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Report on Wake County Jury Selection Study

Catherine M. Grosso & Barbara O'Brien

Professors of Law

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I. Introduction

This report documents the study design, methodology, analysis, and results for a study on the jury selection in trials of ten capital defendants in Wake County, North Carolina. The study examined how the jury selection process in ten capital proceedings impacted venire members of different races differently. The primary investigators for the study are Catherine Grosso and Barbara O'Brien. Both are professors of law at Michigan State University College of Law.

II. Study Design and Population

This study examined jury selection in ten capital proceedings in Wake County from 2008-2019. For each proceeding we sought to include every venire member who faced excusal for cause (including hardship) or a peremptory challenge as part of jury selection. For the purposes of this report a "venire member" includes anyone who was subjected to voir dire questioning, including alternates. It does not include potential jurors who were summoned and appeared at court, but who did not participate in voir dire.

As reported in Table 1, Columns C and D, among these 10 cases, there was variation in the number of venire members involved, ranging from 81 (Donavan Richardson) to 201 (Jason Williford), producing a database of 1,281 potential jurors. Of these, 628 (49%) were women and 653 (51%) were men.[1]

As reported in Table 2, Columns C and D, the venire members' racial composition was as follows: white (979, 76%); Black (211, 16%); Asian (49, 4%); Latine/Hispanic (16, 1%); mixed race

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[1] Percentages in this report may not add up to 100 due to rounding.

(4, 0.3%); other (4, 0.3%); Native American (2, 0.2%); and unknown (16, 1%). Note that according to the U.S. Census Quick Facts the Wake County, NC, population is approximately 67% white, 21% Black, 8% Asian, 10% Latine/Hispanic, 3% mixed race, and 0.8% Native American.[2] The white population in the coded venire members is 9 points larger (76% vs. 67%) than would be expected in the population.

Table 1. List of Cases in Study with Number of Venire Members per Case and Percent of Venire Members Provided by Each Case

	A	B	C	D	E	F
	StudyID	Defendant Last Name	Number of Venire Members	Percent of Venire Members	Number of Black & White Venire Members Only	Percent of Black & White Venire Members Only
1.	1013	Cooper	106	8%	105	9%
2.	1014	Devega	188	15%	169	14%
3.	1015	Dickerson	85	7%	79	7%
4.	1011	Gillard	120	9%	109	9%
5.	1021	Holden	108	8%	99	8%
6.	1025	D. Richardson	81	6%	71	6%
7.	1020	Smith	115	9%	107	9%
8.	1019	Stepp	178	14%	167	14%
9.	1018	Williford	201	16%	187	16%
10.	1016	Wilson	99	8%	97	8%
		Total	1,281		1,190	

The findings presented in this report limit the database to Black and white venire members for simplicity of presentation. We ran parallel analyses for every finding using the full dataset. Limiting the data to Black and white venire members did not change magnitude, direction, or significance of findings in any instance.

As reported in Table 1, Columns E and F, when the database is limited to Black and white venire members, the number of venire members involved varied with the same low and high numbers as in the full dataset: 71 (Donavan Richardson) and 187 (Jason Williford). This produces a database of 1,190 potential jurors. Of these, 578 (49%) were women and 613 (51%) were men. As reported in Table 2, Columns D and E, the venire members' racial composition was as follows: white (979, 83%); Black (211, 18%).

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[2] U.S. Census, QuickFacts, Wake County, North Carolina (https://www.census.gov/quickfacts/wakecountynorthcarolina).

Table 2. Venire Members in the Study by Race or Ethnicity

	A	B	C	D	E
	VM Race/Ethnicity	Number Venire Members	Percent of Venire Members	Number of Black & White Venire Members Only	Percent of Black & White Venire Members Only
1.	White	979	76%	979	82%
2.	Black	211	16%	211	18%
3.	Asian	49	4%	---	---
4.	Latine/Hispanic	16	1%	---	---
5.	Native American	2	0.2%	---	---
6.	Other	4	0.3%	---	---
7.	Mixed (Self-Reported)	4	0.3%	---	---
8.	Unknown	16	1%	---	---
	Total	1,281	100.00	1,190	100.00

A. Data Collection

We created an electronic case file for each proceeding in the study. The case file contains the primary data for every coding decision. The materials in the case file typically include some combination of juror seating charts, individual juror questionnaires, and attorneys' or clerks' notes. Each case file also includes an electronic copy of the jury selection transcript and documentation supporting each race coding decision.[3]

B. Overview of Database Development

Staff attorneys completed all coding and data entry under the direct supervision of the primary investigators. As set forth more fully below, staff attorneys received detailed training on each step of the coding and data entry process. A total of five staff attorneys and two students worked on this project.

i. Development of Data Collection Instruments

Data collection instruments (DCIs) are forms that staff attorneys completed based on the primary documents and transcripts. We used two data collection instruments for coding data in this study: (1) the Venire Member Level Data Collection Instrument (VM-Level DCI) [4] and (2) the Missing Venire Member Race Data Collection Instrument (VM-Level Race Coding DCI).[5]

Questions 1-15 of the VM-Level DCI documented basic identification and procedural information specific to each venire member, including whether they were struck or excused for cause.

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[3] We are missing the transcript for one day of jury selection in Wilson's case. This limits detailed jury selection information for four venire members.
[4] See Appendix A.
[5] See Appendix B.

Questions 4-7 and 13 capture the process of challenges and excusals of venire members for cause, including who initiated a motion for cause and whether either party objected.

Questions 8-9 document details as to which party, if either, exercised a peremptory strike. Question 10 of the VM-Level DCI required the staff attorney to determine strike eligibility for each potential juror. This variable is necessary to analyze the exercise of discretion in the use of peremptory strikes. "Strike eligibility" refers to which party or parties had the chance to exercise a peremptory strike against a particular venire member. For instance, if the prosecution struck someone before the defense had a chance to question that person, that juror would be strike eligible to the prosecution only. Likewise, if the court excused a venire member for cause, then neither party had the chance to exercise a peremptory strike. This determination refines the analysis of strike decisions to examine only those instances in which that party actually had a choice to pass or strike a juror, and it excludes those when the decision was out of the party's hands.

Questions 15-24 document more detailed information about the venire members' personal characteristics, such as race, gender, and religious affiliation.

Question 18 documents the race and ethnicity of the venire member. Staff attorneys completed this question from information venire members provided on their juror questionnaires or from public records. We were unable to code race for 1.2% (16/1,281) of the venire members. Details on race coding are provided below.

Questions 25-29 capture information about the bases for cause excusals, relying primarily on N.C. Gen. Stat. § 15A-1212. In addition to the factors specified in section 15A-1212, two additional bases were specified: 1) the venire member expressed disqualifying death penalty views, and 2) the venire member would face "compelling personal hardship" under N.C. Gen. Stat. § 9-6.

Question 30 records whether the juror was seated on the jury or selected as an alternate.

ii. Race Coding

We obtained information about potential jurors' race from two sources. First, we collected juror questionnaires for many of the venire members in our study. These questionnaires asked the venire member's race, and the vast majority of respondents provided that information. We considered potential venire members' self-reports of race to be highly reliable and were able to get this information from juror questionnaires for 82.3% (1,054/1,281) of the venire members.

For 17.7% (227/1,281) of venire members, we used electronic databases to research race information and record the race in the VM-Level Race Coding DCI. The VM-Level Race Coding

DCI also records the quality of the match for race coding from public records and the source of the race information. The primary investigators prepared a strict protocol for use of these websites for race coding and trained coders on that protocol.[6]

Many of the case files included juror summons lists with addresses and dates of birth. This information allowed coders to match online records to each juror with a high level of certainty. Coders and the primary investigators entered this information in the North Carolina Board of Elections Voter Search website (https://vt.ncsbe.gov/reglkup/) and the Lexis-Nexis Public Records Locate a Person (Nationwide) database according to the protocol described below to identify juror race.

Throughout this process, coders were required to code a venire member's race as "unknown" unless they were able to meet strict criteria ensuring that the person identified in the public record was in fact the venire member and not just someone with the same name.[7] Coders were not to rely on a record containing information that was not wholly consistent with whatever information we had about a particular venire member. For instance, they would not rely on a public record in which the person's middle initial was inconsistent with that of the venire member, unless they were able to document a name change to account for the discrepancy (such as when a record indicated that a venire member started using her maiden name as a middle name). If coders found someone with the same name as the venire member but with a different address, they were to use that record only if they could trace the person's address back to that of the venire member. Coders saved an electronic copy of all documents used to make race determinations.[8] The files are organized by proceeding and are available for review.

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[6] See Appendix C for the protocol used in this process. The primary investigators developed this protocol for use in a statewide jury selection study. See Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2011).

[7] For instance, coders were instructed to use information such as the venire member's middle name or year of birth to link the venire member to records of someone with the same name. When at all in doubt, coders were instructed to code the venire member's race as unknown.

[8] For instance, if a coder identified the race of a venire member through the North Carolina Board of Elections website, she would save the record with the venire member's race designation (usually as a screen shot). If the coder relied upon an address provided in the jury summons list to identify a venire member had moved since the time of the trial, she would also save records of the venire member's change of addresses over the years. This information was often available on Lexis-Nexis Locate a Person (Nationwide) Database, which allowed the coder to trace the venire member's address from the jury summons list to the current address reflected in the North Carolina Board of Elections website. Coders saved a copy of the electronic record for each step in the process linking current information about each venire member to information recorded at the time of the trial.

