tr> <tr> <td colspan="2">NUMBER OF CHILDREN</td> <td colspan="2">RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER</td> </tr> <tr> <td colspan="2">LEVEL OF EDUCATION YOURS</td> <td>SPOUSE/OTHER</td> <td>CHILDREN</td> </tr> </table>	NAME: LAST		FIRST	MIDDLE INITIAL	CITY/TOWNSHIP		COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:		MARITAL STATUS: MARRIED <input type="checkbox"/>	SINGLE <input type="checkbox"/>	SEPARATED <input type="checkbox"/>	DIVORCED <input type="checkbox"/> WIDOWED <input type="checkbox"/>	OCCUPATION		OCCUPATION(S) PAST 10 YEARS		OCCUPATION OF SPOUSE/ OTHER		PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER		NUMBER OF CHILDREN		RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER		LEVEL OF EDUCATION YOURS		SPOUSE/OTHER	CHILDREN																																															
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**STATE/  
DISTRICT**

**RACE/ETHNICITY QUESTIONNAIRE**

Texas	<table border="1"> <tr> <td colspan="2">PLEASE TYPE OR PRINT WITH INK ONLY</td> <td colspan="3">JUROR QUESTIONNAIRE</td> </tr> <tr> <td><input type="checkbox"/> Male</td> <td><input type="checkbox"/> Female</td> <td>Race (required by State Law):</td> <td>Age:</td> <td>Date of Birth:</td> </tr> </table>	PLEASE TYPE OR PRINT WITH INK ONLY		JUROR QUESTIONNAIRE			<input type="checkbox"/> Male	<input type="checkbox"/> Female	Race (required by State Law):	Age:	Date of Birth:
PLEASE TYPE OR PRINT WITH INK ONLY		JUROR QUESTIONNAIRE									
<input type="checkbox"/> Male	<input type="checkbox"/> Female	Race (required by State Law):	Age:	Date of Birth:							
Utah* (San Juan County)	<p>To ensure that all people are represented on juries, please mark which of the following applies to you. Nothing disclosed will affect your selection for jury duty.</p> <p><input type="radio"/> Black   <input type="radio"/> White   <input type="radio"/> American Indian   <input type="radio"/> Hispanic   <input type="radio"/> Other (specify) _____</p>										
Washington**	<p><b>Q9 Are you Hispanic, Latino/a/x, or of Spanish origin? Please select all that apply.</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> No, not Hispanic, Latino/a/x, or of Spanish origin.</li> <li><input type="radio"/> Yes, Mexican, Mexican American, Chicano</li> <li><input type="radio"/> Yes, Puerto Rican</li> <li><input type="radio"/> Yes, Cuban</li> <li><input type="radio"/> Yes, another Hispanic, Latino/a/x, or Spanish origin - Print, for example, Salvadoran, Dominican, Colombian, Guatemalan, Spaniard, Ecuadorian, etc.</li> <li><input type="radio"/> A category not listed:</li> <li><input type="radio"/> Prefer not to answer</li> </ul> <p><b>Q10 What is your race? Please select all that apply AND add the origin when applicable. Note that these answer choices are similar to those used by the U.S. Census Bureau in 2020.</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> White – Print, for example, German, Irish, English, Italian, etc.</li> <li><input type="radio"/> Black or African American – Print, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.</li> <li><input type="radio"/> American Indian or Alaska Native – Print name of enrolled or principal tribe(s), for example, Navajo Nation, Blackfeet Tribe, Mayan, Aztec, Native Village of Barrow Inupiat, Traditional Government, Nome Eskimo Community, etc.</li> <li><input type="radio"/> Asian Indian</li> <li><input type="radio"/> Cambodian</li> <li><input type="radio"/> Chinese</li> <li><input type="radio"/> Filipino</li> <li><input type="radio"/> Japanese</li> <li><input type="radio"/> Korean</li> <li><input type="radio"/> Vietnamese</li> <li><input type="radio"/> Other Asian – Print, for example, Pakistani, Cambodian, Hmong, etc.</li> <li><input type="radio"/> Guamanian or Chamorro</li> <li><input type="radio"/> Native Hawaiian</li> <li><input type="radio"/> Samoan</li> <li><input type="radio"/> Other Pacific Islander – Print, for example, Tongan, Fijian, Marshallese, etc.</li> <li><input type="radio"/> Middle Eastern or North African - Print, for example, Lebanese, Egyptian</li> <li><input type="radio"/> Some other race – Print race or origin, for example, Hispanic, Latino/a/x, etc.</li> <li><input type="radio"/> Prefer not to answer</li> </ul>										
West Virginia	<p><b>12. Ethnicity: *</b></p> <p><input type="radio"/> Hispanic or Latino</p> <p><input type="radio"/> Non-Hispanic or Non-Latino</p> <p><b>13. Race:</b></p> <p>NOTE: This item is included only to satisfy legal requirements and will not affect the selection of jurors. *</p> <p><input type="radio"/> American Indian or Alaskan Native</p> <p><input type="radio"/> Asian or Pacific Islander   <input type="radio"/> Black</p> <p><input type="radio"/> White   <input type="radio"/> Other</p>										
Wisconsin	<p>8. What is your race?</p> <p><input type="checkbox"/> Black or African American   <input type="checkbox"/> American Indian or Alaskan Native   <input type="checkbox"/> White</p> <p><input type="checkbox"/> Asian or Pacific Islander   <input type="checkbox"/> Other: _____</p> <p>9. Select your ethnicity: <input type="checkbox"/> Hispanic   <input type="checkbox"/> Non-Hispanic</p>										

**STATE/  
DISTRICT**

**RACE/ETHNICITY QUESTIONNAIRE**

Washington,  
D.C.

Sex: M  F

Race/Ethnicity:

**D.C. Law requires you to indicate your race in order to avoid discrimination in jury selection. Please select one or more that describe your race.**

Am. Indian/Alaska Native     Asian     Black/African Am.

White     Hispanic/Latino     Two or More Races

Other \_\_\_\_\_

# APPENDIX C

## Collection Trends

STATE/ DISTRICT	YEAR	RELEVANT TEXT
Alabama	1975 and 2000, respectively	ALA. CODE § 12-16-57 (2023); ALA. R. JUD. ADMIN. 40. <a href="https://casetext.com/rule/alabama-court-rules/alabama-rules-of-judicial-administration/rule-40-master-jury-list">https://casetext.com/rule/alabama-court-rules/alabama-rules-of-judicial-administration/rule-40-master-jury-list</a> [ <a href="https://perma.cc/PW3Q-J8DJ">https://perma.cc/PW3Q-J8DJ</a> ] E-mails and telephone interview with Pub. Info. Officer, Ala. Admin. Off. of Cts. (Jan. 12, 2024) (on file with the Berkeley L. Death Penalty Clinic).
Arizona	2021	Collection of Juror Biographical Information, Admin. Ord. No. 2021-54, Ariz. Sup. Ct. (2021), <a href="https://perma.cc/RQS4-HMCA">https://perma.cc/RQS4-HMCA</a>
California	2023	A.B. 1981, 2021–2022 Leg., Reg. Sess. (Cal. 2022) (codified at CAL. CODE CIV. PROC. §§ 215, 241) (authorizing a two-year pilot program in at least six courts for increases in juror compensation and mileage and public transit reimbursement as part of a study that will measure various demographic metrics, including race and ethnicity). Comments of Dir. of Gov. Affs., Cal. Jud. Council (Jul. 7 and Oct. 27, 2023) on file with the Berkeley L. Death Penalty Clinic; Comments of Senior Analyst, Jury Improvement Program Lead Staff, Off. of Ct. Rsch., Operations and Programs Div. (Oct. 27, 2023 and Jan. 17, 2024) (on file with the Berkeley L. Death Penalty Clinic).
Connecticut	1996	1996 Conn. Pub. Acts No. 96-179.
Delaware	1995	Collection has been occurring since at least 1995. E-mail from Statewide Jury Manager, Del. Super. Ct. (Feb. 15, 2023) (on file with the Berkeley L. Death Penalty Clinic).
Georgia	2011	Jury Composition Reform Act of 2011, 2011 Ga. Laws 50.
Iowa	2018	E-mail from State Ct. Adm’r, Iowa Jud. Branch (Feb. 17, 2023) (on file with the Berkeley L. Death Penalty Clinic).

STATE/ DISTRICT	YEAR	RELEVANT TEXT
Massachusetts	2003	While collection of race and ethnicity data became mandatory in 2003, discretionary collection was taking place beforehand. Telephone Interview with Jury Comm'r for the Commw. of Mass. (Mar. 7, 2023) (on file with the Berkeley L. Death Penalty Clinic).
Minnesota	1990	Order Promulgating Jury Management Rules, Ord. No. C5-85-837, Minn. Sup. Ct. (1990), <a href="https://perma.cc/5KVM-ZZHN">https://perma.cc/5KVM-ZZHN</a> .
Missouri	2005	Order dated September 28, 2005, in re: Forms Relating to Juror Qualification, Adult Abuse and Child Protection, Mo. Sup. Ct. (2005), <a href="https://www.courts.mo.gov/page.jsp?id=92522">https://www.courts.mo.gov/page.jsp?id=92522</a> [ <a href="https://perma.cc/LU8D-KZ4N">https://perma.cc/LU8D-KZ4N</a> ].
Nebraska	2006	The state has no current or historical race and ethnicity data on file. Collection stopped in 2010. <i>Committee on Equity and Fairness</i> , STATE OF NEB. JUD. BRANCH (June 2018), <a href="https://supremecourt.nebraska.gov/programs-services/access-justice-commission/committee-equity-fairness">https://supremecourt.nebraska.gov/programs-services/access-justice-commission/committee-equity-fairness</a> [ <a href="https://perma.cc/88KA-NVPF">https://perma.cc/88KA-NVPF</a> ].
Nevada	2017	2017 Nev. Stat. 3880.
New Jersey	2023	Glenn A. Grant, Admin. Dir. of the Cts., N.J., <i>Notice re Collection of Voluntary Juror Demographic Data – Initial Implementation</i> (July 14, 2022), <a href="https://www.njcourts.gov/sites/default/files/notices/2022/07/n220715a.pdf">https://www.njcourts.gov/sites/default/files/notices/2022/07/n220715a.pdf</a> [ <a href="https://perma.cc/5SG2-ZH6B">https://perma.cc/5SG2-ZH6B</a> ]. Glenn A. Grant, Admin. Dir. of the Cts., N.J., <i>Notice re Expanded Availability of Aggregate (Not Individual) Juror Demographic Information</i> (Mar. 28, 2023), <a href="https://www.njcourts.gov/sites/default/files/notices/2023/03/n230330b.pdf">https://www.njcourts.gov/sites/default/files/notices/2023/03/n230330b.pdf</a> [ <a href="https://perma.cc/A6GE-YSEQ">https://perma.cc/A6GE-YSEQ</a> ].
New Mexico	1995	N.M. R. Ann., R. 14-110 (1995).
New York	2010	Jury Pool Fair Representation Act, 2010 N.Y. Sess. Laws ch. 112 (McKinney).

STATE/ DISTRICT	YEAR	RELEVANT TEXT
North Dakota	2013	MINORITY JUST. IMPLEMENTATION COMM., N.D. SUP. CT., MINUTES OF NOVEMBER 21, 2013 MEETING (Nov. 21, 2013), <a href="https://www.ndcourts.gov/Media/Default/Committees/MinorityJustice/2013/Minutes11-21-13.pdf">https://www.ndcourts.gov/Media/Default/Committees/MinorityJustice/2013/Minutes11-21-13.pdf</a> [ <a href="https://perma.cc/ZH4S-SMGY">https://perma.cc/ZH4S-SMGY</a> ].
Pennsylvania	1999	28 Pa. Bull. 4885-91 (Oct. 3, 1998).
South Carolina	1988	1988 S.C. Acts 453.
Texas	1999	1999 Tex. Sess. Law Serv. ch. 539 (West).
Washington	2023	2023 S.B. 5128, 68th Leg., Reg. Sess., 2023 Wash. Sess. Laws ch. 316 (Wash. 2023).
West Virginia	1988	1988 W. Va. Acts c. 79.
Wisconsin	1991	1991 Wis. Legis. Serv. Act 271 (West).
Washington, D.C.	Unk.	Collection of juror race/ethnicity data is managed by the Washington D.C. Jury Plan. However, it is unclear when this requirement was first included in the plan. E-mail from Dir., Spec. Operations Div., Dist. of Columbia Cts. (Apr. 6, 2023) (on file with the Berkeley L. Death Penalty Clinic).

