

Blackstrikes

**A Study of the Racially Disparate Use of
Peremptory Challenges by the Caddo Parish
District Attorney's office**

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Abstract

While selecting juries in criminal trials the prosecutor may use a limited number of discretionary “peremptory challenges” to strike prospective jurors from the panel. Data was collected from more than 300 felony jury trials prosecuted by the Caddo Parish District Attorney's office, Louisiana between 2003 and 2012. The rate at which prosecutors used their challenges to strike jurors was examined against the race of the jurors struck or accepted. Prosecutors chose to strike black prospective jurors at three times the rate of not blacks, a finding which is statistically significant.

Background

In 2007, in *State v. Coleman*², the Louisiana Supreme Court held that prosecutors from the Caddo Parish District Attorney's office had violated the Equal Protection Clause of the Constitution by striking a black prospective juror on account of his race:

“the prosecutor clearly and unmistakably indicated that the decision to strike Miller was motivated by this prospective juror's race”(Coleman at 516).

Caddo has a very racialized history. It is home to the last capital of the confederacy and was at one time home to the highest number of extra-judicial killings of black residents - lynchings - in the South. Until November 2011, the national confederate flag flew at the entrance to the Caddo District Courthouse.

Against this backdrop, this study was designed to identify and document the disproportionate rate at which prosecutors from the Caddo Parish District Attorney's office strike black prospective jurors and not black prospective jurors and the effect of this pattern on the makeup of juries in Caddo parish.³

Mechanics of jury selection

The mechanics of jury selection can be categorized into four stages - eligibility, summons, qualification and selection – which are summarized below.

¹ The term “Black Strikes” describes the use by prosecutors of peremptory challenges to strike black prospective jurors from service at a greater rate than they strike not blacks. It is a play on the phrase “back strikes”, a legitimate use of peremptory challenges during jury selection used to control the overall make up of the jury panel.

² 2006-0518 (La. 11/02/07); 970 So. 2d 511

³ The original Blackstrikes study was conducted in 2004 and documented the racially disproportionate use of peremptory challenges by prosecutors in Jefferson Parish, Louisiana. See the report at http://www.blackstrikes.com/resources/report/black_strikes_report_september_2003.pdf

1. Eligibility

Jury selection begins with the Parish Jury Commission's creation of a list of the parish who may be eligible for jury service. During the period of this study, the list was compiled using voter registration data supplied by the Secretary of State. This list forms the jury pool from which prospective jurors may be selected.

2. Summons

In anticipation of the need for jurors to serve on particular court dates, the Jury Commissioners select a list of names from the pool using a method intended to achieve a random selection. Those persons are then sent a summons to attend for jury service. The volume and frequency of issuing summonses depends on the number of jury trials – criminal and civil – that are listed before the court. Caddo Parish issues between 500 and 600 summonses for up to 6 trials scheduled for a two-week trial period.

A jury summons is accompanied by a short juror questionnaire that contains a section in which the recipient may request to be excused from service or answer questions that indicate that he or she is not qualified to serve.

Venirepersons, upon return of their questionnaire and assuming they are not disqualified from service, are assigned to a date upon which they are to attend court for jury service

3. Qualification

Once at court, groups of venirepersons will be sent to particular courtrooms to participate in jury selection for individual cases. The jury coordinator selects this smaller group from the available venirepersons using a method intended to achieve a random selection.

Once at court, jurors participate in voir dire, a process by which the judge, prosecutor and defense counsel each ask questions to determine: whether each venireperson is qualified to serve as juror under Louisiana law; whether there exists any legal reason why the venireperson should be excluded from service on that particular jury based upon a challenge for cause; and, whether either party might wish to exercise a peremptory challenge to exclude the venireperson from service on that particular jury.

During or at the completion of voir dire of a group of venirepersons the court on its own motion or at the urging of one of the parties may exclude a juror for good cause or as a result of the particular hardship that jury service at that time may cause the venireperson. The most common reasons to challenge for cause are because the prospective juror could not be impartial or would not be willing to consider the evidence or render a verdict in the manner the law prescribes.⁴

Jurors who are not excluded by the court for hardship or good cause form the qualified venire from which the final jury is selected.

⁴ La. C. Crim. P. Art. 797, 798

In Louisiana juries are be made up of twelve persons in capital cases and in cases in which the penalty is necessarily hard labor and six persons in cases in which the punishment may be hard labor or confinement without hard labor for more than six months.

4. Selection

The names of the venirepersons who form the qualified petit jury venire are then tendered to the defense and prosecution for selection of the jury that will serve in the case.