The methods described in this section allowed us to document the race of all but 16 of the 1,281 venire members in our study.[9] In other words, our database includes race information for 98.75% of the venire members.

iii. Coding Procedures

Staff attorneys coded the venire members in the study using the complete case file, including juror questionnaires (when available) and the transcripts of voir dire proceedings. Staff attorneys used the search function in Adobe Acrobat to search for venire members by name. This allowed them to reliably and efficiently find each instance when a particular venire member answered questions during the jury selection process. Every question in the DCI provided a code for the staff attorney to indicate that the case file did not contain sufficient information for a particular characteristic.

We also instituted standard double coding procedures. Under these procedures, two staff attorneys separately coded information for each venire member to ensure accuracy and intercoder reliability. A senior staff attorney with extensive experience working on the study compared and reviewed their codes for consistency and suggested corrections, subject to approval of the primary investigators.

After a primary investigator resolved the issue, the senior staff attorney documented the proper coding for the issue in the coding log ("Cause DCI Questions and Answers").[10] All staff attorneys had access to the coding log and were responsible for reviewing this document regularly to inform themselves about ongoing coding decisions. The coding team met weekly with the primary investigators to review discrepancies and discuss questions. This system allowed the study team to develop a shared expertise and enhanced intercoder reliability. The number of differences in judgment diminished over time due to staff attorney experience with the data collection instruments, the data themselves, and the coding log.

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[9] We were unable to determine the race of the following sixteen venire members: 1019.0.597 Carol Adams, 1014.0.626 Matthew Alpal, 1014.0.619 Leeann Bove, 1025.0.010 Andrew Bratt, 1014.0.629 Josie Dorches, 1014.0.647 Richard Hepperg, 1019.0.586 Heather Hood, 1014.0.543 Sam Lingrim, 1018.0.590 Ricky Oliver, 1018.0.599 Michael O'Sary, 1018.0.588 Katen Patel, 1018.0.598 Sashlie Psioda, 1014.0.621 Michael Spierer, 1018.0.571 Gain Sidney, and 1018.0.587 Amanda Ward.
[10] See Appendix D.

C. Steps for Ensuring Accuracy of Data

The full database includes information about 10 proceedings and 1,281 venire members. As noted above, we took several steps to minimize coding errors. We also developed systematic procedures to catch and correct errors in data entry.

Once the coding was reviewed and discrepancies reconciled, staff attorneys entered data into an Excel spreadsheet. The data entry fields accepted only valid responses in order to minimize errors. For instance, if an item on the DCI allowed for only three possible responses (0 = No, 1 = Yes, and 9 = Unknown), then entering anything other than 0, 1, or 9 would be rejected and the person entering the data would be prompted to re-enter an acceptable value for that question. Although this mechanism could not prevent all data entry errors (e.g., it could not catch a misspelling of a venire member's name), it provided one line of defense against human error.

We used several other methods to catch and correct other errors in coding or data entry. Using the Stata statistical program, we identified instances where inconsistencies in data indicated possible errors and established a process for review and, where appropriate, correction.

III.   Analysis and Results

As noted above, we limited the database to Black and white venire members. This section includes three parts. Section A reports race and gender disparities in the impact of death qualification, including the combined effect of race and gender. Section B reports the race and gender disparities in state's exercise of peremptory strikes. Finally, Section C reports the combined impact of death qualification and state peremptory strikes on the population of Black and white venire members.

Throughout this section, we report the disparities observed as well as a measure of the likelihood that the finding would occur as a result of chance. This measure, called a *p*-value, reflects the probability of observing a disparity of a given magnitude simply by luck of the draw. The lower the *p*-value, the lower the chance that an observed disparity was due merely to chance. The *p*-values for the racial disparities observed in this study are consistently well below the standard scientific benchmarks for reliability.[11]

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[11] Federal Judicial Center & National Research Council, *REFERENCE MANUAL ON SCIENTIFIC EVIDENCE* 249-52 (National Academies Press 2011).

A. Racial and Gender Disparities in the Impact of Death Qualification

Section A reports the race and gender disparities in the impact of death qualification. Table 3 presents the rate at which jurors are removed from the venire because of their opposition to the death penalty under *Witherspoon v. Illinois*, 391 U.S. 510 (1968) and related cases. Fourteen percent of the venire members were excluded because of their opposition to the death penalty. This decision impacted 176 venire members who were ready to serve. Only hardship excusals, granted at the request of the venire member and primarily allowing a venire member to fulfil obligations to work or family, impacted a larger segment of the venire members in the study (485, 38%). Venire members excluded because they would automatically impose the death penalty constitute only 4% (56 venire members). This is the least common basis for excusal. Over 20% of venire members were removed by peremptory strikes. The state struck 128 venire members (10%), and the defense struck 137 venire members (11%).

Black venire members were excluded in this way at a significantly higher rate than white venire members. As reported in Column C, 25% of Black venire members were removed for death qualification (52/211) compared to 11% of white venire members (111/979). This is a relative ratio of 2.27 (25%/11%). The disparity is statistically significant ($p < .0001$).

Table 3. Death Qualification of Venire Members by Race *(Death qualification of venire members aggregated across cases.)*[12]

	A		B	C	D
	Venire Member Race		Death Qualified	Removed as Not Death Qualified	Totals
1.	White	*number*	868	111	979
		percent	89%	11%	100%
2.	Black	*number*	159	52	211
		percent	75%	25%	100%
	Total		1,027	163	1,190
			86%	14%	

This disparity persists if we focus on venire members for whom the transcript presents no basis for cause removal other than failure to be death qualified. This reduces the number of death-disqualified jurors from 163 to 154, and from 14% of venire members to 13%. Black venire members

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[12] We replicated this analysis by calculating the rate of removal by death qualification in each of the ten cases and averaging these rates across the ten cases. In this analysis, Black venire members faced an average death qualification removal rate of 24% (SD = 2.49) compared to white venire members' average death qualification removal rate of 12.0% (SD = 1.97). A paired t-test indicates that this difference in strike rates is significant at $p < .001$.

were death disqualified with no other basis for cause removal 23% of the time (48/211), whereas white venire members were death disqualified with no other basis for cause removal 11% of the time (106/979). The relative rate of dismissal remains over two, at 2.09 (23%/11%). The disparity remains statistically significant ($p < .001$).

Table 4.   Death Qualification of Venire Members by Race where No Other Cause Basis for Dismissal Was Presented *(Death qualification of venire members aggregated across cases.)*[13]

	A		B	C	D
	Venire Member Race		Death Qualified	Removed as Not Death Qualified	Totals
1.	White	number	873	106	979
		percent	89%	11%	100%
2.	Black	number	163	48	211
		percent	77%	23%	100%
	Total		1,036	154	1,190
			87%	13%	

Table 5. Death Qualification of Venire Members by Gender *(Death qualification of venire members aggregated across cases.)*[14]

	A		B	C	D
	Venire Member Gender		Death Qualified	Removed as Not Death Qualified	Totals
1.	Female	number	482	96	578
		percent	83%	17%	100%
2.	Male	number	545	67	612
		percent	89%	11%	100%
	Total		1,027	163	1,190
			86%	14%	

We also calculated the rate at which men and women were excluded by the death qualification requirements. Table 5, Column C, reports that women were excluded at a higher rate than men. In particular, 17% of women (96/578) compared to 11% of men (67/612) were death disqualified. This

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[13] We replicated this analysis by calculating the rate of removal by death qualification alone in each of the ten cases and averaging these rates across the ten cases. In this analysis, Black venire members faced an average death qualification removal rate of 23.0% (SD = 2.46) compared to white venire members' average death qualification removal rate of 11.0% (SD = 1.87). A paired t-test indicates that this difference in strike rates is significant at $p < .001$.

[14] We replicated this analysis by calculating the rate of removal by death qualification in each of the ten cases and averaging these rates across the ten cases. In this analysis, female venire members faced an average death qualification removal rate of 17.7% (SD = 3.21) compared to male venire members' average death qualification removal rate of 11.1% (SD = 1.49). A paired t-test indicates that this difference in strike rates is significant at $p < .03$.

is a smaller relative disparity than observed for race: 1.54 (17%/11%). It is statistically significant (*p* < .01).

The disparity presented in Tables 3 and 5 is concentrated in the experiences of the Black women who appeared for jury duty in these cases. Table 6, Column C, reports that 31% of Black women are excluded under death qualification (35/112). This rate is 2.2 times the 14% overall rate of removal under death qualification in this study (31%/14%) and 2.6 times the 12% rate of all other venire members (128/1,078). The disparity is statistically significant (*p* < .001). It is higher than we identified for any other race-gender combination in separate analysis.

Table 6. Death Qualification of Black Female Venire Members *(Death qualification of venire members aggregated across cases.)*[15]

	A Venire Member Race-Gender		B Death Qualified	C Removed as Not Death Qualified	D Totals
1.	Black Female	*number*	77	35	112
		percent	69%	31%	100%
2.	All Other Venire	*number*	950	128	1,078
	Members	*percent*	88%	12%	100%
	Total		1,027	163	1,190
			86%	14%	

As noted in the section on study design, we also collected information where available on religion. In particular, we looked for evidence to answer two questions: (1) Is the venire member religious? and (2) With what religious organization does the venire member identify? This information was not always available in the materials we collected. As a result, we are missing this information for 30% of the venire members for the first question and 36% of the venire members for second question.