# APPENDIX D

## Juror Questionnaires

Can be found online at <https://www.law.berkeley.edu/wp-content/uploads/2024/02/Guess-Whos-Coming-to-Jury-Duty-Appendix-D-2023.12.04-opt.pdf>



## ENDNOTES

- 1 ELISABETH SEMEL, DAGEN DOWNARD, EMMA TOLMAN, ANNE WEIS, DANIELLE CRAIG & CHELSEA HANLOCK, BERKELEY L. DEATH PENALTY CLINIC, *WHITEWASHING THE JURY BOX: HOW CALIFORNIA PERPETUATES THE DISCRIMINATORY EXCLUSION OF BLACK AND LATINX JURORS* (2020), <https://www.law.berkeley.edu/wp-content/uploads/2020/06/Whitewashing-the-Jury-Box.pdf>.
- 2 *Batson* established a three-step inquiry for determining whether the prosecutor’s exercise of a peremptory challenge against a Black prospective juror violates the Equal Protection Clause. 476 U.S. at 93–98. At step one, the defendant must establish a “prima facie case” by raising “an inference” of purposeful discrimination based on “all relevant circumstances.” *Id.* at 93–94, 96. If the court agrees that the defendant has done so, the prosecutor must come forward with a “race-neutral” reason for striking the juror. *Id.* at 97–98. At the third step, the trial judge decides whether the defendant has demonstrated that the peremptory challenge was based on intentional discrimination. *Id.* at 98. For an explanation of the difference between *Wheeler* and *Batson*, the Supreme Court’s extension of *Batson*, and its expansion by various states and federal circuits, see SEMEL ET AL., *supra* note 1, at 92–93 nn.112–116.
- 3 SEMEL ET AL., *supra* note 1 at iv.
- 4 *Id.* at ix–x, 70–71; [A.B. 3070](#), 2019–2020 Leg., Reg. Sess. (Cal. 2020) (codified at CAL. CIV. PROC. CODE § 231.7); WASH. R. [GEN. APPLICATION 37](#).
- 5 [A.B. 3070](#), 2019–2020 Leg., Reg. Sess. (Cal. 2020) (codified at CAL. CIV. PROC. CODE § 231.7).
- 6 CAL. CIV. PROC. CODE § 231.7(i) (West 2023). The statute applies only to criminal trials until January 1, 2026, at which point it will also apply to civil trials. *Id.* at §§ (j), (m).
- 7 See CAL. CIV. PROC. CODE §§ 205(c)–(e), 231.7(d)(3)(A)–(D), (G) (West 2023); CAL. SUP. CT., JURY SELECTION WORKGROUP: FINAL REPORT TO THE SUPREME COURT OF CALIFORNIA 4 (2022), <https://newsroom.courts.ca.gov/sites/default/files/newsroom/2022-09/Jury%20Selection%20Work%20Group%20Final%20Report.pdf> [<https://perma.cc/858U-Z2EC>] (observing that “California superior courts do not systematically collect demographic data on jurors”). See *infra* note 8 and *infra* Section IV.B for information about a two-year pilot program launching in 2024 in six California county superior courts to study whether increases in juror compensation and mileage rates improve jury diversity.
- 8 Increasing representativeness and diversity at the front end of the selection process, i.e., in the pool of jurors who are summoned, will not yield a meaningful increase in the representativeness and diversity of the venire and the seated jury unless courts improve compensation and reimbursement rates for expenses such as transportation. See BRENDAN W. CLARK, NAT’L CTR. FOR STATE CTS., *JUROR COMPENSATION IN THE UNITED STATES* 2 (2022), [https://ncfsc-web.squiz.cloud/\\_data/assets/pdf\\_file/0024/76191/NCSC-Report-Juror-Compensation\\_P5.pdf](https://ncfsc-web.squiz.cloud/_data/assets/pdf_file/0024/76191/NCSC-Report-Juror-Compensation_P5.pdf) [<https://perma.cc/ZLJ3-G9YR>] (finding that “in almost all states, jurors’ daily compensation is far below the respective federal or state minimum

wage that could be earned by jurors in the course of their regular employment”). In July 2023, the National Center for State Courts reported, “Six states passed legislation in 2023 to increase juror compensation.” *NCSC report, six states increase juror pay*, NAT’L CTR. FOR STATE CTS. (July 5, 2023), <https://www.ncsc.org/newsroom/at-the-center/2023/following-ncsc-report,-six-states-increase-juror-pay> [<https://perma.cc/FU6H-YR2M>]. In 2023, San Francisco concluded a yearlong pilot program that aimed to improve jury diversity by increasing juror compensation in criminal trials to \$100 per day for “low- to moderate-income” earners. S.F. FIN. JUST. PROJECT, SAN FRANCISCO BE THE JURY PILOT PROGRAM RESULTS (2023), <https://sfgov.org/financialjustice/files/2023-08/One-Pager%20BTJ%20report%20findings-1.pdf> [<https://perma.cc/6VMM-R4JD>]. Sixty percent of participants were people of color. *Id.* Eighty-four percent of participants reported that they were able to serve because of the additional compensation. *Id.* See *infra* Section IV.B for information about a two-year pilot program — launching in 2024 in six California county superior courts — to study whether increases in juror compensation and mileage rates improve juror diversity. A.B. 1981, 2021–2022 Leg., Reg. Sess. (Cal. 2022) ([codified at Cal. Code Civ. Proc. §§ 215, 241](#)). See also PETER A. COLLINS, BROOKE GIALOPSOS & BAILEY TANAKA, STATEWIDE JUROR SUMMONS DEMOGRAPHIC SURVEY PROJECT 2023 FINAL REPORT x (June 30, 2023), <https://www.courts.wa.gov/subsite/mjc/docs/Statewide%20Juror%20Summons%20Demographic%20Survey%20Project%202023.pdf> [<https://perma.cc/K9CX-49JK>] [hereinafter COLLINS ET AL., 2023 FINAL REPORT] (finding that “[w]ork/financial hardships continue to play a significant role in preventing many, especially those with low-income, from responding to and participating in jury duty” and pointing to “the recently approved juror pay pilot project in Pierce County, [Washington] Superior Court” as an opportunity to increase participation); Letter from Jury Scholars and Social Scientists to the Cal. Sup. Ct. Jury Selection Work Group 14 (June 4, 2021) [<https://perma.cc/Q4A8-JHQZ>] [hereinafter Letter from Jury Scholars] (explaining that “income differentials by race and ethnicity mean that requests for financial hardship excuses from jury service can diminish the diversity of the jury pool” and recommending an increase in juror compensation).

- 9 The term “source lists” refers to the lists of names used to identify potential jurors, such as lists of registered voters, licensed drivers, and state identification card holders. See generally PAULA HANNAFORD-AGOR, MIRIAM HAMILTON & ERIKA BAILEY, NAT. CTR. FOR STATE CTS., ELIMINATING SHADOWS AND GHOSTS (2022), [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0025/82681/Master-Jury-List.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0025/82681/Master-Jury-List.pdf) [<https://perma.cc/9ML9-V6RB>] (assessing the “inclusiveness, representativeness, and accuracy” of the jury sources lists and resulting master lists in Missouri, New Jersey, and Tennessee in light of the movement by state courts towards the use of multiple juror source lists and offering recommendations for improvement across the three measurements). “The agencies that maintain juror source lists often do not collect [self-reported race and ethnicity] data.” MIRIAM HAMILTON, NAT. CTR. FOR STATE CTS., INFERRING RACE AND ETHNICITY DEMOGRAPHICS FROM U.S. CENSUS DATA: TESTING THE FEASIBILITY FOR USE IN STATE COURT DISPARITY ANALYSIS 6 (2022), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0025/85624/Race-and-Ethnicity-Demographics-White-Paper.pdf](https://www.ncsc.org/_data/assets/pdf_file/0025/85624/Race-and-Ethnicity-Demographics-White-Paper.pdf) [<https://perma.cc/9L6P-6JZY>].

- 10 The American Bar Association and the National Center for State Courts recommend that “courts use U.S. Census Bureau demographic statistics [as] a starting point to reveal whether the jury pool is reflective of the community. They enable a court to determine the demographic characteristics of the adult population in a jurisdiction and estimate the jury-eligible population.” Judge William Caprathé, Paula Hannaford-Agor, Stephanie McCoy Loquvam & Sheri Seidman Diamond, *Assessing and Achieving Jury Pool Representativeness*, 55 JUDGES’ J. 16, 17 (2016). We acknowledge that the categories/definitions employed in the Census do not always sufficiently capture how people view their own identity. See D’VERA COHN, ANNA BROWN & MARK HUGO LOPEZ, PEW RSCH. CTR., *BLACK AND HISPANIC AMERICANS SEE THEIR ORIGINS AS CENTRAL TO WHO THEY ARE, LESS SO FOR WHITE ADULTS* 20 (2021), [https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2021/05/ST\\_2021.05.14\\_Census-Identity\\_FINAL.pdf](https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2021/05/ST_2021.05.14_Census-Identity_FINAL.pdf) [<https://perma.cc/7WHZ-USSD>] (“[O]nly about half of Americans said the census question reflects how they see their own race and origin ‘very well.’”); COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at 4 (explaining that although the researchers “tried to mimic the U.S. Census question format and categories as much as possible in order to make CVAP (Census Voting Age Population) comparisons straightforward and easy to interpret,” they made several modifications to increase inclusivity, e.g., enabling “respondents to select all categories that applied”; including “Cambodian” and “Middle Eastern or North African” as “free-standing” options; and including “Hispanic, Latino/a/x” as a listed example of an origin in the ‘Some other race’ response category”).
- 11 See, e.g., Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, GUARDIAN (July 19, 2015), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement> [<https://perma.cc/V32D-R9DT>] (detailing the rise of #BlackLivesMatter from a social media post after the trial of George Zimmerman — who was acquitted of the murder of Trayvon Martin, an unarmed Black teenager — to a national movement); Zackary Okun Dunivin, Harry Yaojun Yan, Jelani Ince & Fabio Rojas, *Black Lives Matter Protests Shift Public Discourse*, 119 PROC. NAT’L ACAD. SCIS., Mar. 8, 2022, at 1 (finding that Black Lives Matter (BLM) protest events since 2014 “incited a change in public awareness of BLM’s vision of social change and the dissemination of antiracist ideas into popular discourse”); Errin Haines, *More White Americans Acknowledge Racism as a National Problem*, PBS NEWSHOUR (Jan. 16, 2016), <https://www.pbs.org/newshour/nation/more-white-americans-acknowledge-racism-as-a-national-problem> [<https://perma.cc/7E75-YRCR>] (highlighting that in 2015, 44% of white Americans and 77% of Black Americans believed the criminal legal system was biased against Black Americans, up from 15% and 51%, respectively, in 1995); David A. Lieb, *Ferguson Spurs 40 New State Measures; Activists Want More*, ASSOCIATED PRESS (Aug. 2, 2015), <https://apnews.com/article/2cd834a26ad146cebo4ba6f265566ec5> [<https://perma.cc/U6BL-RM3W>] (“Twenty-four states have passed at least 40 new measures addressing such things as officer-worn cameras, training about racial bias, independent investigations when police use force and new limits on the flow of surplus military equipment to local law enforcement agencies.”); Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (reducing the sentencing disparities between crack and powder cocaine); First Step Act of 2018, Pub. L. No. 115-135,