Each party has the right to exercise a limited number of peremptory challenges to exclude otherwise qualified jurors from service in that trial without the need to show a legal cause for the exclusion. Each side has twelve peremptory challenges in a case with a twelve person jury or six peremptory challenges in a case with a six person jury.⁵

In Caddo Parish, the prosecution and defense attorneys simultaneously submit “strike sheets” to the judge listing the jurors against whom they exercise their peremptory challenges.

No reason is given for the exercise of the challenge; the juror is simply dismissed from the panel. This process occurs without the participation of the prospective jurors and they are not advised of whose decision it was to remove them from the panel.

The process continues until both the State and the Defense have accepted a complete jury or run out of peremptory challenges and frequently requires several rounds of peremptory challenges. Even where both parties initially accepted a venire person, at any time before the full jury is assembled and sworn, a party may still exercise a peremptory challenge against that venire person. This process is known as “back striking” and is intended to allow attorneys to make the decision to peremptorily challenge an individual juror in the light of the balance of the whole jury.

The court will then usually undertake a similar process to select alternate jurors, who will sit through the trial and take part in the verdict in the event that a juror becomes unavailable during the trial. The court will often grant the State and the Defense a single peremptory challenge per alternate juror to assist in the selection process.

While ordinarily no reason need be given for the exercise of a peremptory challenge, a peremptory challenge cannot be motivated by the race or gender of the venireperson. As no reason is given for the peremptory challenge this prohibition is particularly difficult to enforce. However, where a pattern of racially (or gender) disproportionate challenges or some other evidence is offered to make out a *prima facie* case that challenges are being made based on race (or gender) then reasons must be offered. The reasons offered must be race neutral but need not be persuasive or show good cause for having exercised the challenge. The judge must then decide whether it has been proven by a preponderance of the evidence that the peremptory challenge was motivated by the race (or gender) of the venireperson.

⁵ La. C. Crim. P. Art. 799

The process of attacking a peremptory challenge on the basis of race is known as a *Batson* challenge, referring to the United States Supreme Court case of *Batson v. Kentucky*, 476 U.S. 79 (1986).

Gathering the data

To commence the study, the criminal Clerk's Office was approached to provide a list of all criminal jury trials held between January 2003 and December 2012. The Office provided a list of 476 trials identified by case number and sometimes also by the defendant's last name.

The record for all trials were not able to be examined as the files were either sealed⁶ or unable to be located and/or accessed by the Clerk's Office. Some additional trial records did not provide sufficient data for analysis as jury selection was not complete due to the defendant pleading guilty or the court declaring a mistrial during jury selection. A further group of trial records could not be used in the study because the information identifying either the prospective juror or selection outcome was unclear or incomplete.

Ultimately, data from 332 trials and the selection outcomes for over 8,000 otherwise qualified prospective jurors were included in this study.

The court records for the cases, along with the voter registration roll, were examined to extract relevant data including: the name, race, gender and selection outcome⁷ for each prospective juror; the name, race and gender of the defendant; jury pool date, trial date and trial outcome; and the names of the judge, prosecutors(s) and defense attorney(s). Specifically, prospective juror information was gathered as follows:

- the name of each prospective juror using official minute entries from jury selection, voir dire transcripts, official jury selection charts prepared by minute clerks, other juror lists included in the trial record;
- the race and gender of each prospective juror using sources in the trial record including minute entries, voir dire transcripts and jury selection charts, compared with publicly available data in the Secretary of State's voter registration list; and
- the selection outcome using the minute entries from jury selection, voir dire transcripts, the trial court's official jury charts, and peremptory challenge forms submitted by each attorney.

Defendant information was gathered as follows:

- the name of the defendant(s) using official minute entries, bill of information/indictment and voir dire transcript; and

⁶The clerk's office advised that 65 records were sealed as they concerned sex offenses and contained victim information.

⁷The jury selection outcome describes whether a qualified prospective juror was accepted to serve or struck peremptorily by either side and if struck, which party exercised the peremptory strike.

- the race and gender of the defendant(s) using official minute entries.

Trial information was gathered as follows:

- the names of the judge and State and Defense attorneys using the official minute entries from the jury pool date and jury selection charts;
- the jury pool date from the official minute entries, voir dire transcript and jury selection charts;
- the trial date from the official minute entries and voir dire transcript; and
- the trial outcome from the official minute entries, verdict sheet and voir dire transcript.

The raw data was almost exclusively accessed on location in the parish courthouse. Caddo Parish court records were largely available and complete and the record of jury selection consistently entered. Official minute entries in some cases were accessed from the Clerk of Court's online portal but most were obtained by reviewing the files and requesting hard copies of relevant court documents selected from the file.