For the remaining venire members, we found that death qualification excluded 20% of jurors identified as religious (113/577) compared to 12% of those identified as not religious (21/178).

Venire members identified as religious make up 69% of the venire members excluded for death qualification (113/163). Venire members identified as not religious make up 13% (21/163),

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[15] We replicated this analysis by calculating the rate of removal by death qualification in each of the ten cases and averaging these rates across the ten cases. In this analysis, Black female venire members faced an average death qualification removal rate of 34.3% (SD = 5.20) compared to all other venire members' average death qualification removal rate of 12.0% (SD = 1.95). A paired t-test indicates that this difference in strike rates is significant at *p* < .001.

and venire members for whom we did not identify information on religious beliefs make up 18% (29/163).

These exclusions included 25% of Catholic venire members (20/80), and 33% of Quakers (1/3), two religious organizations that have expressed formal opposition to the death penalty. These rates exceed the overall rate of exclusion for death qualification of 14% (163/1,190), with relative disparities of 1.79 and 2.36. Catholic venire members made up 9% of those with a known religious affiliation (80/840) overall, but they composed 14% of those with a known religious affiliation who were excluded because of their death penalty opinions (20/139). Catholic venire members' share of those excluded increased by a factor of 1.5 (14%/9%).

B. Racial and Gender Disparities in the Impact of State Peremptory Strikes

Earlier research has demonstrated the ongoing significance of race in the exercise of peremptory challenges.[16] This section presents the rate at which prosecutors exercised peremptory challenges against Black versus white venire members when they had the opportunity to strike.

Table 7. State Strikes against Strike Eligible Venire Persons by Race *(Peremptory strikes aggregated across cases.)*[17]

	A		B	C	D
	Venire Member Race		No Strike	State Peremptory Strike	Totals
1.	White	*number*	253	83	336
		percent	75%	25%	100%
2.	Black	*number*	31	36	67
		percent	46%	54%	100%
	Total		284	119	403
			70%	29%	100%

As in earlier North Carolina research, prosecutors struck Black venire members at a significantly higher rate than white venire members.[18] Table 7, Column C, reports that state strikes removed 54% of eligible Black venire members (36/67) compared to 25% (83/336) of eligible white

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[16] See Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-*Batson *North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2011).

[17] We replicated this analysis by calculating the prosecutorial strike rate in each of the ten cases and averaging these rates across the ten cases. In this analysis, prosecutors struck Black venire members at an average rate of 54.7% (SD = 4.20) compared to white venire members' average strike rate of 24.5% (SD = 1.05). A paired t-test indicates that this difference in strike rates is significant at p < .001.

[18] Id.

venire members. The relative strike ratio is 2.16 (54%/25%). This disparity is statistically significant ($p < .0001$).

We replicated the gender analysis presented in Section A but did not observe disparities in prosecutorial exercises of peremptories strikes against all women. We did, however, observe significant disparities in strikes against Black women.[19] Table 8 shows that the state removed 57% of eligible Black women with peremptory strikes (16/28) compared to 27% of all other venire members (103/375). This is a relative strike ratio of 2.1. This disparity is statistically significant ($p < .01$).

Table 8. State Strikes against Strike Eligible Black Female Venire Persons *(Peremptory strikes aggregated across cases.)*[20]

	A		B	C	D
	Venire Member Race-Gender		No Strike	State Peremptory Strike	Totals
1.	Black Female	*number*	12	16	28
		percent	43%	57%	100%
2.	All Other	*number*	272	103	375
		percent	72%	27%	100%
	Total		284	119	403
			70%	29%	100%

C. Combined Impact of Death Qualification and State Peremptory Strikes by Race

The final section of this report presents the combined effect of death qualification and state peremptory strikes on jury selection. Table 9 collects information presented in the early parts of the report. Column B reports the number of Black and white venire members in the study. Column C presents the number of Black and white venire members removed by death qualification. Column D presents the number of Black and white venire members removed by state peremptory strikes. Column E combines the number of venire members removed by death qualification and state strikes, and presents the totals for Black and white venire members. Finally, Column F presents the number of Black and white venire members in the reduced population.

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[19] Note that very few Black women remained in the venire and eligible for prosecutorial peremptory strikes. State strikes removed all of the strike eligible Black women in three of the ten cases: Cooper (1 of 1), Devega (2 of 2), and Stepp (1 of 1). In a fourth, Richardson, no Black women were eligible for state strikes.

[20] We replicated this analysis by calculating the prosecutorial strike rate in each of the ten cases and averaging these rates across the ten cases. In this analysis, prosecutors struck Black female venire members at an average rate of 57.9% (SD = 11.57) compared to all other venire members' average strike rate of 24.2% (SD = 2.90). A paired t-test indicates that this difference in strike rates is significant at $p < .02$.

Table 9 also presents basic calculations concerning the impact of these decisions on jury diversity. Column G shows that Black venire members were removed at 2.1 times the rate of white venire members (42%/20%). This may in part be because Black venire members make up only 18% of the initial venire (Column B), but removals of Black venire members constitute 31% of the total removals (Column E), almost two times the rate of their presence in the overall population (as illustrated in Figure 1). The white venire members, by contrast, face removal at more than 15 percentage points less frequently, a rate of 0.8 as frequently.

Table 9. Combined Impact of Removals by Death Qualification and State Strikes

	A		B	C	D	E	F	G
	Venire Member Race		Initial Number of Venire Members	Removed as Not Death Qualified	State Strikes	Total Removed (C+D) & Percent	Reduced Population (B-E) & Percent	Rate Removed (E/B)
1.	White	number	979	111	83	194	785	20%
		percent	82%			69%	86%	194/979
			(979/1,190)			(194/282)	(785/908)	
2.	Black	number	211	52	36	88	123	42%
		percent	18%			31%	13%	88/211
			(211/1,190)			(88/282)	(123/908)	
	Totals		1,190	163	119	282	908	1,190

Figure 1. Comparison of Representation in the Initial Population of Venire Members to the Representation in Venire Members Removed Under Death Qualification or State Strikes.

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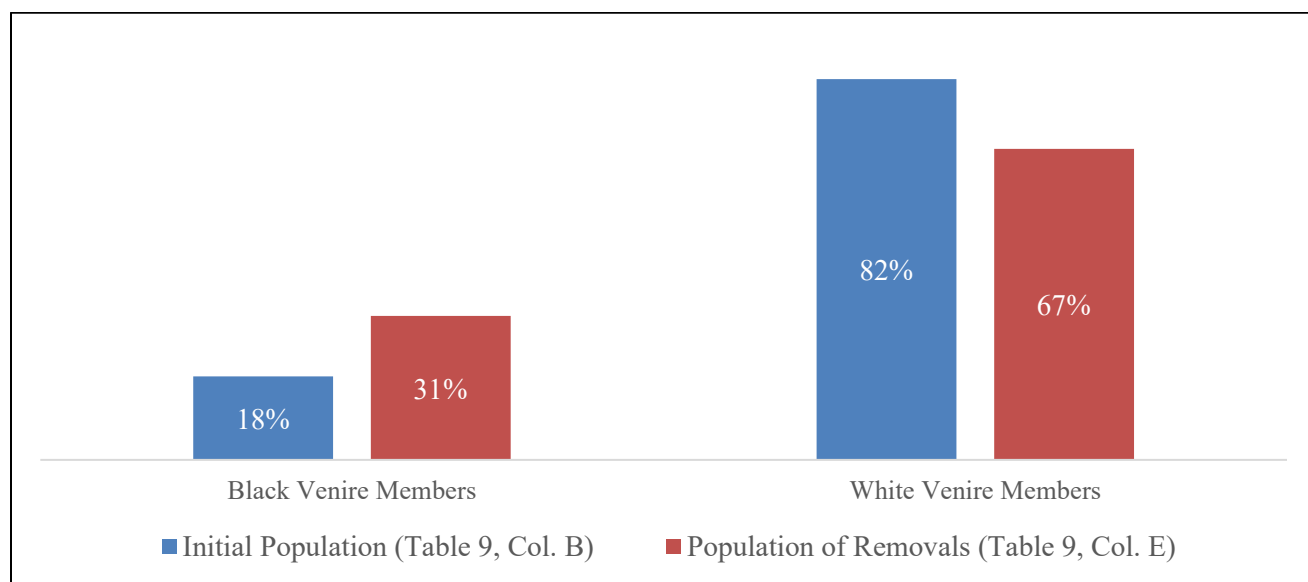
IV.   Summary of Findings

We examined the process of jury selection in ten capital trials in Wake County from 2008 to 2019. Our findings replicated and expanded on prior research documenting racial disparities in the jury selection in North Carolina capital trials. The process of death qualification of potential jurors excluded disproportionality more Black potential jurors than their white counterparts, removing Black potential jurors at 2.27 times the rate of their white counterparts. This disparity persists even when we limit the inquiry to venire members for whom no basis other than death disqualification applied: Black venire members were removed on this basis at 2.09 times the rate of white venire members.

In addition, women were excused under death qualification at a higher rate than men—a ratio of 1.54. This disparity was driven largely by the disparate removal of Black women, who were removed under death qualification at 2.2 times the rate of other potential jurors.

The death qualification process also disparately affected venire members based on their religious views. Twenty percent of venire members who were religious were excused as not death qualified, compared to just 12% of those who were not. This disparity was more pronounced for some religious affiliations than others. Twenty-five percent of venire members who identified as Catholic and one-third of Quakers were excused as not death qualified.