- 132 Stat. 5222 (implementing various federal sentencing and prison condition reforms); Beatrix Lockwood & Annaliese Griffin, *The System: The State of Bail Reform*, MARSHALL PROJECT (Oct. 10, 2020), [https://www.themarshallproject.org/2020/10/30/the-state-of-bail-reform?gclid=CjoKCQjwla-hBhD7ARIsAM9tQKvVz7L4EHpjRzbqb3BAMqKdTdYT5J945qXmTwTdSTfgiZKEQY2dFkoaApH2EALw\\_wcB](https://www.themarshallproject.org/2020/10/30/the-state-of-bail-reform?gclid=CjoKCQjwla-hBhD7ARIsAM9tQKvVz7L4EHpjRzbqb3BAMqKdTdYT5J945qXmTwTdSTfgiZKEQY2dFkoaApH2EALw_wcB) [<https://perma.cc/W7CW-ZJQR>] (detailing bail reform efforts in Alaska, California, Georgia, New Jersey, New York, Vermont, and Washington D.C.).
- 12 See, e.g., Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (last visited Jan. 31, 2024) (noting that more people had participated in BLM protests in May and June than in any other movement in U.S. history); Dunivin et al., *supra* note 11, at 10 (highlighting that while early BLM protests increased discursive awareness of racialized police killings, after the murder of George Floyd “the response evolved to become more expansive, beyond police killings, even beyond policing, to the social structures that create and maintain the conditions of Black life in the United States”); Ram Subramian & Leily Arzy, *State Policing Reforms Since George Floyd’s Murder*, BRENNAN CTR. FOR JUST. (2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder> [<https://perma.cc/H8ZN-8QMX>] (detailing how 30 states and the District of Columbia enacted police reform legislation after the murder of George Floyd); California Racial Justice Act of 2020, A.B. 2542, 2019–2020 Leg., Reg. Sess. (Cal. 2020) (codified as amended at CAL. PENAL CODE § 745).
- 13 Open Letter from the Wash. Sup. Ct. to Members of the Judiciary and the Legal Community (June 4, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf> [<https://perma.cc/43E8-J6GV>] [hereinafter Open Letter from the Wash. Sup. Ct.]. See also *State Court Statements on Racial Justice*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/newsroom/state-court-statements-on-racial-justice> [<https://perma.cc/V7XC-G6CV>]; Conference of Chief Justices & Conference of State Court Administrators, *Resolution 1: In Support of Racial Equality and Justice for All* (July 30, 2020), [https://ccj.ncsc.org/\\_data/assets/pdf\\_file/0017/51191/Resolution-1-In-Support-of-Racial-Equality-and-Justice-for-All.pdf](https://ccj.ncsc.org/_data/assets/pdf_file/0017/51191/Resolution-1-In-Support-of-Racial-Equality-and-Justice-for-All.pdf) [<https://perma.cc/L9C9-W6VU>] [hereinafter CCJ & COSCA *Resolution 1*]; David Hessekiel, *Companies Taking a Public Stand in the Wake of George Floyd’s Death*, FORBES (June 4, 2020), <https://www.forbes.com/sites/davidhessekiel/2020/06/04/companies-taking-a-public-stand-in-the-wake-of-george-floyds-death/?sh=749a8dbe7214> [<https://perma.cc/VSS8-RT4K>] (quoting public statements by major corporations); Emma Whitford, *Going Behind the Rhetoric*, INSIDE HIGHER ED (Aug. 4, 2021), <https://www.insidehighered.com/news/2021/08/05/naspa-report-examines-statements-wake-george-floyds-murder> [<https://perma.cc/LDB6-CNJF>] (discussing a report by the National Association of Diversity Officers, which found that “230 colleges and universities issued statements in the two-week period following Floyd’s death,” but that “[o]nly 24 percent of the statements discussed police violence against the Black and/or African American community,” and “[a]bout one in 10 statements included actionable next steps for the institution”).



- 14 Between 2020 and 2021, 30 states and the District of Columbia enacted at least one piece of reform legislation addressing the use of force, the duty of other officers to intervene when witnessing police misconduct, and policies relating to law enforcement misconduct reporting and decertification. Subramian & Arzy, *supra* note 12. See *Police Abolition*, MARSHALL PROJECT, <https://www.themarshallproject.org/records/3382-police-abolition> [<https://perma.cc/LJ9N-RLFY>] (publishing a collection of links to news coverage of calls for police reform and abolition).
- 15 It is equally important to acknowledge the backlash to the movement for racial justice that accelerated after the killing of George Floyd. See, e.g., Khiara M. Bridges, *Language on the Move: “Cancel Culture,” “Critical Race Theory,” and the Digital Public Sphere*, 131 YALE L.J. FORUM 767, 785 n.101 (Jan. 26, 2022), [https://law.yale.edu/sites/default/files/area/center/isp/documents/bridges\\_dps.pdf](https://law.yale.edu/sites/default/files/area/center/isp/documents/bridges_dps.pdf) [<https://perma.cc/PR6S-NZN3>] (observing that the protests following Derek Chauvin’s murder of George Floyd marked “the precise historical moment in which the Trump Administration began its fascination with Critical Race Theory (CRT)”).
- 16 SEMEL ET AL., *supra* note 1.
- 17 *Id.* at 2–12.
- 18 *Id.* at 13–27.
- 19 See *supra* note 2 (summarizing *Batson*’s three-step inquiry).
- 20 SEMEL ET AL., *supra* note 1, at 13.
- 21 *Id.* at 2, 82 n.2. See also Anna Offit, *Race-Conscious Jury Selection*, 82 OHIO STATE L.J. 201 (2021) (reporting on the results of a five-year field study combining interviews of Assistant U.S. Attorneys and observational data of jury selection proceedings); Whitney DeCamp & Elise DeCamp, *It’s Still About Race: Peremptory Challenge Use on Black Prospective Jurors*, 57 J. RSCH. CRIM. & DELINQUENCY 3, 13, 21 (2020) (applying the statistical technique of propensity score matching to data from approximately 2,500 venire members in 89 criminal trials in one Mississippi judicial district and finding that Black prospective jurors are “4.51 times as likely to receive a peremptory from the prosecution” than whites); Vida B. Johnson, *Arresting Batson: How Striking Jurors Based on Arrest Records Violates Batson*, 34 YALE L. & POL’Y REV. 387 (2016) (examining prosecutors’ frequent practice of investigating the arrest records of prospective Black and Latinx jurors and their reliance on those records to strike Black and Latinx jurors as a contributing factor to prosecutors’ disproportionate exclusion of those jurors).
- 22 SEMEL ET AL., *supra* note 1, at 31–32.
- 23 *Id.* at 36–52.
- 24 *Id.* at 67–70.
- 25 *Id.* at ix–x, 70–71; [A.B. 3070](#), 2019–2020 Leg., Reg. Sess. (Cal. 2020) (codified at CAL. CIV. PROC. CODE § 231.7); WASH. [R. GEN. APPLICATION 37](#). Note that, depending on the jurisdiction, these reforms may be based solely on independent state constitutional, statutory, or judicial authority or they may, as in Washington, (1) adopt prospective rule

- (GR 37) and (2) embrace the view that “to meet the goals of *Batson*, [the court] must modify the current test” and apply those modifications retrospectively. *State v. Jefferson*, 192 Wash. 2d 225, 429 P.3d 467, 480 (Wash. 2018).
- 26 [A.B. 3070](#), 2019–2020 Leg., Reg. Sess. (Cal. 2020) (codified at CAL. CIV. PROC. CODE § 231.7).
- 27 CAL. CIV. PROC. CODE § 231.7(i) (West 2023).
- 28 *Batson Reform State by State*, BERKELEY L. DEATH PENALTY CLINIC, <https://www.law.berkeley.edu/experiential/clinics/death-penalty-clinic/projects-and-cases/whitewashing-the-jury-box-how-california-perpetuates-the-discriminatory-exclusion-of-black-and-latinx-jurors/batson-reform-state-by-state/> [<https://perma.cc/3LN3-5WSC>]; Thomas Ward Frampton & Brandon Charles Osowski, *The End of Batson? Rulemaking, Race, and Criminal Procedure Reform*, COL. L. REV. (forthcoming 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4419333](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4419333) [<https://perma.cc/Z88B-7QVC>].
- 29 See CAL. CIV. PROC. CODE §§ 205(c)–(e), 231.7(d)(3)(A)–(D), (G) (West 2023); JURY SELECTION WORKGROUP: FINAL REPORT TO THE SUPREME COURT OF CALIFORNIA, *supra* note 7, at 4–5 (observing that “California superior courts do not systematically collect demographic data on jurors” and recommending the collection of “jurors’ race, ethnicity, and gender” when “a prospective juror responds to a summons”).
- 30 See *Batson Reform: State by State*, *supra* note 28.
- 31 Catherine M. Grosso & Barbara O’Brien, *A Call to Criminal Courts: Record Rules for Batson*, 105 KY. L.J. 651, 653–54 (2016–2017).
- 32 *Id.* at 653.
- 33 *Id.* at 654.
- 34 *Id.* at 667.
- 35 See *Duren v. Missouri*, 439 U.S. 357, 364 (1979) (setting forth the three elements of a fair cross-section violation under the Sixth Amendment); *infra* note 88.
- 36 As we discuss in Section III.C, our recommendations attend to the baseline of what is required to make out a Sixth Amendment violation. They will not remedy the judicial status quo in which “courts consistently conclude that the representation of people of color is ‘fair and reasonable’ when research demonstrates — just as consistently — that African-Americans and Hispanics are underrepresented in jury systems across the country.” Nina W. Chernoff, *Wrong About the Right: How Courts Undermine the Fair Cross-Section Guarantee by Confusing It with Equal Protection*, 64 HASTINGS L.J. 141, 145 (2014). See *id.* at 149–50 (also discussing “alternative constructions of the [Sixth Amendment] right, or alternative legal frameworks to evaluate the problem” and arguing that the persistent denial of claims flows from “a consistent judicial failure to actually apply the unadulterated Sixth Amendment standard in *Duren*”). See also SEMEL ET AL., *supra* note 1, at 4–5 (summarizing the history and present-day exclusion of Black Californians from jury pools).

- 37 Act of Sept. 29, 1972, Pub. L. 92-437, 86 Stat. 740 (amending 28 U.S.C. § 1869(h) to add “race” to the information elicited on juror qualification forms in federal district courts).
- 38 ABA, PRINCIPLES FOR JURIES & JURY TRIALS 51 (2005).
- 39 CCJ & COSCA, *Resolution 1*, *supra* note 13, at 2.
- 40 *See, e.g.*, JURY SELECTION WORKGROUP: FINAL REPORT TO THE SUPREME COURT OF CALIFORNIA, *supra* note 7, at 7 (“[S]ystematic collection of juror demographic information would be helpful, and necessary, to answer questions about jury diversity in California and to inform future steps.”); JURY SELECTION TASK FORCE, REPORT TO CONNECTICUT SUPREME COURT JUSTICE RICHARD A. ROBINSON (2020), [https://jud.ct.gov/Committees/jury\\_taskforce/ReportJurySelectionTaskForce.pdf](https://jud.ct.gov/Committees/jury_taskforce/ReportJurySelectionTaskForce.pdf) [<https://perma.cc/Z9NW-UKNE>] (“[W]e recommend that the Connecticut Judicial Branch . . . [c]ollect data on the characteristics of prospective jurors, including race, ethnicity, and gender.”); N.C. GOVERNOR’S TASK FORCE FOR RACIAL EQUAL. IN CRIM. JUST., SUGGESTED JURY PRACTICES: SUPERIOR AND DISTRICT COURT JUDGES 2–3 (2022) [hereinafter TREC, SUGGESTED JURY PRACTICES], <https://ncdoj.gov/wp-content/uploads/2022/08/Suggested-Jury-Practices.pdf> [<https://perma.cc/4PFH-DWHX>] (recommending “transparent jury data collection efforts to enable oversight of the fair cross section guarantee”); N.D. COMM’N TO STUDY RACIAL AND ETHNIC BIAS IN THE CTS., FINAL REPORT AND RECOMMENDATIONS 36 (2012), <https://www.ndcourts.gov/Media/Default/Committees/commission-to-study-racial-and-ethnic-bias-in-the-courts/FinalReport.pdf> [<https://perma.cc/AF9W-Y833>] (“A long-term or permanent study on jury panels must be undertaken before firm statistical conclusions on minority representation can be reached.”).
- 41 Letter from Jury Scholars, *supra* note 8, at 19.
- 42 Caprathe et al., *supra* note 10, at 17.
- 43 *See, e.g.*, Natalie Angier, *Do Races Differ? Not Really, Genes Show*, N.Y. TIMES (Aug. 22, 2000), <https://www.nytimes.com/2000/08/22/science/do-races-differ-not-really-genes-show.html> [<https://perma.cc/64UG-M69W>] (“Race is a social concept, not a scientific one.”) (quoting J. Craig Venter, one of the researchers who sequenced the human genome); Ian Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 27 (1994) [hereinafter Haney López, *The Social Construction of Race*]; *id.* at 27 n.108 (quoting PAUL GILROY, “THERE AIN’T NO BLACK IN THE UNION JACK:” THE CULTURAL POLITICS OF RACE AND NATION 38 (1987) for the proposition that “[r]acial formation ‘refers both to the transformation of phenotypical variation into concrete systems of differentiation based on ‘race’ and colour to the appeals to spurious biological theory which have been a feature of the history of ‘races.’”); ASHLEY MONTAGU, MAN’S MOST DANGEROUS MYTH: THE FALLACY OF RACE (1942) (“As far as research and observation have been able to prove, the chromosome number of all the human races is the same. . . . [I]n spite of the questionable physical differences between groups of people, an imposing substrate of similarity underlies these differences.”); W.E.B. DU BOIS, DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT 137–38 (Harcourt Brace & Co. 1942) (“[I]t is easy to see that scientific definition of race is impossible; it is easy to

prove that physical characteristics are not so inherited as to make it possible to divide the world into races . . . the possibilities of human development cannot be circumscribed by color, nationality, or any conceivable definition of race. . . .”).