Coding the data

Race categories

Race categories for prospective jurors and defendants that were used by the Clerk's Office and the Secretary of State have been adopted by this study. They include:

- Black (B),
- White (W),
- Hispanic (H),
- American Indian (AI),
- Indian (I), and
- Other (O).

For the purposes of analysis, race categories have been aggregated into two groups: Black (B) and Not Black (W, H, AI, I and O), as this study inquires only into whether District Attorneys are more likely to strike Black prospective jurors than Not Black prospective jurors.

Jury selection categories

Selection outcomes of qualified jurors were coded as follows:⁸

- those peremptorily struck by the State (SP),
- those peremptorily struck by both the State and the Defense (PJ)
- those peremptorily struck by the Defense (DP)
- those accepted by both parties for jury service (J)
- those accepted by both parties for service as alternate jurors (A),

These outcomes were grouped into one of two categories: those accepted by the State for service (J, A and DP); and those struck by the State from service (SP and PJ).

This coding reflects the decision making stage for the State’s attorneys: when faced with the possibility of having a particular qualified juror on the jury did they accept that juror or use a peremptory challenge to exclude them?

Results of the Study

The dataset

The 2010 census recorded the population of Caddo Parish as 47.2% black and an adult black population of 44.2%.

The dataset consists of 332 criminal jury trials held between January 2003 and December 2012.

Of the 332 trials, 277 (83%) involved a black defendant.

Of the juries, 224 were 12 person juries and 108 were 6 person juries.

The juries were distributed across the time period as follows:

Year of trial	Number of trials
2003	25
2004	27
2005	35
2006	43
2007	41
2008	25
2009	38

⁸ Selection outcomes for those challenged for cause or unused in selecting the ultimate jury were also recorded.

Year of trial	Number of trials
2010	30
2011	40
2012	28

There were 8,318 qualified jurors tendered to the State for peremptory challenge or acceptance. Of the 8,318 tendered jurors, 35% were black and 65% were not black.

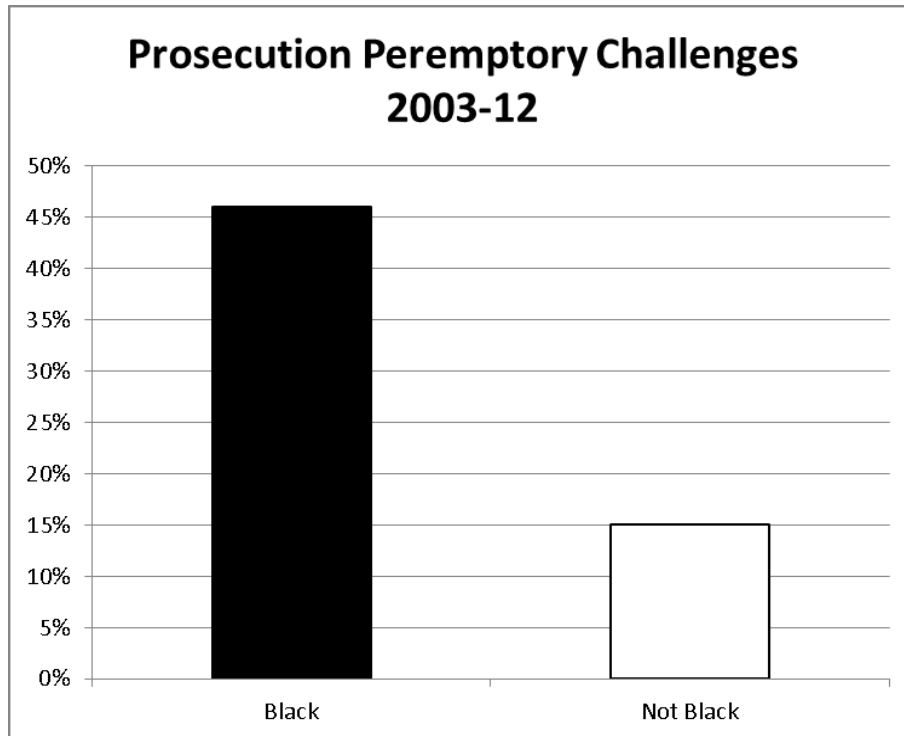
Overall pattern of prosecution peremptory challenges

The number of jurors accepted or struck by the state is as follows:

Race	Accepted	Struck	TOTAL
Black	1570 (54%)	1338 (46%)	2908
Not Black	4580 (85%)	830 (15%)	5410
TOTAL	6150	2168	8318

What this table shows is that when presented with an otherwise qualified black juror, the State exercised its discretion to peremptorily strike that juror 46% of the time. By comparison, when presented with an otherwise qualified juror who was not black, the state exercised its discretion to peremptorily strike the juror 15% of the time.