The racial disparity resulting from the process of death qualification persisted in the prosecution's exercise of peremptory strikes. The state struck Black potential jurors at 2.16 times the rate it struck white venire members; Black women were struck at 2.1 times the rate of all others. The cumulative effect of the death qualification process and the state's exercise of peremptory strikes meant that Black potential jurors were removed at almost twice the rate of their representation in the population of potential jurors, whereas white potential jurors were removed at 0.8 times their rate.

REPORT ON WAKE COUNTY JURY SELECTION STUDY

APPENDIX A

I.   01IDENTIFYING INFORMATION

1.   Venire Member's Study Identification Number   Q1000 |____|____|____|____|**.** |____|**.**|____|____|____|

2.   Defendant's Name

|____|____|____|____|____|____|____|____|____|____|____|
LAST [Q1001]

|____|____|____|____|____|____|____|____|____|____| |____|
FIRST [Q1002]   MI [Q1003]

3.   Venire Member's Name **NOTE**: CONFIDENTIAL. This name is not to be shared publicly at any time.

|____|____|____|____|____|____|____|____|____|____|____|
LAST [Q1004]

|____|____|____|____|____|____|____|____|____|____| |____|
FIRST [Q1005]   MI [Q1006]

II.   CHALLENGES TO VENIRE MEMBER

4.   Excused for Cause (circle one)   Q1007

      0 = No   1 = Yes   9 = Unknown

5.   Cause Challenge initiated by State (circle one)   Q1008

      0 = No   1 = Yes   9 = Unknown

6.   Cause Challenge initiated by Defense (circle one)   Q1009

      0 = No   1 = Yes   9 = Unknown

7.   Cause Challenge initiated by Court (circle one)   Q1010

      0 = No   1 = Yes   9 = Unknown

8.   Peremptory Challenge by State (circle one)   Q1011

      0 = No   1 = Yes   9 = Unknown

9.   Peremptory Challenge by Defense (circle one)   Q1012

      0 = No   1 = Yes   9 = Unknown

10. Peremptory strike eligibility (circle one) Q1013

    1 = Both Defense & State   2 = State   3 = Defense (State exhausted strikes)   4 = Neither or N/A   9 = Unknown

11. Record the transcript volume and page number for the successful challenge: _____ Q1014

12. Approximately how many pages of transcript involve voir dire with this juror? Q1015

    1 = 5 or fewer   3 = 11-25   5 = More than 50

    2 = 6-10   4 = 25-50

13. Initial response(s) to the eventually successful challenge for cause (circle all that apply) Q1016

    0 = No objection or rehabilitation.

    1 = Court conducts additional voir dire to rehabilitate or test basis for strike.

    2 = Opposing party objection.

    3 = Opposing party conducts additional voir dire to rehabilitate or test basis for strike

    8 = Does not apply.

14. How many times did the state move to strike this juror for cause? (enter actual number)   ____|____ Q1017

15. How many times did the defense move to strike this juror for cause? (enter actual number)   ____|____ Q1018

III.   VENIRE MEMBER CHARACTERISTICS

16. Venire Member's Gender (circle one)

Q1019

    0 = Female   1 = Male   9 = Unknown

17. Source of information for Gender (circle one) Q1020

    1 = Indicated Explicitly   2 = Inferred from other   9 = Gender unknown
                                   information (e.g., name)

18. Venire Member's Race (circle one) Q1021

    1 = White/Caucasian   5 = Latino/Hispanic   8 = Mixed (self-reported)

    2 = Black/African American   6 = Native American   _____

    3 = Asian/Asian American   7 = Other (specify)   9 = Unknown

    4 = Pacific Islander   _____

19. Source of information for race (circle one) Q1022

    1 = Indicated Explicitly on questionnaire   2 = Noted by court or counsel during voir   9 = Race unknown
        or during voir dire.   dire and not disputed.

20. Age   .   Q1023

    0 = Under 18   2 = 26-39   4 = 60+

    1 = 18-25   3 = 40-59   9 = Unknown

21. Is the venire member religious? (circle one)   Q1024

    0 = No   1 = Yes   9 = Unknown

22. With what religious organization does the juror identify? (circle)   Q1025

    1 = Catholic   4 = Jewish   8 = Does not belong to a religious org

    2 = Quaker   5 = Muslim   9 = Unknown

    3 = Other Christian   6 = Other: _____

23. Source of information on religious organization: Q1026

1 = Stated on Jury Questionnaire	2 = Stated in response to question during voir dire.	3 = Stated both on Jury Questionnaire and in voir dire	9 = Religious organization detail unknown.

24. If the juror was asked about religion, who asked? (choose all that apply)   Q1027

    1 = Judge   2 = Prosecutor   3 = Defense Counsel   9 = Not asked.

IV. INFORMATION ON CAUSE STRIKE

25. Use the list of bases for cause strikes to code the basis or bases **<u>given</u>** for the cause strike. A list of bases for cause strikes appears on page 5.

    Q1028   ___|___   Q1030   ___|___   *88* = No factors apply or venire member was not
                                                                        excused for cause (enter in Q1028)
    Q1029   ___|___   Q1031   ___|___
                                                        99 = Responses unknown (enter in Q1028)

26. Use the list of statutory bases for cause strikes to code the statutory basis or bases that applied to the venire member but **<u>were not given</u>** for the cause strike.

    Q1032   ___|___   Q1034   ___|___   *88* = No factors apply that were not given or venire
                                                                      member was not excused for cause (enter in
    Q1033   ___|___   Q1035   ___|___   Q1031).
                                                        99 = Responses unknown (enter in Q1031).

27. Death Penalty Opinions. If the venire member is removed because of disqualifying death penalty opinions, what opinion or opinions did the venire member express? (circle all that apply)   Q1036

    10 = Venire member expressed a moral or religious opposition to the death penalty

    11 = Venire member expressed other reasons they could not vote for a death sentence.

    12 = Venire member could not consider a life sentence.

    13 = Venire member could not consider mitigation.

    14 = Venire member expressed disqualifying support for imposition of the death penalty.

    88 = Not applicable (Venire member did not express disqualifying death penalty opinions).

    99 = Venire member expressed disqualifying death penalty opinions, but record provides no details.

28. History of Inequality. Did the venire member indicate that they did not trust law enforcement or the criminal court system to be fair after years of inequality and racism?   Q1037

    0 = No   1 = Yes

29. Hardship. If the venire member is removed because requiring service would be a hardship, what hardship did the venire member express? (circle all that apply)   Q1038

10	=	Work obligations	13	=	Age (over 65).
11	=	Economic hardship	14	=	Medical concern or physical ability
12	=	Care for children or another family member	15	=	Medical competence
88	=	Venire member was not excused for hardship.	16	=	Other
99	=	Venire member was excused for hardship but the record provides no details.			

30. What was this venire member's ultimate status? (circle one)   Q1039

    0 = Neither seated on the jury nor selected as alternate   2 = Seated on the jury as an alternate

    1 = Seated on the jury   9 = Unknown

Coder's Name

|____|____|____|____|____|____|____|____|____|____|____|____|____|
LAST [Q1040]

|____|____|____|____|____|____|____|____|____| |____|____|
FIRST[Q1041]   MI [Q1042]

Date Coded   ____/____/_____   Q1043
                 MM DD YEAR

Bases for Cause Strikes

01   =   Does not have the qualifications required by N.C. Gen. Stat. § 9-3. § 15A-1212 (1).[1]

02   =   Is incapable by reason of mental or physical infirmity of rendering jury service. § 15A-1212 (2).

03   =   Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant. § 15A-1212 (3).

04   =   Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution. § 15A-1212 (4).

05   =   Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime. § 15A-1212 (5).

06   =   Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant. § 15A-1212 (6).

07   =   Is presently charged with a felony. § 15A-1212 (7).

08   =   As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina. § 15A-1212 (8).

09   =   For any other cause is unable to render a fair and impartial verdict. § 15A-1212 (9).

10   =   Death Qualification. Venire member expressed disqualifying death penalty views.

11   =   Hardship. Reasons of "compelling personal hardship" or "because requiring service would be contrary to the public welfare, health, or safety." G.S. 9-6(a).

---

[1] Statutory Disqualification Grounds under N.C. Gen. Stat. § 9-3: Not a citizen of the State. Not a resident of the county. Had served as juror during the preceding two years. Under 18 years of age. Physically or mentally incompetent. Cannot understand the English language. Convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony and has not had citizenship restored pursuant to law. Had been adjudged non compos mentis.

REPORT ON WAKE COUNTY JURY SELECTION STUDY

APPENDIX B

WAKE COUNTY CAUSE STUDY
Missing Venire Member Race Data Collection Instrument
Version: 8 June 2022

1. Venire Member Study Identification Number   [Q1000] |____|____|____|____|____.____.____|____|____|

2. Venire Member's Name |____ _____|____| _____ ____|____|____|____|____|____|____|____|____|
                    LAST [Q1004]

              |____|____|____|____|____|____|____|____|____|____|____| |____|
              FIRST [Q1005]   MI [Q1006]

3. Venire Member's Race (circle one) [Q1021]

    1 = White/Caucasian   5 = Latino/Hispanic   8 = Mixed (self-reported)

    2 = Black/African American   6 = Native American   _____

    3 = Asian/Asian American   7 = Other (specify)   9 = Unknown

    4 = Pacific Islander   _____

4. Please indicate the source of information for race. Choose the lowest number that applies, even if a subsequent foil is also applicable (e.g., if you match based on notes in the jury chart and checked against BOE or Lexis, choose 3 even though 4 would also technically be correct). (Circle one)   [Q1045]

    1 = Self-reported on questionnaire   = BOE website and/or Lexis 8 =

    2 = Noted by court or counsel in transcript and no dispute about characterization   N/A because race is unknown

    3 = Noted on a jury chart or in counsel's notes and verified by another source

5. If the source of race information was based in any way on either the BOE website or a Lexis public records search (or both), please indicate *all* of the criteria on which you were able to match using the following codes.