- 44 See Open Letter from the Wash. Sup. Ct., *supra* note 13. See also Haney López, *The Social Construction of Race*, *supra* note 43, at 4 (“Race suffuses all bodies of law, not only obvious ones like civil rights, immigration law, and federal Indian law, but also property law, contracts law, criminal law, federal courts, family law, and even ‘the purest of corporate law questions within the most unquestionably Anglo scholarly paradigm.’”) (quoting Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 729 (1990)).
- 45 Haney López, *The Social Construction of Race*, *supra* note 43, at 3. See also Sheri Lynn Johnson, *Explaining the Invidious: How Race Influences Capital Punishment in America*, 107 CORNELL L. REV. 1513, 1548–49 (2022) [hereinafter Johnson, *Explaining the Invidious*] (“Animosity and consciously held stereotypes have not disappeared. To the extent they have diminished, they have largely been replaced by unconscious bias.”) *Id.* at 1531–48 (summarizing the evidence on unconscious bias from social psychology).
- 46 “Perhaps being unconscious of race, racism, and racial inequality is precisely the mechanism by which they are all reproduced.” Khiara M. Bridges, *Class-Based Affirmative Action, or the Lies that We Tell about the Insignificance of Race*, 96 BOS. UNIV. L. REV. 55, 107–08 (2016).
- 47 Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1832 (2012) [hereinafter Haney-López, *Intentional Blindness*] (employing the phrase “intentional blindness” to “express[] the marrow of the Court’s racial jurisprudence — which seems intentionally blind to racial context, including the persistence of racial discrimination against non-Whites, and the desire of democratic majorities to remedy this lingering stain on American justice”); *id.* at 1876 (“In this realm of enforced racial blindness, the inference that racism is over reigns unchallenged. The country deserves an equality jurisprudence with eyes open to racial context.”). See also Mario L. Barnes, Erwin Chemerinsky & Trina Jones, *A Post-Racial Equal Protection?*, 98 GEO. L.J. 967, 972, 974 (2010) (observing that “[p]rofessing American society to be post-racial is not new,” but rather an “impulse [that] has surfaced repeatedly in U.S. constitutional jurisprudence”); *id.* at 978–79 (“Whether premised on colorblindness or color-consciousness [ — seeing race “but only in a positive sense” — ], post-racialism incorporates the belief that racism is largely a relic of the past. . . . [such that] the law should not tolerate race-based decision making or the adoption of race-based remedies.”).
- 48 See Paul Butler, *Mississippi Goddamn: Flowers v. Mississippi’s Cheap Racial Justice*, 2019 SUP. CT. REV. 73, 87–88 (2019) (observing that Justice Harlan’s dissenting opinion in *Plessy v. Ferguson*, 163 U.S. 537 (1896), was “the first time the concept of color-blindness appeared in a Supreme Court opinion” and that “it was pitched to preserve white supremacy”); see generally Haney López, *Intentional Blindness*, *supra* note 47, at 1784 (tracing the Court’s equal protection jurisprudence from the civil rights era through the present day, explaining the connection between the doctrines of colorblindness and intent, and showing that they are now “unified” in the jurisprudence of “intentional blindness”).



- 49 Haney López, *Intentional Blindness*, *supra* note 47, at 1828–37 (characterizing *Pers. Admin’r Massachusetts. et al. v. Feeney*, 442 U.S. 256 (1979), as the “transitional case” in which colorblindness both “opposes race-conscious remedies to race” and requires proof of malicious intent to establish claims of racial discrimination).
- 50 143 S. Ct. 2141 (2023).
- 51 *Id.* at 2169.
- 52 *See id.*
- 53 *See* 439 U.S. 357, 364 (1979); *infra* note 88.
- 54 *SFFA*, 143 S. Ct. at 2175.
- 55 *Cf. Brown v. North Carolina*, 479 U.S. 940, 942 (1986) (O’Connor, J., concurring in the denial of certiorari) (describing *Batson*’s limitation on the prosecution’s use of peremptory challenges as a “special rule [which] is a product of the unique history of racial discrimination in this country [that] should not be divorced from that context”).
- 56 *See, e.g.*, KATHRYN GENTHON & DIANE ROBINSON, CT. STATISTICS PROJECT, COLLECTING RACE & ETHNICITY DATA (Feb. 8, 2021), [https://www.courtstatistics.org/\\_data/assets/pdf\\_file/0018/42255/Race\\_Ethnicity\\_Data\\_Collection\\_2.pdf](https://www.courtstatistics.org/_data/assets/pdf_file/0018/42255/Race_Ethnicity_Data_Collection_2.pdf) (recommending that the provision of race/ethnicity information should be optional).
- 57 *See* Nolan L. Cabrera & Matthew R. Holliday, *Racial Politics and Racial Self-Identification: A Case Study of Arizona, 2010–2011*, 39 HISPANIC J. OF BEHAV. SCI. 131, 142 (2017) (a study examining University of Arizona students’ rate of racial self-identification before and after the passage of anti-immigrant laws in 2010 and finding “a 26% increase of [Latino] participants who wrote a variation of ‘half-White, half-Hispanic,’ a decrease of 20% in the number of students who identified as “Mexican,” and a 30% decline in the use of “Mexican-American” as a self-identifier); Antronette K. Yancy, Alexander N. Ortega, Shiriki K. Kumanyika, *Effective Recruitment and retention of minority research participants*, 27 ANN. REV. PUB. HEALTH 1, 1, 9 (2006) (in a literature review of studies of “participation of racial/ethnic minority populations in health-related research,” finding that “[p]erceptions of trust and mistrust of scientific investigators, of government, and of academic institutions were . . . a central barrier to recruitment, particularly among African Americans”); *C.f.*, Lisa M. Nicholson, Patricia M. Schwirian, Judith A. Groner, *Recruitment and retention strategies in clinical studies with low-income and minority populations: Progress from 2004–2014*, 45 CONTEMP. CLINICAL TRIALS 34 (2015) (describing the research on the “general sense of distrust in the health care system and medical research”); Maichu Lor, Barbara J. Bowers, Nora Krupp & Anna Jacobson, *Tailored Explanation: A Strategy to Minimize Nonresponse in Demographic Items Among Low-Income Racial and Ethnic Minorities*, 10 SURV. PRAC., no. 3, June 2017, at 5 (reporting “a 15.2% reduction of nonresponse of income when the explanation for the demographic questions was provided to participants”).
- 58 COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at 5.
- 59 ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED, VERA INST. OF JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 7 (2018).
- 60 *Id.* at 8.

- 61 *Id.*
- 62 EMILY WIDRA & TIANA HERRING, PRISON POL’Y INITIATIVE, STATES OF INCARCERATION: THE GLOBAL CONTEXT 2021 (2021), <https://www.prisonpolicy.org/global/2021.html> [<https://perma.cc/MU84-CLRF>].
- 63 U.S. *Criminal Justice Data*, SENTENCING PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data/> [<https://perma.cc/3RHW-QF8M>]. (last visited Jan. 31, 2024)
- 64 WENDY SAWYER & PETER WAGNER, PRISON POL’Y INITIATIVE, MASS INCARCERATION: THE WHOLE PIE 2023 (Mar. 14, 2023), <https://www.prisonpolicy.org/reports/pie2023.html> [<https://perma.cc/9YPB-RK64>].
- 65 See HINTON, ET AL., *supra* note 59, at 3 (citing KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2011)).
- 66 See SEAN E. GOODISON, U.S. DEP’T OF JUST., LOCAL POLICE DEPARTMENTS PERSONNEL 2020 6 (2020), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/lpdp20.pdf> [<https://perma.cc/TAT4-S3E8>].
- 67 Ninety-five percent of all elected prosecutors are white. REFLECTIVE DEMOCRACY CAMPAIGN, *TIPPING THE SCALES: CHALLENGERS TAKE ON THE OLD BOYS’ CLUB OF ELECTED PROSECUTORS 1* (2019), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> [<https://perma.cc/7UER-4BCA>]. In California, for example, 69.8% of full-time prosecutors are white, despite the fact that only 38.5% of Californians are white. KATHERINE J. BIES, ISAAH M. DEPORTO, DARRYL G. LONG, MEGAN S. MCKOY, DEBBIE A. MUKAMAL & DAVID ALAN SKLANSKY, STAN. CRIM. JUST. CTR., *STUCK IN THE ’70S: THE DEMOGRAPHICS OF CALIFORNIA PROSECUTORS 10* (2015), <https://law.stanford.edu/wp-content/uploads/2015/04/Stuck-in-the-70s-Final-Report.pdf> [<https://perma.cc/FL94-J5ND>].
- 68 Approximately 80% of all state court judges nationwide are white. TRACEY E. GEORGE & ALBERT H. YOON, AM. CONST. SOC’Y FOR L. AND POL’Y, *THE GAVEL GAP: WHO SITS IN JUDGMENT ON STATE COURTS?* 3, 18 (2014), <https://www.acslaw.org/wp-content/uploads/2018/02/gavel-gap-report.pdf> [<https://perma.cc/XQR3-9DLM>]; EQUAL JUST. INITIATIVE, *RACE AND THE JURY: ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION*, CH. 2 (2021), <https://ej.org/report/race-and-the-jury/> [<https://perma.cc/2RM4-P2SK>] (reporting, “Twenty-two states currently have all-white supreme courts, including 11 states in which people of color comprise at least 20% of the population. In 16 states — nearly a third of the country — there has never been a Black supreme court justice.”). *Id.* (describing a “stark lack of diversity” on the federal bench).
- 69 EQUAL JUST. INITIATIVE, *supra* note 68, at ch. 1 (describing the history of exclusion “since America’s founding”); SEMEL ET AL., *supra* note 1, at 1–5 (offering a brief summary of the constitutional, legislative, judicial, and extra-legal methods of exclusion).
- 70 See EQUAL JUST. INITIATIVE, *supra* note 68, at ch. 1.
- 71 *Flowers v. Mississippi*, 139 S. Ct. 2228, 2238 (2019) (citing *Powers v. Ohio*, 499 U.S. 400, 407

- (1991)).
- 72 Ashish S. Joshi & Christina T. Kline, *Lack of Jury Diversity: A National Problem with Individual Consequences*, A.B.A. (Sept. 1, 2015), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2015/lack-of-jury-diversity-national-problem-individual-consequences/> [<https://perma.cc/XRP5-F52M>].
- 73 *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397 (2020) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 148–50 (1968)). See also *Benton v. Maryland*, 395 U.S. 784, 794 (1969); *Batson v. Kentucky*, 476 U.S. 79, 86 n.8 (1986); *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 551 (1976); *Hodges v. Easton*, 106 U.S. 408, 412 (1882) (“It has been often said by this court that the trial by jury is a fundamental guaranty of the rights and liberties of the people.”).
- 74 *Smith v. Texas*, 311 U.S. 128, 130 (1940). The Court in *Smith* was concerned with an Equal Protection challenge to the Texas statutory scheme. *Id.*
- 75 419 U.S. 522, 528 (1975).
- 76 *Id.* at 530 (citation omitted).
- 77 *Peters v. Kiff*, 407 U.S. 493, 503–04 (1972). Some scholars propose applying the Sixth Amendment “over equal protection color blindness” to “allow the judge to make trade-offs between the use of peremptory challenges to root out individualized bias and protecting the fair cross section of the jury.” Tania Tetlow, *Solving Batson*, 56 WM. & MARY L. REV. 1859, 1867 (2015). It is difficult to imagine that a majority of the current Supreme Court would reconsider the decision in *Holland v. Illinois*, holding that the Sixth Amendment guarantee extends only to the composition of the venire. 493 U.S. 474, 480 (1990). When, eight years before *Batson*, the California Supreme Court rejected the high court’s “pernicious” tolerance of race-based peremptory challenges under *Swain*, the court did so under the state constitution’s independent representative cross-section guarantee. *People v. Wheeler*, 22 Cal. 3d 258, 270, 283, 583 P.2d 748, 766 (1978). See *Swain v. Alabama*, 380 U.S. 202, 223 (1965) (expressing a willingness to consider a constitutional challenge to the prosecution’s strikes only when the defendant could show that the State “in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of [qualified] Negroes”). The court in *Wheeler* nonetheless “adopted an approach that was lifted from equal protection analysis.” SEMEL ET AL., *supra* note 1, at 7, 90 n.89. The tension between race-consciousness and colorblindness was also apparent in *Wheeler*. On the one hand, the majority championed “representativeness” as “a precondition to trial by an impartial jury.” *Wheeler*, 22 Cal. 2d at 271, 275–76. On the other, the court agreed that a prosecutor’s peremptory challenge based on a juror’s “record of prior arrests” or “complain[ts] of police harassment” was “essentially neutral” because “the characteristics on which they focus cut across many segments of our society.” *Id.* at 276. There is nothing “essentially neutral” about these justifications. See CAL. CIV. PROC. CODE § 231.7(e)(1)–(3) (West 2023) (identifying these and other reasons as “presumptively invalid”); WASH. R. GEN. APPLICATION 37(h)(i)–(v) (identifying these and other reasons as “historically associated with improper discrimination and “presumptively invalid”); *People v. Triplett*, 48 Cal. App. 5th 655,