This disparity is shown in the following chart:



In short, over the course of a ten year period, Caddo parish prosecutors exercised peremptory challenges against black prospective jurors at more than three times the rate at which they exercised peremptory challenges against white prospective jurors.

A statistical analysis of this disparity in strikes rates shows that the difference is extremely statistically significant ($p < .0001$).⁹ That is, the chance that the disparity is unrelated to the race of prospective jurors is less than one-in-ten thousand.

In 93% of trials, prosecutors struck black prospective jurors at a higher rate than not black jurors. By comparison, prosecutors struck not black prospective jurors at a higher rate than black jurors in 6% of trials. And in 1% of trials, there was no difference in the rate prosecutors struck black and not black prospective jurors.

Individual patterns of prosecution peremptory challenges

The size of the data set allowed the identification of strike rates for individual prosecutors. In some cases, more than one prosecutor participated in jury selection and for the purposes of this analysis, jury selection outcomes were attributed to each prosecutor. Data is only reported for those prosecutors who were found to have prosecuted more than 20 trials in the data available for this study.

The results for the individual prosecutors are listed in the table below, in descending order based upon the rate at which they challenged black more than not black prospective jurors:

⁹ Chi-Square or Fisher's Exact Test

Prosecutor	Percentage of Black jurors challenged	Percentage of Not Black jurors challenged	Blackstrike Rate	Trials Studied
Barber, Brian H	41%	8%	5.0	22
Brown, Jason	51%	11%	4.5	53
Kervin, Damon	53%	12%	4.4	31
Thompson, Dhu	51%	16%	3.2	49
Hall, Lea	47%	15%	3.2	48
Cox, Dale	38%	14%	2.7	22
Prudhomme, Geya	48%	18%	2.7	30
O'Callaghan, Brady	47%	19%	2.5	47
Langford, Ben	40%	17%	2.4	26
Edwards, William J	43%	21%	2.1	25
Smith, Kodie	37%	19%	2.0	24
Midboe, Sarah	37%	20%	1.8	24

Racial makeup of juries

The study of 332 trials also allowed observations to be made of the racial makeup of criminal juries sitting in Caddo Parish over a ten year period.

Assuming that the race of a prospective juror does not influence jury selection, in Caddo Parish that has a 44.2% black adult population one would expect an average of 5.3 black jurors per twelve person jury. In the 224 such juries included in the study, an average of 3.86 jurors per jury were black.

Again assuming no racial effect in jury selection, one would expect juries with 2 or fewer black members to occur in only 10.1% of trials.¹⁰ In Caddo, 22% of trials have 2 or fewer black jurors.

The presence of two or fewer black members of the jury is particularly important in Louisiana which allows majority verdicts upon the vote of ten out of twelve jurors. In theory, a jury with two or fewer black jurors could return a verdict without regard to the votes of the black jurors. Indeed, an historical

¹⁰This estimate was generated by using a Poisson distribution to model expected jury racial makeup given the parishes overall demographic.

case has been made that majority verdicts were introduced in Louisiana in 1898 with the intent of undermining the value of black votes on juries.

Racial makeup of juries and trial outcomes

Of the 224 twelve person juries studied, 200 returned a verdict (guilty as charged, guilty of a lesser offense or acquittal). The remaining juries did not return a verdict due to mistrial or a change of plea during the course of the trial.

In this study, the rate of acquittal appears to increase with the number of black jurors. Not one defendant was acquitted in a trial where there were two or fewer black jurors. The acquittal rate in the 49 trials where the number of black jurors was three or more, was 12 %.

In trials with five or more black jurors, defendants are acquitted 19% of the time. This is the average acquittal rate in jury trials in the State of Texas over the last four years. This is also the average number of black jurors (five) that, given Caddo's adult black population, to be expected in each trial.

Conclusions

This data reveals that in 332 trials over a ten year period, when presented with a prospective black juror, prosecutors from the Caddo Parish District Attorney's Office exercised their discretion to peremptorily strike that black juror 46% of the time. By comparison, when presented with a prospective juror who is not black, prosecutors exercised their discretion 15% of the time.

That is, prosecutors are more than three times as likely to strike black than not black prospective jurors.

A statistical analysis of this disparity shows that the difference is significant. Some individual prosecutors struck black prospective jurors at rates of 4.5 and 5 times the rate they struck those who are not black.

While a disparity in the rate of strikes between prospective jurors who are black and not black may be subject to innocent explanation, the consistently high blackstrikes rate across 332 trials over ten years indicates otherwise. In the absence of evidence to the contrary, the pattern disclosed in this study strongly suggests that race has played a role in the exercise of peremptory challenges by the Caddo Parish District Attorney's office.