    1 = Matched to this information
    0 = Unable to match on this information
    Blank = Not applicable because race unknown

First & last name [Q1046] |____|	Address [Q1047] |____|	Middle name/initial [Q1048] |____|
DOB [Q1049] |____|	SSN (any part) [Q1050] |____|	City [Q1051] |____|
County [Q1052] |____|		Other (please specify) [Q1053] |____| _____ [Q1054]

6. **Coder's Name** _____
                      [Q1055]

7. **Date Coded** [Q1056]_____/_____/_____
                  MM   DD   YEAR

Appendix C

Race Coding Protocol

(1) Memo re: Protocol for Determining Race of Jurors
(2) Instructions for Race Coding

To: RJA Jury Study File
From: Barb O'Brien
Re: Protocol for Determining Race of Potential Jurors
Date: February 18, 2010

This study requires that the race of potential jurors be accurately recorded. Below is the protocol for coding a potential juror's race. For each juror, please indicate the source relied on in the spreadsheet column entitled "source."

1. **Self or Contemporaneous Report of Race based on Direct Observation**: The following are considered definitive sources of race information, in descending order of preference. (In other words, rely on the source of information listed in (a) before (b).)
    a. The juror reports his or her own race either in a questionnaire or on the record during voir dire
    b. The juror's race is noted by the court or an attorney as part of the record (e.g., race is mentioned in connection with a *Batson* motion or the clerk reads the race of the venire members into the record) and there is no indication of any unresolved dispute about that characterization.
    c. The juror's race is noted on the seating chart, and verified using public sources listed in Part 2.

2. **Secondary Sources of Information**: If the sources of information listed in section 1 are not available, you may look to the North Carolina Board of Elections website or Lexis Public Records for race information. Below are the circumstances in which you may find a match and thus rely on these records for information about race, in descending order of preference (in other words, rely on matches based on (a) before (b), and (b) before (c)). In all cases, the person named in the record *must* have been at least 18 at the time of trial. Information that a person would have been under 18 at the time of trial is a sufficient basis to exclude him or her as a match.
    a. You may rely on the public record for race if the record is consistent with our information about the venire member's name *as well as* either the venire member's (1) address, *or* (2) birth date.
        i. For the information to be considered "consistent" it must not contradict the information we have. For instance, if we know the juror's middle name, any information about the middle name in the public record must be consistent with what we have. If both sources provide all three names, then all three names must be the same to be treated as "consistent." If the public record provides only a middle initial, that initial must be consistent with the venire member's reported middle name. If either source lacks information about a middle name, then the presence of information about

it in the other source does not render them inconsistent and preclude a match.

1. Example: We have information about a venire member named "Jack Shepherd." On the BOE website, you find "Jack A. Shepherd." This would be considered consistent. The same would be true if we had the information on the venire member's middle initial, but the BOE website did not. In contrast, suppose we have information about a venire member named "Jack A. Shepherd." On the BOE website, you find a record for "Jack B. Shepherd." This would *not* be considered consistent as to name, and thus preclude a match.

2. Slight discrepancies may be acceptable if there are other strong indicators of a match that suggest that the inconsistency is likely due to data entry error or some other reasonable explanation. However, this assumption should not be made casually, but only when significant other evidence supports the inference.

   a. Example: We have information on venire member Richard Alpert, living 4815 Jacobs Way, with a DOB 8/15/1960. On Lexis, you find a record for Richard A. Alpert at 4815 Jacobs Way, whose DOB is listed as 8/15/1961. Another record for Richard Alpert at a different address (from a different year) lists his DOB as 8/15/1960. Lexis records often give partial Social Security Numbers. If the two records for Richard Alpert have matching partial SSNs, it is reasonable to find this to be a match for our venire member despite the difference in the year of birth in one of the records.

   b. Example: We have information about venire member Katherine R. Austin, born 1/6/1978. You find a record created several years after trial for Katherine Austin Ford, born 1/6/1978. If there are other pieces of information to indicate that these are the same people (e.g., DOB or partial Social Security numbers), the "Ford" does not render the names inconsistent because it could have been changed upon marriage.

ii. Because people move, lack of consistency between the venire member's address and the address indicated in the public record isn't necessarily fatal to finding a match based on other criteria. However, if information about the address suggests that these are not the same people (e.g., the

person did not reside in the county at the time of trial), that person should not be treated as a match.

b. You may rely on the public record for race information if the record is consistent with the venire member's name and county of residence at time of jury duty. If more than one record matches based on these criteria, you may rely on race information *only* if all the people with the matching records have the same race.

    i. Example: A search for John Locke in Wake County produces a single match for someone of that name who would have been old enough to serve on a jury at the time of the trial. That match is unique and you may rely on that record's information about race. But suppose the search produces several people with that name in Wake County. If all of those people are indicated as being white, for instance, code the potential juror as "white." If the matching records include people of different races, code venire member John Locke's race as "unknown."

    ii. Example: A search for John Locke in Wake County produces two matches for people with that name, but only one of whom would have been old enough to serve on a jury at the time of the trial. You may exclude the younger person and thus conclude that you have found a match.

    iii. Use information about the date of trial to assess whether there is a match as to county. As with address, lack of consistency between the venire member's county and the county indicated in the public record isn't necessarily fatal to finding a match. People do move from county to county. However, if information in the record suggests that the person did not reside in that county at the time of trial, that person should not be treated as a match.

c. If you cannot match on county, you may rely on a match based on a statewide search on name alone *only* if it produces a unique match or multiple matches of people of the same race. It will likely be very rare to find a match on this basis even if we have the middle name, but it may be possible for a particularly unusual name.

Instructions for Race Coding

Our goal is to determine the race of venire members in our study. Your job is to track down public records for the venire members and record their race. To do this, you will receive various types of information about the venire members. The level of detail will vary. Use the information you have available to find a record that matches with as much specificity as possible.

Below is a step-by-step guide to finding these records. During this process, however, you should not abandon your own common sense and good judgment. If something doesn't make sense, please don't be afraid to ask questions. For each venire member, you will fill out a sheet with questions about how you made your determination.

1. Create a folder with the defendant's case number and name as the title (e.g., for defendant John Badgett, create a folder named "14 Badgett".
2. Use two electronic sources of information:
    a. North Carolina Board of Elections (BOE) website (http://www.sboe.state.nc.us/VoterLookup.aspx?Feature=voterinfo)
    b. Lexis public records search (http://w3.lexis.com/lawschoolreg/researchlogin04.asp)
        i. If that link doesn't work, go to lexis.com and log in. Then look under "Public Records" and then "Voter Registrations Search." Be sure to select "North Carolina" as the state.

3. **If the information provides name AND address or date of birth**, search by name and county in the BOE website.
    a. If you find a unique match on the BOE website, you may record that venire member's race and stop looking.
        i. A "unique match" is entirely consistent with the venire member's name and also matches either the address or date of birth (DOB) as provided.
        ii. Name Consistency: For the information to be considered "consistent" it must match the information provided as follows:
            1. If both sources provide all three names, then all three names must be the same to be treated as "consistent."
            2. If the public record provides only a middle initial, that initial must be consistent with the venire member's reported middle name (and vice versa)
            3. If either source lacks information about a middle name, then the presence of information about it in the other source does not render them inconsistent and preclude a match.
        iii. Address Consistency. For the information to be considered "consistent" it must match the information provided perfectly.
            1. If you find multiple matches with the same address, you may record the race if all the records are for people with the same race.
    b. If the BOE search does not produce a unique match or does not produce any matches, run the same search in Lexis.

      i. Look for Name Consistency.

      ii. Look for Address Consistency. For the information to be considered "consistent," it must be possible to determine **two** items of information:

          1. The person identified lived at the address provided at or near the time of the trial.

          2. The person identified also lived at the address provided by the BOE.

      iii. If you find Name Consistency and Address Consistency, you may record that venire member's race and stop looking.

  c. If searching by name and county produces multiple matches with multiple race information, try to narrow the possible matches. Eliminate duplicate candidate matches in each database (BOE & Lexis) based on the following:

      i. The person did not reside in the county of trial at the time of trial.

      ii. The person would not have been old enough to serve on a jury at the time of trial. (BOE and Lexis often provide year of birth.)

  d. If searching by name and county does not produce any matches in BOE,

      i. Use Lexis to determine if a venire member has changed her name. Search in Lexis under the name provided. If Lexis documents a name change, search again in the BOE website with the new name. Look for a unique match. Note that Lexis often includes partial Social Security Numbers that allow you to confirm a match even if the person's name has changed.

4. If the information does not provide address or DOB on the venire member, search BOE by name and county. If you find a record for someone with that name living in the county of trial at the time of trial, record the race if:

  a. The search produces a unique match

      i. In determining whether you have a unique match, use Lexis to gather additional information that may allow you to exclude some potential matches as ineligible.

  b. The search produces records for several people with that name in that county and all are of the same race.