692–93, 267 Cal. Rptr. 675, 692 (Cal. Ct. App. 2020) (Liu, J., dissenting from the denial of review) (“To many people, excluding qualified Black jurors based on their negative experiences with law enforcement or the justice system must seem like adding insult to injury. It has been more than 30 years since this court has found racial discrimination in the peremptory strike of a Black juror. Over the decades, California courts have repeatedly upheld the exclusion of Black jurors for reasons like those at issue here. It is time to reassess whether the law should permit the real-life experiences of our Black citizens to be devalued in this way.”); Aliza Plener Cover, *Hybrid Jury Strikes*, 52 HARV. C.R.-C.L. L. REV. 357, 368–69 (2017) (“[T]he very inequalities in the criminal justice system that make jury diversity so important also, perversely, create formally race-neutral justifications for the exclusion of minorities under *Batson* . . . The very inequality of the criminal justice system provides cover for prosecutors to strike minorities on ostensibly race-neutral reasons.”); Peremptory Challenges in Kansas: Amended Report of Elisabeth Semel, at 29–41, *State of Kansas v. Kyle D. Young* (No. 2020-CR-879), 18th Jud. Dist., Dist. Ct. of Sedgwick Cty., Kan (filed Oct. 20, 2020) <https://www.aclu.org/cases/kansas-v-kyle-young?document=Ex-D-Elisabeth-Semel-Batson-Report> (documenting the frequency with which Kansas prosecutors gave reasons that are associated with racial stereotypes); Elisabeth Semel, *Batson in the Twenty-First Century*, in JURYWORK: SYSTEMATIC TECHNIQUES 458 (NJP Litigation Consultants ed. 2022–23) [hereinafter Semel, *Batson in the Twenty-First Century*] (“Judicial norming of racial proxies and stereotypes as ‘race-neutral’ is among the most insidious and effective ways in which *Batson* has been crippled; this is particularly so when implicit bias is at work.”); *id.* at 415–28 (discussing the rare cases in which a prosecutor’s reasons have been found legally insufficient to satisfy *Batson*); *id.* at 441–45 (discussing courts’ acceptance of demeanor-based reasons as “race-neutral”); *id.* at 455–58 (discussing courts’ acceptance of racial proxies and stereotypes as “race-neutral”); SEMEL ET AL., *supra* note 1, at 13–22 (finding that California prosecutors rely on racial and ethnic stereotypes to disproportionately remove Black and Latinx prospective jurors); *id.* at 36, 113 n.388 (stating that the California Supreme Court has repeatedly found that prosecutors’ strikes are race-neutral when based on the assertion that a juror of color holds negative views about the criminal legal system or law enforcement); *id.* at 49–52 (showing how California prosecutors are trained to rely on dozens of stock “race-neutral” reasons that courts have approved).

- 78 Nina W. Chernoff, *No Records, No Right: Discovery and the Fair Cross-Section Guarantee*, 101 IOWA L. REV. 1719, 1744 (2016) [hereinafter Chernoff, *No Records, No Right*].
- 79 See Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 597, 603–10 (2006). More recent research confirms these findings. See Amanda Nicholson Bergold & Margaret Bull Kovera, *Diversity’s Impact on the Quality of Deliberations*, 48 PERSONALITY & SOC. PSYCH. BULL. 1406, 1412 (2021) (finding that diverse juries were better at evaluating and challenging ambiguous evidence); Margaret C. Stevenson, Brad L. Lytle, BreighAnna J. Baumholser & Evan W. McCracken, *Racially Diverse Juries Promote Self-Monitoring Efforts*



- During Jury Deliberation*, 3 TRANSLATIONAL ISSUES IN PSYCH. SCI. 187, 187 (2017) (“[J]ury racial diversity appears to foster careful and critical thinking among jurors. . .”).
- 80 Sommers, *supra* note 79, at 606.
- 81 *Id.*
- 82 Liana Peter-Hagene, *Jurors’ Cognitive Depletion and Performance During Jury Deliberation as a Function of Jury Diversity and Defendant Race*, 43 L. & HUM. BEHAV. 232, 245 (2019).
- 83 For example, the Capital Jury Project (CJP), which was launched and administered by William J. Bowers, Ph.D., operated from 1991 through 2011. CJP conducted surveys of over 1,200 jurors who participated in 353 capital trials in 14 states and analyzed the survey data to make findings on the decision-making process. See M. E. GRENANDER SPEC. COLLECTIONS & ARCHIVES, UNIV. AT ALBANY, STATE UNIV. OF N.Y., *Capital Jury Project, 1941–2011*, <https://archives.albany.edu/description/catalog/apap196> [<https://perma.cc/XHY5-PV3H>] (last visited Jan. 31, 2024).
- 84 William J. Bowers, Benjamin D. Steiner & Marla Sandys, *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors’ Race and Jury Racial Composition*, 3 U. PA. J. CONST. L. 171, 193–94 (2001).
- 85 Mona Lynch & Craig Haney, *Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the “Empathic Divide,”* 45 L. & SOC’Y REV. 69, 91 (2011) (finding that white male jurors “diverged significantly” from other jurors “both in terms of how they constructed the defendant’s blameworthiness and motivation, and on whether they believed he deserved to be allowed to continue to live”); *id.* at 92 (finding that these effects were not mediated by the fact that white male participants “had significantly higher comprehension of the capital jury sentencing instructions”); Mona Lynch & Craig Haney, *Capital Jury Deliberation: Effects on Death Sentencing, Comprehension, and Discrimination*, 33 L. & HUM. BEHAV. 481, 494 (2009) (“[T]here were striking differences in how all of the mitigating evidence and some of the aggravating evidence were evaluated by [the] White male jurors, as a function of the defendant’s race.”); Mark Peffley & Jon Hurwitz, *Persuasion and Resistance: Race and the Death Penalty in America*, 51 AM. J. POL. SCI. 996, 1007 (2007) (“[W]hen confronted with the argument that the death penalty is racially unfair, whites who believe that black crime is due more to blacks’ dispositions than to a biased justice system end up rejecting the racial argument with such force that they become even more supportive of the death penalty.”); William J. Bowers, Thomas W. Brewer & Marla Sandys, *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant is Black and the Victim in White*, 53 DEPAUL L. REV. 1497, 1513 (2004) (“[B]lack and white males differ substantially, not only with respect to strong aggravating and mitigating considerations, such as dangerousness, remorse, and lingering doubt, but also in the ways they see the crime (i.e., vicious versus not cold-blooded) and in the degree to which they personalize the defendant and identify with him and his family.”); *id.* at 1515 (finding overall that “white jurors are much less receptive to mitigation than their black counterparts” in Black-defendant/white-victim cases); Thomas J. Brewer, *Race and Jurors’ Receptivity to Mitigation in Capital Cases: The Effect of Jurors’, Defendants’,*

*and Victims' Race in Combination*, 28 L. & HUM. BEHAV. 529, 539 (2004) (“Black jurors are significantly more receptive to mitigation than their white counterparts.”); Bowers et al., *supra* note 84, at 207 (finding that Black jurors were “far and away the most likely to have lingering doubts and to regard such doubts as important in making the punishment decision”); *id.* at 222 (“[T]he defendant’s ‘dangerousness’ was the watchword of white jurors [and] [m]ore white jurors than black jurors saw the defendant as ‘dangerous’ in [these] cases by about twenty percentage points.”); Stephen P. Garvey, *The Emotional Economy of Capital Sentencing*, 75 N.Y.U. L. REV. 26, 47 (2000) (finding that Black jurors are more likely than white jurors to differentiate between the crime and the defendant when deciding penalty).

- 86 Sheri Lynn Johnson, *Black Innocence and the White Jury*, 83 MICH. L. REV. 1611, 1668–69 (1985) [hereinafter Johnson, *Black Innocence*].
- 87 An equally probative question interrogates the harm to Black defendants tried by juries as they have been and largely continue to be composed. For example, a 1985 empirical analysis of the available aggregate data sources examined “whether black defendants are more likely to be convicted merely because they are black” and found sufficient evidence to show this relationship. Johnson, *Black Innocence*, *supra* note 86, at 1617–18. *Id.* (positing the question “in social science terms” as “testing the null hypothesis that race is not a factor in the determination of guilt” and finding that, “taken together, [the data] provide sufficient evidence to warrant rejecting the null hypothesis”). See Shamena Anwar, Patrick Bayer & Randi Hjalmarrsson, *The Impact of Jury Race in Criminal Trials*, 127 Q. J. ECON. 1017 (2012) (examining 731 non-capital felony trial outcomes in two Florida counties and finding that conviction rates for Black and white defendants did not differ from each other among juries when there were Black potential jurors in the jury pool, but Black defendants were convicted at a higher rate when no Black citizens were in the pool); Marian R. Williams & Melissa W. Burek, *Justice, Juries, and Convictions: The Relevance of Race in Jury Verdicts*, 31 J. CRIME & JUST. 149, 164 (2008) (an analysis of felony trial outcomes, finding, after controlling for legally relevant case factors, that “juries with a higher percentage of white serving on them were more likely to convict black defendants”).
- 88 Chernoff, *No Records, No Right*, *supra* note 78, at 1755–56.
- 89 *Id.* at 1735.
- 90 See, e.g., *id.* at 1764–74 (describing how “inadequate advocacy by defense attorneys and prosecutors also contributes to state courts’ failure to recognize that their legitimate concerns are not threatened by granting discovery requests”).
- 91 See *id.* at 1767.
- 92 See *Batson v. Kentucky*, 476 U.S. 79, 94, 96 (1986); WASH. R. GEN. APPLICATION 37(a) (defining cognizability under the rule as “race” or “ethnicity”); CAL. CIV. PROC. CODE § 231.7(a) (West 2023) (prohibiting the exclusion of a juror “on the basis of the prospective juror’s race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups”). In *Batson*, 476 U.S. at 94, the Supreme Court employed the test it announced

in *Castaneda v. Partida*, 430 U.S. 482, 494 (1977), which deems cognizable any group that is “a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied.” See also Semel, *Batson in the Twenty-First Century*, *supra* note 77, at 356–57 (discussing the *Castaneda* standard and the more stringent test under *United States v. Sgro*, 816 F.2d 30, 33 (1st Cir. 1987)). Courts deciding cognizability under *Batson* do not uniformly employ the *Castaneda* standard. See *id.* at 357–72 (reviewing the different groups recognized by the U.S. Supreme Court, lower federal courts, state courts, and state constitutional and statutory provisions). While the Supreme Court has never explicitly held that *Batson*’s protections extend to white prospective jurors, some federal appellate courts and state courts have found that *Batson* encompasses them. See, e.g., *United States v. Thompson*, 528 F.3d 110, 117–18 (2d Cir. 2008); *Gov’t of Virgin Islands v. Forte*, 865 F.2d 59, 64 (3d Cir. 1989); *United States v. Thomas*, 847 F.3d 193, 208–09 (5th Cir. 2017) (per curiam); *United States v. Walker*, 490 F.3d 1282, 1291–92 (11th Cir. 2007); *Williams v. State*, 634 So. 2d 1034, 1038 (Ala. Crim. App. 1993); *State v. Hurd*, 246 N.C. App. 281, 784 S.E. 2d 528 (2016). Other courts have gone further, holding that the subset of white men, who most assuredly do not satisfy *Castaneda*, are cognizable under *Batson*. See *People v. Willis*, 27 Cal. 4th 811, 813–14, 43 P.3d 130 (2002); *Com. v. Jordan*, 439 Mass. 47, 58–59, 62, 285 N.E. 2d 368 (2003). See also Haney López, *Intentional Blindness*, *supra* note 47, at 1822–23 (describing *Castaneda* as a decision in which Justice Marshall’s concurring opinion embraced “social science as a compelling resource for helping him understand racial hierarchy” and Justice Powell’s dissent was a signal of “today’s reactionary equal protection jurisprudence” soon to find favor with a majority of the Court).