5. Create an electronic folder for each juror for whom you are able to make a race designation. Name the folder based on the based on the juror's last and then first name (e.g., for juror John Locke save the PDF as "Locke_John". For each electronic record you rely upon to determine race, save a PDF named the same way you named the folder, with an extension to indicate whether the source is BOE or Lexis. Save the PDF to the folder created for this juror, which is within the folder created for this defendant's case. You can usually do this quite easily by selecting "print page" and then select "Adobe PDF" as the printer. You can also select "save as" and save the html page as a PDF.

  a. Example: When working on defendant Badgett's case, create a folder named "14 Badgett". Within that folder, create a folder for juror John Locke named "Locke_John". You find several BOE records for John Locke, and look to Lexis to exclude some as a potential match. Within the folder "Locke_John", save as PDFs the documents you relied upon to make the race determination.

REPORT ON WAKE COUNTY JURY SELECTION STUDY

APPENDIX D

Wake County, North Carolina - Death Qualification Study

<u>Coding Questions & Answers</u>

Question numbers in this Coding Log relate to the Wake County, North Carolina, Death Qualification Study Venire Member Level Data Collection Instrument dated 13 July 2020.

This is a working document intended to communicate key previous coding decisions for the Death Qualification Study. This coding protocol has been updated throughout the coding and review process as needed. All staff attorneys coding cases are expected to read this document before beginning coding and to refer to it throughout the coding process. Close adherence to this protocol is essential to completing a reliable study.

Refer to this document when coding questions arise. When coders present questions or issues, I will make a note of the resolution here so that it is available to everyone. If you have a question about how to code something, check this document to see if it has already been resolved. When you have a question, please post it at the top of this page and I will address it asap.

NOTE: Please put new questions at the top so that the older ones move to the bottom over time. Please start your question with "Q" followed by the corresponding DCI question in green.

FYI - The Q21 Random Sample Review included 70 venire members. The review resulted in the following codes

- Unknown (9): 63
- Yes (1):   4
- No (0):   3

If we all agree that the three Q&A venire members remain unknown, this is a 10% correction rate: 7/70.

Q21 1017.0.019- James Brohard- VM says his religious preference is Catholic. During VD he is asked if he practices regularly or … He says no.. Is this enough to change from unknown to religious- KCS (pg 588) BO'B: 9

Q21 1018.0.547-Sharon Morrison-Still unknown? VM says she is not the member of a church on her questionnaire. Then there is this follow up. After VM says "Baptist" Court moves on. BO'B: 9

```
2                    HE COURT:  And we're going to talk about the

3    processes and things a lot in a few minutes.  We asked you

4    about religious or other affiliations, church-type

5    affiliations, and you said that you were not currently active

6    or involved in a church group.  Have you at any point in your

7    life been active in any type of church activities?

8                    PROSPECTIVE JUROR MORRISON:  Yes.

9                    THE COURT:  And what faith or denomination

.0   were those activities?

.1                   PROSPECTIVE JUROR MORRISON:  Baptist.
```

Q21 1018.0.023-Donald Barber-Still unknown? VM checked that he was not the member of a church on questionnaire and the following took place during questioning: BO'B: 9

```
4                    You are currently not participating as a

5      member, parishioner, anything any type of church

6      group.  Have you at any point in your life been an

7      active member or a participant in a church or faith

8      group?

9                    PROSPECTIVE JUROR BARBER:  When I was

0      young I was brought up Catholic.

1                    THE COURT:  The Catholic church has a

2      stance on the death penalty, as they do on a lot of

3      other topics.  Do you adhere to the church's position

4      or are you your own man when it comes to that kind of

5      thing?

6                    PROSPECTIVE JUROR BARBER:  I have my own

7      beliefs.

8                    THE COURT:  Okay.  Do you have any
```

Q27- In the instructions below this is what we have under Question 27:
**Coded 88 unless Q25 or Q26 is coded 10. [CHECK THIS AFTER DATA ENTRY]
I am wondering if we can be more explicit. In reliability checks, I am seeing consistent coding where both coders code a 10 in Question 26 but it is not reflected in Question 27 (they both code 88 in question 27). I

know this is on our re-code list. Maybe we can add something in the Question 26 instructions and Question 27 instructions like "If you code a 10 in question 26, make sure to capture the DP opinion in question 27"? <mark>Good idea. I added this sentence below at Q26 and Q27.</mark>

Left Off here--

<mark>*** *** *** ***   *** *** *** *** *** *** *** ***   *** *** ***</mark>

Coding Log (by Question)

Updated: 17 May 2021

Questions 4-7: Excused for Cause

- When the defense clearly anticipates that the VM will be excused for cause, but no motions are offered before the Court asks both parties if either has an objection to removing her, code Q7 = yes.

- While the Court is questioning VM, he elicits her DP views and she is not death qualified. He then turns to the other parties, and asks if they have questions. They do not. VM is excused for cause. Q7 = yes.

- Defense counsel moves 3 times unsuccessfully to strike him for cause. Then on the 4th time the Court excuses the VM. Q6 = yes.

Question 10: Peremptory Strike Eligibility

- If VM was removed for cause à Code 4. All VMs excused for cause will be coded 4.

- Code 1 when the juror is seated rather than 4, because both parties had the opportunity to strike VM, but chose not to.

- When VM was removed by a peremptory strike:

  - Code 1 à If both Defense and State had opportunity to question VM, unless the State strikes first.

  - Code 2 à If only State had opportunity to use a peremptory VM (i.e. VM was removed before Def had the chance to question).

  - Code 3 à If only Def had opportunity to use a peremptory on VM (would happen only if State had exhausted all their strikes).

Question 12

- When two coders count a slightly different number of pages that leads to a different code for Q12, the coder doing the reliability check should select the higher code and not recount pages.

- If VM is questioned for exactly 25 pages, code 4, not 3..

Question 13, 14 & 15: Number of Motions for Cause

- When an attorney has moved for cause, been denied, continued questioning about cause bases, said "Your Honor, may we be heard?", and then the Court began asking the VM questions before sending the VM out, and then the attorney formally makes another motion for cause . . . code as <u>two rather than three motions</u>. (Do not treat "may I be heard" as an independent motion.)

- Q13 = 0 when the court excuses a VM and no one complains.

- Where Defense objects to the Court's motion to excuse VM, still code Q13 = 2 (opposing party objection).

Question 16. Venire member gender

- Where VM marked "M" on their questionnaire, but is always referred to by feminine salutations/pronouns in the transcript and VM's name is a female gendered name code Q16 = 9 (unknown).

Question 18. Venire member race or ethnicity

- English is the VM's second language. VM did not enter race was on the questionnaire. The court asked the VM what his race was but he did not understand the question. The VM was born in Mexico. It is a fair inference to code as Latino/Hispanic.

- VM enters race as "Iranian." Code = Other

Question 21: Religiosity

- Info can be taken from either the questionnaire or the transcript.

- Start here:

  - If VM is a member of a religious org that is enough to say the VM is religious in the absence of other clearly contradictory information.

  - If the VM mentions faith or religious reasons as the basis for an opinion that is enough to say the VM is religious even if the VM does not belong to a specific church.

- Jury Questionnaires – Use these guides only in the absence of stated membership in a religious org or use of religion as the basis for an opinion (as stated above)

  - <u>Wilson Questionnaire</u> asks what their religion is, what denomination (ex. what branch of Christianity), and how much do they participate in church's civil or social activities (not at all, a little, some, or a great deal). How do we want to categorize their answers?

    - "Not at all" = no, "a little = don't know if religious, "some" and "a great deal" = yes

  - <u>Gillard Questionnaire</u> asks Are you a member of a church, temple, or other religious organization? (Yes/No); If yes, please list the name. How frequently do you attend service?

    - At least weekly (Q21 = yes), Once a Month (Q21 = yes), Special Occasions (Q21 = don't know), Rarely (Q21 = don't know).

  - <u>Devega Questionnaire</u> asks Are you a member of a church: _ yes _ No; Which church and denomination do you belong?; How often do you participate in your church's activities?

    - A great deal (Q21 = yes), some (Q21 =yes), a little (Q21 = don't know), not at all (Q21 = no)

  - <u>Richardson Questionnaire</u> asks "what is your religion preference, if any?"

    - If they answer this question with a blank = not religious; "none" = not religious; "Catholic, Baptist, etc." = religious unless there is conversation in the voir dire that suggests otherwise

- Examples of not religious (0)

  - VM grew up going to Catholic schools and went to a Jesuit college, but says his parents were not Catholic and his views on DP did have not anything to do with religion. VM also marked that he was not a part of a religious organization on his questionnaire.

  - VM was raised as a Quaker, in a Quaker church, but does not currently attend and belong to the church today. VM "holds a lot of their beliefs in my background and in my family." Code Q22 as Quaker but Q21 not religious.

  - VM writes Christian/N/A as religious preference on questionnaire. Code Q21 = not religious, but Q22 is other Christian.

  - VM writes N/A as religious preference on questionnaire.

  - VM drew a dash through the question "what is your religious preference?"

- ○ VM says he is not a member of a local church, temple, or other religious organization and does not participate, but still upholds the Christian morals he was taught as a child.

- ○ "I have faith, but religion is not very strong for me. Moral, yes. I would say morally . . ."

● Examples of religious where VM does not say belongs to church or rely on faith in stating opinion (1)

- ○ VM is not part of a church community or faith group but responded to a question "We are currently not attending a specific church, but we did, growing up attend Westland Church, and more recently we have been going to the Methodist church, but we are not currently members."

- ○ VM is no longer a member of a church but he used to be a youth leader. VM explained that he moved away from his old church and his work hours made attending church now difficult. [Note he was very active, and hasn't said he rejected it.]

- ○ VM does not participate in any church or religious or faith community, or pray regularly, but is "very much a part of" her faith's feast and celebrations.

- ○ VM is not a member of a local church, but goes to service weekly and substitute teaches at a Christian school.

- ○ VM says on her questionnaire that she is not a member of a church, but says she sometimes goes to church activities.

- ○ VM does not believe in DP because of her religious beliefs but does not belong to a religious organization.
- ○ VM notes that his mother is quite religious and that "her beliefs are pretty much my beliefs." On his questionnaire he indicates he does not belong to a religious org.
- ○ During voir dire she says that since moving she has not gone in a while and my husband is not very religious, so it makes it hard to go.
● Unknown (9)

- ○ If no answer is given, or conflicting info is given, code Unknown.

- ○ VM on her questionnaire indicates she is not a member of a local church, temple or other religious organization. The Court asks her if she has ever been active in a church or faith based group at any point in her life. VM says that she has gone to church. "Not been a member of a church, but I have attended church every so often with my best friend."

- ○ ==If the VM only provided that they are not a member of a church on their questionnaire (no additional info) and is not asked about it during voir dire, the code should be unknown.==

○ On questionnaire VM states they do not belong to a religious org and no one actually asks her about faith/religion, but she talks about keeping her children "sheltered and in church" as a way of keeping them from gun violence or guns in general.

Question 22. What religious org?

- When a person says they are not a member of a church and provides no other information then code "8", not 9 (unknown).

- Catholic (1)

  ○ VM's questionnaire she says she is a member at a Methodist church but attends a Catholic church.

  ○ VM says he gets his wife and children to Catholic church and joins them there. His questionnaire does say he is a member of a church.

  ○ VM says "as a Christian I'm aware that humans are fallible people."

- Other Christian (3)

  ○ VM grew up attending the Westland Church and has been going to the Methodist church.

  ○ VM is strongly opposed to the death penalty due to his religious views. His mother was a preacher. On JQ said that he was a member of a church, did not put down what denomination, and said that he did not attend his church's activities. [We can rule out non-Christian because of church, Catholic because mom was a preacher.]

  ○ VM goes to different churches but says most of the denominations she attends are Baptist. She was raised Baptist.

  ○ Mormon should be coded as 3, Other Christian.

Question 23: Source of Info on Religious Org

- General guidance

  ○ Refers to specific religious organization (Lutheran, Baptist, Non-denom, Muslim, etc), not just general religiosity in transcript.

  ○ A party can ask VM about religion in general and VM can answer about religion without referencing a specific religious organization. So, it is possible to have Q24 coded affirmatively (asked) without having Q23 = 2 or 3 coded (during questioning) because of the way Q24 is phrased.

  ○ Q23 about membership in a religious org can be based on the JQ only, even if religiosity in Q24 was "asked". They are asking slightly different things, it is not incompatible

- ○ When Q21 and Q22 are coded "unknown" using information (not just blanks) from the questionnaire, Q23 should be coded "1." Code 9 only if the VM does not answer the question on the questionnaire.

  - ○ When VM mentions that they are christian during voir dire that is enough for the source of the information to be from voir dire

- ● Unknown

  - ○ VM was not asked about religion during voir dire. On his questionnaire he checked both boxes and scratched out the religious organization he wrote down.

  - ○ Code 9 if the VM does not answer the question on the questionnaire.

- ● Stated during voir dire only (2)

  - ○ VM on his questionnaire says that he does not belong to a religious organization but he participates in activities twice a year. During questioning, VM says he is Lutheran.

Question 24: Who asked about religion?

- ● State asks about religion (2)

  - ○ VM references conversation with pastor. State follows up, "you went and sought counsel from your pastor?" State also asks "And so clearly this is an issue that comes not just morally, but also religious?"

  - ○ The State asks "Is that a personal, moral, religious, all of the above kind of position you have on this?" State does not follow up on religion specifically.

  - ○ Pros. asks VM about a mission trip and the VM talks about going with his church. Pros never asks about the church and is really only asking about the mission trip because the VM had earlier talked about this trip.

- ● Judge asks about religion (1)

  - ○ The judge, while questioning, reads the questionnaire to VM, "You said I am against the death penalty religiously because I feel that we have no right to take a person's life even if it is warranted. How long have you felt that way?"

  - ○ "Do you have any personal, moral, or religious position on the death penalty?"

- ● Not asked

  - ○ Defense states, "I'm going to start off with faith and their family are important to everybody. Outside of faith and family what's important to you?"

- Defense says, "Let me ask you first of all, what's important in your life? We all have faith and we all have family that [else] is important to us."

Question 25: Bases for cause strikes given.

- Is it not possible to have a code other than 88 in Q25 if the juror is seated or struck with a peremptory.

- When a VM is excused for cause there should be codes in Q25 even when the court does not state a reason why the VM is excused.

- Examples for specific codes in Q25 or Q26 are included here:

01 = Does not have the qualifications required by N.C. Gen. Stat. § 9-3. § 15A-1212(1).

- VM is from Pennsylvania but was in NC to help take care of family. He had his mail sent to NC there, which is how he received a jury summons. He plans to return to Pennsylvania now that his family is better.
- VM does not speak or understand English.
- VM is moving prior to trial out of the county, so he will no longer be a resident.
- VM is moving out of state in one month.

02 = Is incapable by reason of mental or physical infirmity of rendering jury service. §15A-1212(2).

- *Generally defer to code 11, hardship, but raise a question if 2 seems like a better fit.*
- VM has hard time understanding the questions. Highest level of education is 8th grade and VM is 71 years old.

03 = Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant. § 15A-1212 (3).

- This is rare. Will relate specifically to this case.
- VM is approached by a cousin of the defendant, cousin is charged with witness tampering and now the VM must be a witness against the cousin.

06 = Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant. § 15A-1212 (6).

- VM states she has formed opinions on the case and she might have a hard time in this case.
- VM lives near the crime scene and notes there was a high level of focus on it in the community.

- VM was excused because he mentioned to another VM that he thought the defendant was guilty, even when he denied making those statements when questioned by the Judge,

08 = As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina. § 15A-1212 (8).

- Only code 08 in addition to 10 if there is an additional aspect to their inability to follow the law.

- Because of religious beliefs, VM feels he cannot partake in the guilt/innocence phase of trial.

- Where VM is a Jehovah's Witness and gets excused because he does not feel he can partake in the guilty or innocent phase of the trial. Q25 gets 8; Q26 gets nada; Q27 gets a 88.

- Judge was concerned that VM read philosophy books (like Noam Chomsky) to think about her views on the death penalty and thoughts was concerned that she might not follow instructions.

- Court asks if VM would have difficulty separating her faith beliefs and her duty as a juror under NC law. VM says "I think that would be a problem for me. The only reason is, I would be compromising my faith...."

09=For any other cause is unable to render a fair and impartial verdict. § 15A-1212 (9).

- Note: 9 is a catch all—broader than 6—because everything that qualifies as a 6 would also qualify as a 9, but the reverse isn't true.

- Because of personal experiences, VM would favor the defendant in the case.

- VM's niece was raped and this has impacted her ability to be impartial.

- VM dismissed because it's not the appropriate case for her to sit on "with your personal, you know, the background and things that happened to your family members."

- VM is a medical administrator at prison where defendant is being held.

- VM's visible distress in court without other context.

- Trouble viewing crime scene photos

- VM would be unable to look at physical evidence,

- VM is a sexual assault survivor (in a case involving sexual assault).

- VM is a convicted felon who has gotten back his rights, but does not believe in the court system.

- VM is untruthful about his own criminal history

- VM is excused for discussion that other jurors had in the jury room, even though he is not aware of the discussion.

- Trouble following beyond a reasonable doubt standard

- VM was excused for having a concern that LWOP might not mean what it says over time leading the Defendant, if found guilty, to get parole.

Examples with Both 9 & 10

- VM has been taking care of a 19 year old male, no blood relation, since he was young. The male recently was in trouble with the law, and VM was not happy with how the Court handled it. He also tends to be against the DP and feels that he would likely favor the defense based on the situation with the 19 year old.

- VM expressed disqualifying death penalty views and court also finds that VM seems to have trouble following the Court's instructions and answering questions consistently.

- VM does not think she can be fair, but also expresses disqualifying DP views.

10 = Death Qualification. Venire member expressed disqualifying death penalty views.

- Examples of distinctions between not enough for a code 10 and just over the line into 10 being appropriate

  - Appropriate for code 10

    - VM says she doesn't know if she could impose a sentence of death. She doesn't have any views about DP, just doesn't know if she is capable of doing that. VM keeps saying she just doesn't know.

    - VM would require that mitigating circumstances be proven more than "just a preponderance." (The Constitution requires only a preponderance.)

  - Not appropriate for code 10 (unless the judge made it clear this was the basis for excusal)

    - Cannot code DP reservations when it is unclear that her opposition would have been substantial enough to warrant removal for cause.

■ VM has never really thought about DP. Says "if the person who is convicted did something morally awful like multiple murders or such." Says she doesn't know if she could consider DP. Doesn't want to be put in a position to decide somebody else's fate. She's a mom. Supposes she could consider it if the circumstances deemed necessary. VM doesn't know if she can fairly consider DP because she doesn't want that burden on her. Says it would be hard but she could be fair.