- 93 *Batson*, 476 U.S. at 97 (referring to the prosecution’s “pattern of strikes”). See Semel, *Batson in the Twenty-First Century*, *supra* note 77, at 380–88 (discussing the evolution in how courts evaluate the number of strikes, including the Supreme Court’s oft-repeated admonition that “even a single instance of race discrimination against a prospective juror is impermissible”) (quoting *Flowers v. Mississippi*, 139 S. Ct. 2228, 2242) (2019)).
- 94 See *Flowers*, 139 S. Ct. at 2246–51 (discussing the prosecutor’s “dramatically disparate” questioning of Black prospective jurors and his proffered explanations for striking a particular Black juror); *Foster v. Chatman*, 578 U.S. 488, 501–13 (2016), 578 U.S. at 501–13 (2016) (finding compelling evidence that the prosecutor’s proffered reasons for striking two Black jurors applied just as forcefully to non-Black jurors who were permitted to serve); *Snyder v. Louisiana*, 552 U.S. 472, 483–86 (2008) (comparing the prosecutor’s reason for striking a Black juror to the prosecutor’s concern about hardship due to the juror’s “conflicting obligations” with statements by two white jurors who themselves raised these concerns but were seated); *Miller-El v. Dretke (Miller-El II)*, 545 U.S. 231, 241–52 (2005) (finding the “race neutral” reasons for striking two Black jurors implausible in light of views expressed by seated white jurors).
- 95 *Flowers*, 139 S. Ct. at 2243 (2019) (citing *Foster*, 578 U.S. 488; *Snyder*, 552 U.S. 472; *Miller-El II*, 545 U.S. 231; *Batson*, 476 U.S. 79).
- 96 *Flowers*, 139 S. Ct. at 2243.

97 AUDREY & BRIAN D. SMEDLEY, RACE IN NORTH AMERICA, ORIGINS AND EVOLUTION OF A  
WORLDVIEW xii (2012).

98 839 F.3d 806 (9th Cir. 2016).

99 *Id.* at 808.

100 *Id.* at 812.

101 *Id.*

102 *Id.* (internal quotation marks and citation omitted).

103 *Miller-El II*, 545 U.S. at 251; *see Batson*, 476 U.S. at 96 (referring to the prosecution’s  
statements during voir dire).

104 25 Wash. App. 2d 1007, 2022 WL 17974659 (Wash. Ct. App. 2022 (unpublished)). *Seals v.*  
*Vannoy*, 1 F.4th 362 (5th Cir. 2021), offers another instance in which a dispute about the  
prospective juror’s race based on appearance worked to the disadvantage of the defendant.  
Seals objected to the prosecution’s peremptory challenge against a juror whom the defense  
believed identified as “a person of color.” *Id.* at 365. The trial judge and prosecutor agreed  
that they could not tell juror’s race based on his appearance, with the prosecutor adding  
that “you can’t just tell by looking.” *Id.* Ultimately, the federal appeals court removed  
the strike from the analysis — treating the juror as if he were white — which further  
undermined the defendant’s prima facie showing. *Id.* at 366.

105 *Smalley*, 2022 WL 17974659 at \*1-2.

106 *Id.* at \*2.

107 *Id.* at \*2.

108 *Id.* at \*2.

109 *Id.* at \*14. An earlier opinion by the Washington Court of Appeals held that GR 37 “has  
to do with appearances, not whether a juror actually identifies with a racial or ethnic  
minority group.” *State v. Orozco*, 19 Wash. App. 2d 367, 376, 496 P.3d 1215, 1221 (Wash. Ct.  
App. 2021). When *Orozco* and *Smalley* were decided, Washington had not yet adopted  
legislation facilitating the collection of jurors’ race/ethnicity. *See infra*, Section IV.B.  
The new statute, however, does not make this information available to trial judges  
and litigants. *See* S.B. 5128, 2023–2024 Leg., Reg. Sess. (Wash. 2023), [https://app.leg.  
wa.gov/billsummary?BillNumber=5128&Year23=2023&Initiative=false](https://app.leg.wa.gov/billsummary?BillNumber=5128&Year23=2023&Initiative=false) [[https://perma.  
cc/438PUHXE](https://perma.cc/438PUHXE)]; *infra* Section VI.B.2. California’s *Batson* reform statute allows the  
adjudication of discrimination based not only on a prospective juror’s membership in  
a protected group, but also on a prospective juror’s “perceived membership.” CAL. CIV.  
PROC. CODE § 231.7(a) (West 2023). We all have implicit and explicit biases that influence  
our *perceptions* of other people’s race and ethnicity. “[S]tereotypes about ethnic groups  
appear as a part of the social heritage of society. They are transmitted across generations  
as a component of the accumulated knowledge of society. They are as true as tradition,  
and as pervasive as folklore. No person can grow up in a society without having learned  
the stereotypes assigned to the major ethnic groups.” *State v. Saintcalle*, 178 Wash. 2d  
34, 309 P.3d 326, 336 (2013), *abrogated by City of Seattle v. Erickson*, 188 Wash. 2d 721, 398



- P.3d 1124 (2017) (quoting Howard J. Ehrlich, *THE SOCIAL PSYCHOLOGY OF PREJUDICE* 35 (1973)). For that reason, continuing to rely on “perceived membership” is more likely to bake stereotypes into the process than to eliminate them. California courts do not systematically collect juror’s self-identified race/ethnicity. *See* CAL. CIV. PROC. CODE § 205(c)–(e) (West 2023). *See also* *People v. Davis*, 46 Cal. 4th 539, 584, 208 P.3d 78, 116 (2009) (declining to identify as “Hispanic” three struck jurors with Spanish surnames where the defense failed to refute the prosecution’s description of them as “Caucasian”).
- 110 428 F.3d 1015, 1040–43 (11th Cir. 2005).
- 111 *Id.* at 1043.
- 112 *Id.* (italics added). The Eleventh Circuit reasoned that identifying race based on “physical characteristics . . . emphasize[es] racial distinctions in jury selection, which our *Batson* jurisprudence seeks to eliminate.” *Id.* at 1043. In a footnote, the court observed that the “better practice” would be to “give both parties the self-reported race or ethnicity upon request in order to avoid any speculative stereotyping, but equivocated as to whether this was ultimately a preferable approach. *Id.* at 1043 n.37. The court’s equivocal reasoning failed to take into account *Batson*’s facilitation of implicit racial and ethnic stereotyping. The North Carolina Task Force for Racial Equality in Criminal Justice recommended the state supreme court adopt a rule “requiring consistent self-identification of race and gender and complete recordation of jury selection” as necessary to “[e]nable a more effective appellate review of *Batson* challenges.” N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., 2020 REPORT 101 (2021), [https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal\\_02262021.pdf](https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal_02262021.pdf) [<https://perma.cc/2SKN-T5MC>]. *See also* Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 782 (Oct. 30, 1997).
- 113 Anthony Page, *Batson’s Blind Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. REV. 155, 228 (2005). *See also* SEMEL ET AL., *supra* note 1, at 46–49 (describing how California prosecutors are trained to rely on their “gut instincts” and, under *Batson*, courts sanction reliance on racial stereotypes).
- 114 Terry D. Brown, Jr., Francis C. Dane & Marcus D. Durham, *Perception of Race and Ethnicity*, 13 J. SOC. BEHAV. & PERSONALITY 295, 295 (1998) (“[I]ndividuals report using skin color as the primary cue when making decisions about the race of another person.”); Marguerite N. Alejandro-Wright, *The Child’s Conception of Racial Classification: A Social-Cognitive Model*, in *BEGINNINGS: THE ART AND SCIENCE OF PLANNING PSYCHOTHERAPY* 185–200 (Margaret B. Spencer et al., eds., 2013) (studying hair and nose and lip shapes); Irene V. Blair & Charles M. Judd, *Afrocentric Facial Features and Stereotyping*, in *THE SCIENCE OF SOCIAL VISION* 306–20 (Reginald B. Adams et al., eds., 2010) (studying hair and nose and lip shapes); Cynthia Feliciano, *Shades of Race: How Phenotype and Observer Characteristics Shape Racial Classification*, 60 AM. BEHAV. SCIENTIST 390, 401–03 (2016) (studying hair, nose and lip shapes, and body types); Jennifer Patrice Sims, Whitney Laster Pirtle & Iris Johnson-Arnold, *Doing Hair, Doing Race: The Influence of Hairstyle on Racial Perception Across the U.S.*, 43 ETHNIC & RACIAL STUD. 2099, 2099–2119 (2020) (studying hair).

- 115 Feliciano, *supra* note 114, at 407–09. Racial ascriptions based on phenotype and shaped by observer characteristics do not always cohere with how individuals self-identify. Nicholas Vargas & Kevin Stainback, *Documenting Contested Racial Identities Among Self-Identified Latina/os, Asians, Blacks, and Whites*, 60 AM. BEHAV. SCIENTIST 442, 443 (2016). The same study found that “approximately 14% of self-identified monoracial adults . . . have experienced racial contestation,” or have been perceived as a member of a race with which they do not identify. *Id.* at 457. “[T]o explore how individuals view their own racial and ethnic identities,” a Pierce County, Washington survey asked respondents to self-identify their race and ethnicity, but also asked them “to identify what race and ethnicity they felt other people view them as.” PETER A. COLLINS, BROOKE GIALOPSOS & BAILEY TANAKA, STATEWIDE JUROR SUMMONS DEMOGRAPHIC SURVEY PROJECT, AN ANALYSIS OF SELECTED COUNTY DATA, 2022 INTERIM REPORT 34 [hereinafter COLLINS ET AL., 2022 INTERIM REPORT]. Researchers found that “overall, respondents thought that others viewed them outside their respective self-reported racial and ethnic category.” *Id.* at 35. The population of individuals who identify as “two or more races” in the United States grew by 275.7% from 2010 to 2020. U.S. CENSUS BUREAU, *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html> [<https://perma.cc/ZJ57-DZP7>]. Multiracial individuals experience higher rates of racial contestation than monoracial individuals. Melissa R. Herman, *Do You See What I Am? How Observers’ Backgrounds Affect Their Perceptions of Multiracial Faces*, 73 SOC. PSYCH. Q. 58, 72–73 (2010) (finding that observers classify almost half of self-identified multiracial persons as monoracial).
- 116 See Johnson, *Explaining the Invidious*, *supra* note 45, at 1527–48 (discussing conscious racism through the lens of Supreme Court jurisprudence and unconscious racism through the lens of the psychological and social psychological literature); SEMEL ET AL., *supra* note 1, at 30–32 (providing a brief overview of the research on implicit bias); *id.* at 33–35 (summarizing empirical research on implicit bias in the criminal legal system and the exercise of peremptory challenges).
- 117 *Batson*, 476 U.S. at 106 (Marshall, J., concurring). “Whether to call the prevalent, subconscious influence of race ‘unconscious racial bias,’ ‘unconscious racism,’ ‘biased cognition,’ ‘implicit bias,’ or ‘biased cognition’ varies by subfield as well as personal preference, but today the evidence from social, cognitive and neuropsychology, taken together, is overwhelming on two findings: 1) Racially influenced decision making is very common; and 2) Most decision makers who are influenced by race are unaware that their judgment has been skewed.” Johnson, *Explaining the Invidious*, *supra* note 45, at 1532.
- 118 *Id.*
- 119 See, e.g., SEMEL ET AL., *supra* note 1 at 82 n.2 (citing judicial opinions and scholarship); *id.* at 67–68, 143 n.837 (citing judicial opinions); *Batson Reform State by State*, *supra* note 28 (citing judicial opinions and reports).
- 120 PA. CRIM. PROC. RULES COMM., PA. SUP. CT., NOTICE OF PROPOSED RULEMAKING: PROPOSED AMENDMENT OF PA. R. CRIM. P. 632, <https://www.pacourts.us/Storage/media/pdfs/20230310/203826-publicationreportrejurorquestionnaire.pdf> [<https://perma.cc/FC2P-W4AQ>].