■ VM says both DP and LWOP are equal, but would much rather not suffer in jail, so would lean towards death, but would consider both. After questions about her statements that she leans towards death she reaffirms she would be able to fairly consider both.

11 = Hardship. Reasons of "compelling personal hardship" or "because requiring service would be contrary to the public welfare, health, or safety." G.S. 9-6(a).

● VM would be unable to give her full attention to the case because she would be concerned about her daughter who would have to live with her grandmother during the trial.

● VM's cousin, who lives in NJ, was injured just before the VM came to jury duty. The Judge excuses him because the Judge can see he is very concerned.

● VM wrote on JQ that it would be difficult to live with the fact that someone died and then it was later found out they were innocent.

Question 26: Statutory Bases Not Given

● Is it not possible to have a code other than 88 in Q26 if the juror is seated or struck with a peremptory.

● If you code a 10 in question 26, make sure to capture the DP opinion in question 27.

● Q26 will have numerical codes (explained in previous question) only when the record shows an explicit additional reason for the excusal or when the VM is excused prior to additional question on a statement they made. Otherwise, coded 88.

● Only rarely should Q26 have something and Q25 not—only in cases where a peremptory is explicitly used charitably to avoid a cause inquiry.

● Examples of times that Q26 should not be 88 or 99

○ The Judge and Lawyers have a discussion about how they would have excused VM based on his questionnaire answer that he does not believe in the death penalty. They did not have a chance to ask him any questions about it.

- State ultimately used a peremptory strike, but VM talks about leaning towards LWOP, and that they feel very strongly that they would not like to be in the situation where they are asked to impose death. They talked about it through the entire voir dire. Attorneys and judge agree that VM would probably be struck for cause at some point, but agree to use a peremptory strike to save time.

- VM was excused for an economic hardship since his job is solely commissioned based. Judge then says "he is in real estate and works for York … that is the group has the house listed on Cardia Drive … which is the scene of the crime or offense … I'll just put that on the record, which is a reason that I excused him as well." (Code = 9)

- VM is not qualified to be a juror in NC. (Q25 = 1) He also needs to return to PA to get two more surgeries. Lastly, he is very much against the death penalty. (Q26 = 10 & 11).

- Court notes on the record (after the fact): "We noticed <u>also</u> the verbal, the physical reaction she had to that, and I believe her condition. [The State] and I talked about her condition with her daughter, taking her to school probably would have conflicted with her actually being able to serve." (Q26 = 11)

- VM was excused because he became a witness to jury tampering in connection to the case where he was a potential juror. VM had strong DP views but said that he could follow the law, prior to being excused. Since he could follow the law and there was no further discussion he does not warrant a code 10 in Q26

- Examples of 88

    - State uses a peremptory strike, but VM opposes the death penalty.

    - Defense uses peremptory strike, but VM talks about a strong gore/blood aversion and discuss the difficulty they may have viewing the evidence and analyzing it.

    - Defense peremptory strike, but expresses strong support for the death penalty. Judge denied motions for cause for death penalty opinions.

    - Defense peremptory, VM repeatedly said that they wanted Defense to put on evidence and they wanted the Defendant to testify.

    - Judge says VM was excused because of his death penalty views. During voir dire VM stated he has trouble staying focused and does not think he can give the case the attention it deserves. (No 11 code here. Only 88.)

Question 27: Death Penalty Opinions.

**Coded 88 unless Q25 or Q26 is coded 10. [CHECK THIS AFTER DATA ENTRY]

** If you code a 10 in question 26, make sure to capture the DP opinion in question 27.

** The most important distinction here is between anti-death penalty and pro-death penalty. In each case, if you cannot decide which category of anti or pro, select the lowest number in that group (i.e. 10 for anti or 12 for pro).

10 = Venire member expressed a moral or religious opposition to the death penalty

- VM says she is not in favor of DP so the State asks, "Is that a personal, moral, religious, all of the above kind of position you have on this?" VM says "It's all of them really."

- VM was raised as a Quaker and holds a lot of their beliefs including a belief in non-violence that makes involvement in a death penalty decision really challenging.

- VM has personal moral beliefs against the DP that are connected to religious and moral values.

11 = Venire member expressed other reasons they could not vote for a death sentence.

- Concerns that aren't about the morality or ethics, but something like "It would give me nightmares" or "The death penalty doesn't deter and it's too expensive"

- VM just keeps repeating that they are uncomfortable with DP.

- VM states, regarding his hesitancy toward DP that " it's just a decision that I would have to live with and whether or not – again, you know, if it did warrant it, I don't know if that's a decision I could live with so."

- In her discussion about DP she mentions that she went out and read philosophy books. Read about DP and its use to deter crime, which she doesn't believe DP accomplishes.

12 = Venire member could not consider a life sentence.

- "If you kill someone you need to suffer the consequences of death."

- VM says that someone who is convicted of premeditated, planned murder "doesn't deserve to live his life in jail."

- When asked about his feelings in general on LWOP, VM says, "I mean, I think, they killed somebody, they should be killed themselves. Doesn't feel like LWOP is an appropriate punishment for a first degree murder, feels like it's a free pass

13 = Venire member could not consider mitigation.

- VM says she cannot consider LWOP as an option if someone "was proven guilty for killing somebody else." VM repeats no matter what mitigation evidence is offered she cannot consider LWOP.

14 = Venire member expressed disqualifying support for imposition of the death penalty.

- "If you kill someone, you deserve the same punishment."

- When State asks whether VM believes every murder case deserves DP, VM says "My first reaction would be yes."

- "I strongly feel if you take someone else's life, you should have the death penalty, only exception to be accidental."

Question 28: History of Inequality

- Q28 = 1

  ○ Construe this question broadly to cover any expressions of concern about the system's fairness.

  ○ VM does not believe in the penal system, the way it is administered, because guilty people go free and innocent people get sent to jail.

  ○ VM is not a fan of the court system. He mentions that grand jury indictments are really quick. He also talks about a case where the person was convicted and the defense appeals, which acquits the defendant. After being acquitted the defendant is then tried in military court and convicted.

- Q28 = 0 (not enough)

  ○ VM cared for a minor child for several years and considers him a son. At 19, this person was convicted of shoplifting and served a month in jail. VM indicates that he did not believe that the DA (specifically the DA in this case) treated that person fairly and that he would be biased in a way that he's sure the defense table would love to have him on the jury.

  ○ Does not apply when VM is unsatisfied with the venire process and she is upset about the jury selection process.

Question 29: Hardship

**Coded 88 unless Q25 or Q26 is coded 11. <mark>[CHECK THIS AFTER DATA ENTRY]</mark>

10 = Work obligations

- VM is needed at her job because there will be no one to do billing.

- VM is a full time student just starting his last semester.

- VM is self-employed and jury service would interfere significantly with VMs business.

- VM has a business conference.

- VM has a prepaid/pre booked travel <u>for work</u>.

- VM is in charge of 17 people and is heading up two different projects that have strict deadlines.

- VM just lost his job and is concerned jury duty will prevent him from finding a new one.

11=Economic hardship

- Prepaid Vacations

- Son's wedding

- Court asks if it would put him into financial hardship and he says "Yeah. I mean, I have a—most that me and my wife—my wife works too and she travels, so, I mean, I have kids that I got to take places and also work."

- VM is moving out of state, during the trial, and would be required to get a hotel if selected for the jury.

- VM is sole money-maker for the family, being on a jury would put her into financial hardship.

- VM works seasonally and doesn't have any work in the summer.

- If she misses a day of work, she does not get paid. Her husband is a seasonal cook and so he's not bringing in an income currently. She has four children and four sons and it will financially bankrupt her.

- VM has a 3 year old and 5 weeks of service would cost her a thousand dollars in daycare.

- VM is a commission salesman and the only income in his household. He is helping out his son who is out of work and has to keep two kids in college. If he doesn't work he doesn't make anything. He's a private contractor. If he is out for "four or five weeks I'm out of---I start over." [Note – all of this relates to money, so only 11.]

12 = Care for children or another family member

- VM needs to drive his wife to work every day as she does not have a license.

- He has two kids and his mom just passed and now he has to take care of his dad, too.

- Trip is not yet booked but VM is planning to go to India to visit elderly parents.

- VM's mother is in hospice

- Has plans to travel for a funeral and to help his mother with his dad, and travel over spring break for his children. No mention about if anything is booked.

- Has plans to visit his mother, who is battling cancer. The trip is open ended

14= Medical concern or disability

- VM has scheduled surgery or treatments during the time trial is scheduled to take place.

- VM suffers from PTSD

- VM is on disability and under psychiatric care. Note: this is not sufficient evidence for incompetence under 15.

16=Other

- VM would not be able to focus on the trial for one reason or another

- VM's niece is coming from Taiwan during the trial for a few months and VM planned a three-day trip to see her mother in law while her niece visited, which she said she would cancel if required to serve.

- VM had a vacation planned to her family's condo on the beach. Her family would not go if she was placed on the jury.

- VM is excused because her son recently passed away.

- VM has a scheduled unrelated court case during the time of the trial

- VM is concerned for her family that lives in the Ukraine. Ukraine was going through some unrest at the time.

Question 30. What was this venire member's ultimate status?

- If VM was originally seated on the jury but was later replaced with an alternate during voir dire code "neither seated on the jury nor selected as an alternate" and code cause strike information on DCI.