- 121 See COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at 4.
- 122 28 U.S.C. § 1869(h). See Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 782 (Oct. 30, 1997) (instructing all federal entities collecting “data on race and ethnicity” to do so “to the greatest extent possible” by “self-identification”).
- 123 See, e.g., Juror Qualification Form for the Southern District of Indiana, <https://www.insd.uscourts.gov/sites/insd/files/JQQ%20protected%20-%202up.jpg> [<https://perma.cc/4PLD-W8HZ>].
- 124 28 U.S.C. § 1863(a).
- 125 28 U.S.C. § 1867(f).
- 126 *Test v. United States*, 420 U.S. 28, 30 (1975) (quoting 28 U.S.C. § 1861).
- 127 A.B. 1981, 2021–2022 Leg., Reg. Sess. (Cal. 2022) (codified at Cal. Code Civ. Proc. §§ 215, 241); S.B. 5092, 2021–2022 Leg., Reg. Sess. (Wash. 2022), <https://app.leg.wa.gov/billsummary?BillNumber=5092&Initiative=false&Year=2021> [<https://perma.cc/R9Y9-LXDY>]; S.B. 5128, 2023–2024 Leg., Reg. Sess. (Wash. 2023), <https://app.leg.wa.gov/billsummary?BillNumber=5128&Year=2023&Initiative=false> [<https://perma.cc/438P-UHXE>].
- 128 (South Carolina) 1988 S.C. Acts 453; (West Virginia) 1988 W. Va. Acts c. 79; for Nebraska, see Section IV.B, *infra*.
- 129 The Alabama Administrative Office of the Courts (AOC) uses source lists to compile and maintain the master list for each judicial circuit. The two primary source lists are of registered voters (furnished by the Alabama Secretary of State) and holders of driver’s licenses and identification cards (furnished by the Alabama Department of Safety of the Alabama Law Enforcement Agency). Self-identified “race” and “gender,” along with other demographic information, are included in the source lists and the master lists. ALA. R. JUD. ADMIN. 40; ALA. R. CRIM. PROC., 12.2 (d); ALA. CODE §§ 12-16-57 (2023); e-mails and telephone conversation with Pub. Info. Officer, Ala. Admin. Off. of Cts. (Jan. 12 and 19, 2024) (on file with the Berkeley L. Death Penalty Clinic). The Georgia Department of Driver Services and the Georgia Secretary of State provide race and ethnicity data to the Council of Superior Court Clerks of Georgia, when the data is available. GA. CODE ANN. §§ 15-12-40.1, 15-12-43.1 (West 2023). The council then furnishes the data to county clerks who make it available to a party or their attorney upon request. GA. CODE ANN. §§ 15-12-40.1, 15-12-43.1 (West 2023). The South Carolina Department of Motor Vehicles sends race data to the State Election Commission, which then furnishes jury lists to county jury commissioners. S.C. CODE ANN. § 14-7-130 (2023).
- 130 The Wisconsin Department of Transportation provides the Office of the Director of State Courts with a list of licensed drivers, including their self-identified race, which the office uses to compile the master list of potential jurors. WIS. STAT. ANN. § 756.04(2)(b) (West 2023). The office then provides the master lists to the clerks of circuit courts. *Id.* Each circuit court is required to mail a juror qualification form to each summoned juror that

asks their “race.” WIS. STAT. ANN. § 756.04(6)(am) (West 2023). Although its use is not statutorily mandated, every county in Wisconsin has adopted the Juror Qualification Form (GF-132), which was developed by the Office of Court Operations Forms Committee. E-mail from Bus. Analyst, Wisc. Off. of Ct. Operations. (Sept. 20, 2023) (information on file with the Berkeley L. Death Penalty Clinic). Thus, Wisconsin is a de-facto statewide collection jurisdiction. *See* Appendix D.

- 131 *See* Appendix D; ALASKA STAT. ANN. § 09.20.050 (West 2023) (requiring that annually, the “administrative director of the Alaska Court System shall prepare for each judicial district a list of the names of the residents of the district who are qualified by law for jury service” and that the jury list, which does not include individuals’ race/ethnicity, is based upon a list “compiled by the Department of Revenue of all persons, having an Alaska address, who filed for a distribution of Alaska[’s statutory] permanent fund income” and a list compiled by the Department of Administration of all valid Alaska driver’s license holders).
- 132 *See* Appendix D; ARK. CODE ANN. § 16-31-103 (West 2023) (providing that annually, the judge of each circuit shall select at random 1–100 people whose names appear on current voter registration lists and shall continue the random selection until reaching the number provided by statute); *Sanders v. State*, 776 S.W.2d 334, 335–36 (Ark. 1989) (stating that voter registration lists do not show a voter’s race).
- 133 *See infra* this section and Appendix D.
- 134 *See* Appendix D; COLO. REV. STAT. ANN. §§ 13-71-107, 13-71-108 (West 2023) (providing that the State Court Administrator shall use state driver’s license and voter registration lists as “supplemented and modified by other lists” to create master lists (jury wheels) of prospective jurors for every county and that the information on the jury wheels includes names, addresses, dates of birth, identifying numbers, and jury histories).
- 135 *See* Appendix D; FLA. STAT. ANN. § 40.01 (West 2023) (providing that master lists are created from driver’s license and identification card lists issued by the Florida Department of Highway Safety and Motor Vehicles). Section 2.0 of the Florida Office of the State Courts Administrator Jury Managers’ Manual states that jury managers “should have an idea how representative the potential jury list is as compared to the actual demographics of the jurisdiction.” OFF. OF THE STATE CTS. ADM’R, THE JURY MANAGERS’ MANUAL 2 (1996), <https://www.flcourts.org/content/download/219266/file/manual.pdf> [<https://perma.cc/AX26-GMTL>]. It also provides: “The *Florida Statistical Abstract* can give the racial, gender, and age breakdown of the local population. Similar figures for registered voters may be obtained from the local supervisor of elections.” *Id.* Sample juror questionnaires collected from three Florida counties do not ask for race. *See* Appendix D.
- 136 *See* Appendix D; HAW. REV. STAT. ANN. § 612-11 (West 2023) (“Each year the clerk for each circuit shall compile a master list. The master list shall consist of all voter registration for the circuit, which shall be supplemented with other lists of persons residing in the circuit, such as lists of taxpayers and licensed drivers.”) (emphasis omitted); *id.* (specifying the identifying information of the persons on the lists).

- 137 See Appendix D; IDAHO ADMIN. CODE r. 61 (2023) (At a minimum, a master jury list shall consist of the combined de-duplicated names from the voter registration lists of the most recent general election, and lists of persons issued a state of Idaho driver’s license or identification card.”).
- 138 See Appendix D; 705 ILL. COMP. STAT. ANN. 310/2 (2023) (providing that every four years, the county jury administrator shall prepare a list of all registered voters, all holders of state driver’s licenses, identification and disability cards, and all unemployment insurance claimants and shall specify the identifying information to be included on the list).
- 139 See Appendix D; IND. CODE ANN. § 33-28-5-13 (West 2023) (“The jury administrator shall compile and maintain a master list consisting of lists approved by the supreme court that may be used to select prospective jurors.”) (emphasis omitted). See, e.g., Indiana Supreme Court Order Approving the 2023 Master List for Jury Pool Assembly (Oct. 14, 2022), <https://www.in.gov/courts/files/order-other-2022-22S-MS-341.pdf> [<https://perma.cc/F6CT-F8MP>] (stating that the master list was creating by merging “current customer files” provided by the Bureau of Motor Vehicles and “current taxpayer records” provided by the Department of Revenue). Although Indiana does not track jurors’ race or ethnicity, the state has created a jury list that captures more than 99% of eligible jurors (18-and-older population). *Statewide Jury Pool Project*, OFF. OF JUD. ADMIN., <https://www.in.gov/courts/admin/tech/jury-pool/> [<https://perma.cc/YR64-GY58>].
- 140 See Appendix D; KAN. STAT. ANN. § 43-162 (West 2023) (providing that county jury commissioners are responsible for preparing master lists from voter registration records, licensed drivers lists, county census records, and lists of state-issued identification cardholders who reside in the county).
- 141 See Appendix D; KY. REV. STAT. ANN. § 29A.040 (West 2023) (stating that a county’s master list consists of all persons over 18 who have statutorily approved personal identification cards or driver’s licenses issued by the county, who filed a state individual tax return, individual tax return with a county residence, or who are registered to vote in the county, and providing that the Administrative Office of the Kentucky Courts shall “at least annually” update the state-based source lists and merge various lists.).
- 142 See Appendix D; LA. CODE CRIM. PROC. ANN. art. 408.1 (2023) (providing that (1) each judicial district shall decide whether to draw jurors exclusively from the voter registration list or other lists; (2) if a district’s judges elect to use other sources, the jury commission may not limit prospective jurors to those who are registered to vote; and (3) if the district judges elect to use driver’s licenses the Department of Public Safety and Corrections must provide the clerk or jury commission with a list each year upon request).
- 143 See Appendix D; ME. REV. STAT. ANN. tit. 14, § 1252-A(1) (2023) (providing that the source lists for each county shall consist of “lists of licensed drivers, persons issued an identification card by the Secretary of State and any person who notifies the clerk of the court in the county of their residence and requests to be put on the source list of prospective jurors,” as well as names from other lists “specified by the Supreme Judicial



- Court,” and explaining that the master list for each county consists only of “names, and addresses, or identifying numbers”).
- 144 See Appendix D; MD. CODE ANN., CTS. & JUD. PROC. § 8-206 (West 2023) (providing that the source pool shall consist of the statewide voter registration list, the list of holders of driver’s licenses and identification cards issued by the Motor Vehicle Administration to county residents, and “any other lists of residents of the county” authorized by a county’s jury plan).
- 145 See *infra* this section and Appendix D.
- 146 See Appendix D; MISS. CODE ANN. § 13-5-8 (West 2023) (requiring that the jury commission for each county shall compile a master list “consisting of the voter registration list for the county”).
- 147 See Appendix D; MONT. CODE ANN. §§ 13-15-402; 61-5-127 (West 2023) (providing that annually, the office of the court administrator shall combine the list of “all registered active electors” who are “qualified to serve as trial jurors” furnished by the secretary of state with the list of all licensed drivers and identification card holders furnished by the motor vehicles department); MONT. UNIFORM DIST. CT. R. 9 (“All jurors are requested to complete a questionnaire in the form on file with the clerk . . . which contains basic vital statistical and other pertinent information”).
- 148 See *infra* this section and Appendix D.
- 149 See Appendix D; N.H. REV. STAT. ANN. § 500-A:1 (2023) (defining the “master jury list” as the list “blended and compiled from the voter lists provided by the secretary of state and the records of those 18 years or older who “hold a current New Hampshire driver’s license or a department of safety identification card, which shall be provided by the department”); *id.* § 500-A:2 (requiring the administrative office of the courts to provide the clerk of court with a master jury list for each county or judicial district and stating the type of identifying information on the lists, which does not include race/ethnicity).
- 150 See *infra* this section and Appendix D.
- 151 See Appendix D; OHIO JURY MGMT. ASS’N, 2021 JURY MANAGEMENT MANUAL *in* JURY SERV. COMM. OF THE OHIO JUD. CONF., JURY RESOURCE MANUAL § 2.2 at 9–10 (2021), <http://www.ohiojudges.org/Document.ashx?DocGuid=65b3d2c2-3615-4fb5-bfod-478b5d4c2d1e> [<https://perma.cc/8NQY-AG9S>] (explaining that the “annual juror source list” consists of “a list of registered voters in that county or . . . combined list of registered voters and the list provided by the Bureau of Motor Vehicles of licensed drivers and individuals issued a state identification card in that county”); *id.* § 2.8 at 11–12 (discussing different objectives and designs of juror questionnaires); *id.* § 2.10 at 14 (advising that “you will want to track the demographics of the jurors to determine if your jurors represent the cognizable groups in your jurisdiction”). *id.* Appendix D at 102–37, (providing sample juror questionnaires, some of which include questions about race/ethnicity).

- 152 See Appendix D; OKLA. STAT. ANN., tit. 38, § 18 (West 2023) (requiring that annually, the Commissioner of Public Safety shall furnish to the Administrative Director of the Courts a list by county of residence of all persons 18 years of age or older who are “holders of a current driver license or a current state identification license,” and requiring that “[t]he list shall contain the name, date of birth, and address of each person” and shall be used for the selection of jurors).
- 153 See Appendix D; OR. REV. STAT. ANN. § 10.215 (West 2023) (providing that the source lists consist of the most recent list of electors of the county, records furnished by the Department of Transportation, and other sources approved by the Chief Justice of the Oregon Supreme Court that “will furnish a fair cross section of the citizens or the county”; requiring that annually, the State Court Administrator shall prepare the master list from these source lists and provide them to the circuit courts; and stating that the master jury lists contain the names, residence, and jury identification number, if assigned).
- 154 See Appendix D; 9 R.I. GEN. LAWS ANN. § 9-9-1 (West 2023) (providing that the source lists for the juror commissioner shall consist of the names of persons who are registered to vote in the county, hold a state driver’s license or identification card, file a state income tax return, or receive state unemployment compensation and that such lists shall be compiled annually).
- 155 See Appendix D; S.D. CODIFIED LAWS § 16-13-1 (2023) (requiring that each county compile an annual master jury list); *id.* § 16-13-9.1 (defining the master list as “the list of names randomly selected by the state court administrators office from the jury selection list”); *id.* § 16-13-4.1 (providing that the “jury selection list” is compiled electronically “the current voter registration list obtained from the secretary of state, supplemented by the list of persons eighteen years of age and over holding a valid driver license or a state-issued nondriver identification card”).
- 156 See Appendix D; TENN. CODE ANN. § 22-2-301 (West 2023) (providing that the “jury list” is “compiled from licensed driver records or lists, tax records or other available and reliable sources that are so tabulated and arranged that names can be selected by automated means” and that “[t]he juror coordinator may utilize a single source or any combination of sources”). According to the National Center for State Courts, Tennessee’s master jury list consists of licensed drivers and state identification cardholders and includes prospective jurors’ self-reported race. PAULA HANNAFORD-AGOR, ET AL., *supra* note 9, at 7. Although self-identified race and ethnicity information is available from the source list materials, county jury coordinators do not include this information when compiling jury lists. Telephone Interviews with Clerk, Davidson Cnty.; Jury Coordinator, Knox Cnty.; and Jury Coordinator, Shelby Cnty. (Mar. 6, 2023) (information on file with the Berkeley L. Death Penalty Clinic).
- 157 See *infra* this section and Appendix D.
- 158 See Appendix D; VT. STAT. ANN. tit. 4, §§ 952, 953 (West 2023) (providing that the Court Administrator may obtain the names of prospective jurors from the records of the Departments of Motor Vehicles, Labor, Taxes, Health, Children and Families and from

the Secretary of State’s list of voters; the Court Administrator shall furnish the names of potential jurors to each superior court clerk; and each superior court clerk shall prepare a list of jurors, which “shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution”).

159 See Appendix D; VA. CODE ANN. § 8.01-345 (West 2023) (“The jury commissioners shall utilize random selection techniques, either manual, mechanical or electronic, using a current voter registration list and, where feasible, a list of persons issued a driver’s license . . . from the Department of Motor Vehicles, city or county directories, telephone books, personal property tax rolls, and other such lists as may be designated and approved by the chief judge of the circuit, to select the jurors representative of the broad community interests, to be placed on the master jury list.”)

160 See *infra*.

161 See Appendix D; WYO. STAT. ANN. § 1-11-129 (West 2023) (“The supreme court shall compile a base jury list for each county. . . . The base jury lists shall be compiled from voter lists and may also include names from Wyoming driver’s license or Wyoming department of transportation state identification lists.”)

162 See Appendix D; NEB. REV. STAT. ANN. § 25-1657(3) (West 2023).

163 NEB. SUP. CT. R. § 6-1002.

164 See Appendix D.

165 NEB. SUP. CT. R. § 6-1003.

166 *Id.*

167 *Committee on Equity and Fairness*, STATE OF NEB. JUD. BRANCH (June 2018), <https://supremecourt.nebraska.gov/programs-services/access-justice-commission/committee-equity-fairness> [<https://perma.cc/4YTR-Q9YV>].

168 See Appendix D.

169 E-mail from Deputy Adm’r for Ct. Servs., Neb. Admin. Off. of the Cts. & Prob. (Mar. 6, 2023) (on file with the Berkeley L. Death Penalty Clinic).

170 Paula Hannaford-Agur, director of the Center for Jury Studies, National Center for State Courts. Comments on file with the Berkeley L. Death Penalty Clinic. “Inclusiveness simply compares the number of records on the master jury list to the number of adult residents in each county. A list that is 100% inclusive — that is, it includes every jury-eligible person residing in the jurisdiction — will, by definition, be perfectly representative, but an underinclusive list can still be representative; over-inclusive lists can also be representative, although it is harder to assess without knowing which records are not valid (e.g., stale records or unrecognized duplicates). For a very long time, the absence of accepted methods for determining the demographic composition of the jury pool meant that court policymakers had to rely on alternative measures, especially inclusiveness and random selection procedures, to demonstrate good faith compliance with statutory mandates to guarantee that jurors be selected from a fair cross-section of the community.” *Id.*



- 171 E-mail from Assistant Dist. Ct. Adm’r, Utah Admin. Off. of the Cts. (Feb. 28, 2023) (on file with the Berkeley L. Death Penalty Clinic); questionnaires on file with the Berkeley L. Death Penalty Clinic.
- 172 See Appendix D.
- 173 See Appendix D. By contrast, Orleans Parish does not collect race/ethnicity information in its questionnaire. See *id.*
- 174 See Appendix D.
- 175 See Appendix D.
- 176 JURY SELECTION WORKGROUP: FINAL REPORT TO THE SUPREME COURT OF CALIFORNIA, *supra* note 7, at 4–5 (2022).
- 177 A.B. 1981, 2021–2022 LEG., Reg. Sess. (Cal. 2022) (codified at Cal. Code Civ. Proc. §§ 215, 241), <https://legiscan.com/CA/text/AB1981/id/2606854> [<https://perma.cc/B2QA-QC4D>].
- 178 *Id.*
- 179 There is “\$19 million [in the 2023–24] General Fund and \$17.5 million [in the 2024–25] General Fund to conduct a two-year pilot program in at least six courts to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation as required by AB 1981 (Ch. 326, Stats. of 2022). The budget also includes \$4.2 million ongoing General Fund for increases in juror mileage and public transit reimbursements as required by this legislation.” Cory Jasperson, director of government affairs, California Judicial Council. (July 7, 2023) (comments on file with the Berkeley L. Death Penalty Clinic).
- 180 Stephen Michael Tow, senior analyst, Jury Improvement Program Lead Staff, Office of Court Research, Operations and Programs Division. (Oct. 27, 2023 and Jan. 17, 2024) (comments on file with the Berkeley L. Death Penalty Clinic). The California Judicial Council selected the National Center for State Courts as its consultant on the pilot project. *Id.*
- 181 *Id.*
- 182 *Id.*
- 183 See, e.g., *State v. Saintcalle*, 178 Wash. 2d 34, 309 P.3d 326, 335, 338–39 (2013) (en banc), *abrogated by City of Seattle v. Erickson*, 188 Wash. 2d 721, 398 P.3d 1124 (2017) (en banc) (observing that “*Batson*, like *Swain* before it, appears to have created a ‘crippling burden,’ making it very difficult for defendants to prove discrimination even where it almost certainly exists” and proposing a “new, more robust framework” to “eliminate [unconscious] bias altogether or at least move us closer to that goal”) (quoting *Batson v. Kentucky*, 476 U.S. 79, 92 (1986)); PROPOSED NEW GR 37 — JURY SELECTION WORKGROUP FINAL REPORT 3 (2018), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/OrderNo25700-A-1221Workgroup.pdf> [<https://perma.cc/NA24-GC8J>] (identifying a consensus on the need to refer to the “history of the exclusion of potential jurors based on race and/or ethnicity” in a new rule and to “address implicit bias”).

- 184 WASH. R. GEN. APPLICATION 37.
- 185 See, e.g., *People v. Jefferson*, 192 Wash. 2d 225, 241–43, 429 P.3d 467, 476 (2018). *Id.* at 477, 479–80 (holding that although GR 37 is not retroactive to cases in which the jury was selected before the rule’s effective date, the court has the “authority” to “modify” the *Batson* test and apply GR 37); *Erickson*, 398 P.3d at 1131 (affirming the Washington Supreme Court’s “broad discretion to alter the *Batson* framework to more adequately recognize and defend the goals of equal protection” and adopting a “bright-line rule” that a party establishes a prima facie case of racial discrimination when “the sole member of a racially cognizable group has been struck from the jury”).
- 186 2021 Wash. Sess. Laws Ch. 334 § 115(3); COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at vi, xi.
- 187 COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at vi.
- 188 *Id.*
- 189 *Id.*
- 190 S.B. 5128, 2023–2024 Leg., Reg. Sess. (Wash. 2023) <https://app.leg.wa.gov/billsummary?BillNumber=5128&Year=2023&Initiative=false> [<https://perma.cc/438P-UHXE>]. The legislation does not specify the point in the selection process at which the data must be collected. *Id.* The 2023 FINAL REPORT recommends data collection “from summons to seating in multiple large jurisdictions” to “allow for more targeted analysis and the ability to see where, in the summons to service process, jurors are being retained or drop out.” COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at x.
- 191 S.B. 5128, 2023–2024 Leg., Reg. Sess. (Wash. 2023), <https://app.leg.wa.gov/billsummary?BillNumber=5128&Year23=2023&Initiative=false> [<https://perma.cc/438P-UHXE>].
- 192 *Id.*
- 193 *Id.*
- 194 E-mails from Assoc. Dir., Off. of Ct. Innovation, Wash. State Admin. Off. of the Cts. (Sept. 5–6, 2023) (on file with the Berkeley L. Death Penalty Clinic).
- 195 E-mail from Assoc. Dir., Off. of Ct. Innovation, Wash. State Admin. Off. of the Cts. (Jan. 6, 2024) (on file with the Berkeley L. Death Penalty Clinic). The online and paper surveys are identical to those found at Appendices B and C of the 2023 FINAL REPORT OF THE STATEWIDE JUROR SUMMONS DEMOGRAPHIC SURVEY PROJECT. E-mails from Assoc. Dir., Off. of Ct. Innovation, Wash. St. Admin. Off. of the Cts., (Sept. 5–6, 2023) (on file with the Berkeley L. Death Penalty Clinic). See COLLINS ET AL., 2023 FINAL REPORT, *supra* note 8, at 63–68.
- 196 E-mails from Assoc. Dir., Off. of Ct. Innovation, Wash. State Admin. Off. of the Cts. (Sept. 5–6, 2023) (on file with the Berkeley L. Death Penalty Clinic).
- 197 *Id.*

- 198 *Id.*
- 199 Section 600.1310 of the Michigan Compiled Laws directs the secretary of state to transmit a current list of all county driver’s license and identification card holders to the clerk of each county on an annual basis. MICH. COMP. LAWS ANN. § 600.1310 (West 2023). The source lists do not contain prospective jurors’ race. *Id.* Section 600.1304 requires the jury board to select the names of persons to serve as jurors from the list the secretary of state provides. *Id.* § 600.1304. Michigan’s statewide juror questionnaire does not ask for race or ethnicity. *See* Appendix D.
- 200 S.B. 1175, 2021–2022 Leg., Reg. Sess. (Mich. 2022), [https://www.legislature.mi.gov/\(S\(gpmimwq15wvjybowhxnduoss\)\)/mileg.aspx?page=getObject&objectName=2022-SB-1175](https://www.legislature.mi.gov/(S(gpmimwq15wvjybowhxnduoss))/mileg.aspx?page=getObject&objectName=2022-SB-1175) [<https://perma.cc/8E6B-J3DK>].
- 201 *Id.*
- 202 *Id.*
- 203 *See* S.B. 1175, 2021–2022 Leg., Reg. Sess. (Mich. 2022), [https://www.legislature.mi.gov/\(S\(gpmimwq15wvjybowhxnduoss\)\)/mileg.aspx?page=getObject&objectName=2022-SB-1175](https://www.legislature.mi.gov/(S(gpmimwq15wvjybowhxnduoss))/mileg.aspx?page=getObject&objectName=2022-SB-1175) [<https://perma.cc/8E6B-J3DK>].
- 204 Information on file with the Berkeley L. Death Penalty Clinic.
- 205 N.C. GEN. STAT. ANN. §§ 9-1, 9-2(b) (West 2023).
- 206 *Id.* § 9-2(e).
- 207 *Task Force for Racial Equity in Criminal Justice (TREC)*, N.C. DEP’T OF JUST., <https://ncdoj.gov/trec/> [<https://perma.cc/U3C4-8YTH>].
- 208 N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., 2020 REPORT: EXECUTIVE SUMMARY 11 (2020) <https://ncdoj.gov/wp-content/uploads/2020/12/TREC-exec-summary-12132020.pdf> [<https://perma.cc/TR2Y-GE57>]. *See also id.* at 19 (identifying this as “Solution # 91”).
- 209 N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., 2020 REPORT 101 (2021), [https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal\\_02262021.pdf](https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal_02262021.pdf) [<https://perma.cc/2SKN-T5MC>].
- 210 *Id.* at 102.
- 211 *Id.*
- 212 N.C. TASK FORCE FOR RACIAL EQUITY IN CRIM. JUST., END OF YEAR REPORT 2021 45 (2022), [https://ncdoj.gov/download/167/trec/343381/trec-interim-report\\_1-12-2022.pdf](https://ncdoj.gov/download/167/trec/343381/trec-interim-report_1-12-2022.pdf) [<https://perma.cc/7A6X-5C39>].
- 213 TREC, SUGGESTED JURY PRACTICES, *supra* note 40, at 2 (2022), <https://ncdoj.gov/wp-content/uploads/2022/08/Suggested-Jury-Practices.pdf> [<https://perma.cc/4PFH-DWHX>].

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