SUGGESTED JURY PRACTICES
Superior and District Court Judges
North Carolina Governor's Task Force for Racial Equity in Criminal Justice

The Governor's Task Force on Racial Equity in Criminal Justice's jury recommendations seek to ensure fair and impartial juries, promote diverse and representative jury pools, and prevent bias from tainting the administration of criminal jury trials. These recommendations reflect state and federal constitutional prohibitions against discrimination in jury selection, the state and federal constitutional guarantee of a jury selected from a fair cross section of the community, and the importance of the jury's longstanding role as the "criminal defendant's fundamental protection of life and liberty against race or color prejudice." *McCleskey* v. *Kemp*, 481 U. S. 279, 310 (1987) (internal quotations omitted). As the U.S. Supreme Court has recognized, "racial prejudice in the jury system damages both the fact and the perception of the jury's role as a vital check against the wrongful exercise of power by the State." *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 868 (2017) (internal quotations omitted). Addressing racial bias and the underrepresentation of people of color in the jury system enables "our legal system [to come] ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." *Id.* The following suggested practices are offered in service of that aspiration.

I. Ensure Diverse, Representative Jury Pools (Recommendation 91)

Rationale for recommendation 91 and related suggested practices.

The importance of ensuring diverse, representative jury pools is threefold. Legally, the fair cross-section requirement—grounded in the Sixth Amendment and article I, sections 24 and 26 of the North Carolina Constitution—requires that juries reflect the demographic composition of the broader community. Practically, researchers have concluded that diverse juries perform better than less diverse juries: they make fewer errors, deliberate longer, consider more of the evidence, and come to fairer conclusions.[1] Ultimately, because public confidence in criminal justice outcomes depends upon the perceived fairness of the process, representative jury pools are critical to the integrity and credibility of the justice system.

a. Master jury lists should be updated annually.
    i. Pursuant to N.C.G.S. § 9-2(a), the senior regular resident superior court judge may direct the jury commission to update the master jury list annually rather than each biennium.[2]
    ii. As demonstrated in other jurisdictions, more frequent updating of the master jury list reduces the number of summonses sent to bad addresses and returned as undeliverable.[3] Research has demonstrated that increasing jury yield increases the diversity of the jury pool and reduces administrative costs.[4]

b. District and superior court judges should coordinate with the clerk of superior court to ensure that potential jurors receive more than one communication from the court.
    i. Jurisdictions have found that additional mailings to potential jurors following summonses to which no response was received increases juror yield.[5] Increasing juror yield has been shown to increase juror diversity.[6]

ii. Electronic juror reminders and notifications may also help reach a broader portion of the community.[7]

c. District and superior court judges should encourage the jury commission's use of additional source lists intended to increase the diversity of the jury pool.[8]
   i. N.C.G.S. § 9-2(b) authorizes jury commissions to use additional lists beyond the lists of drivers and voters when assembling the master jury list.
   ii. Other states have achieved more representative jury pools by pulling juror names from lists of non-driver IDs, tax filers, unemployment insurance recipients, newly naturalized citizens, recipients of public assistance, and other lists. Using lists beyond the voter and driver lists may result in broader demographic community representation in the jury pool.

d. District and superior court judges should encourage jury commissioners and/or jury trial administrators to confirm addresses of potential jurors using the National Change of Address Database. As demonstrated in a number of jurisdictions, this step reduces the number of summonses returned as undeliverable, improves jury yield, increases jury diversity, and reduces administrative costs.[9]

e. Local judicial district executive committees should develop transparent jury data collection efforts to enable oversight of the fair cross section guarantee.[10]
   i. Data collected should include demographic information (race, ethnicity, gender, age, and zip code) associated with:
      1. Mailed summonses
      2. Undeliverable summonses
      3. No shows
      4. Potential jurors appearing at the courthouse for service
      5. Potential jurors excused or deferred
      6. Potential jurors removed for cause
      7. Jurors removed for cause with the agreement of both parties
      8. Jurors removed with the consent of the prosecution only
      9. Jurors removed with the consent of the defense only
      10. Jurors removed with the consent of neither party
      11. Potential jurors peremptorily struck
      12. Jurors struck by defendant, any associated *Batson* challenges, and resolution of such challenges
      13. Jurors struck by prosecution, any associated *Batson* challenges, and resolution of such challenges
      14. Seated jurors
   ii. Collected data should be anonymized and made available to the public. Members of the public should be able to determine whether diversity of the community is fairly represented in all stages of North Carolina jury formation.[11]
   iii. As an interim step toward regular jury data collection, analysis, and reporting, senior resident superior court judges should issue administrative orders directing the distribution of demographic surveys to all potential jurors

arriving for jury service orientation, so that court officials, attorneys, and members of the public may compare the population of people appearing for jury service with the population of the broader community.[12] *See Beard v. North Carolina State Bar*, 320 N.C. 126, 129 (1987) ("Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice.").

iv. At least annually, the senior resident superior court judge should review the numbers reflected in the jury data and convene a meeting with stakeholders to discuss any disparities between the adult population of the community and the jury pools or seated juries.

f. Local judicial district executive committees should review jury operations to consider opportunities for removing barriers to jury service for low-income jurors or other jurors facing obstacles to jury service. While increasing juror pay would require legislative change, counties may be able to experiment with other supportive programs, including but not limited to:
   i. Supporting parents by piloting a childcare program at the courthouse and ensuring a private room at the courthouse for breastfeeding jurors to pump and/or breastfeed during court breaks.[13]
   ii. Partnering with local restaurants to offer discounts to jurors.
   iii. Contacting employers to inform them of legal protections of jurors any time workers express concerns over losing wages or employment as a result of jury service.[14]

II. Address Discrimination in Jury Selection (Recommendation 92)

Rationale for Recommendation 92 and related suggested practices.

Our judiciary must be proactive in preventing the exclusion of jurors based on race and other improper factors. Superior Court Judges should adopt the following practices to increase the capacity of courts to address juror discrimination, discourage the practice among attorneys, and facilitate well-constructed, representative juries in North Carolina.

a. Complete recordation of jury selection to enable effective review of *Batson* challenges.
   i. The absence of a jury selection transcript inhibits meaningful review of a *Batson* claim on appeal.[15]
   ii. For this reason, and because it is not clear in advance when a *Batson* challenge may be raised, judges should ensure complete recordation of jury selection in every case. G.S. 15A-1241(b) authorizes judges on their own motion to have jury selection recorded.
   iii. Consistent recordation of jury selection will enable more consistent and effective review of *Batson* challenges.

b. Require self-identification of race/gender/ethnicity by all potential jurors during jury selection.
    i. In order to review claims of discrimination in jury selection, appellate courts must have a "record which shows the race of a challenged juror." *State v. Willis,* 332 N.C. 151, 162 (1992), *quoted in State v. Bennett*, 374 N.C. 579, 592, (2020).
    ii. Self-identification of juror race, while not the only legitimate method of establishing juror race for the purpose of reviewing a *Batson* challenge, is the most reliable method of establishing juror race and least likely to lead to extensive litigation on the adequacy of the record. *See, e.g., State v. Bennett*, 374 N.C. 579 (2020) (reviewing whether juror race may be established by stipulation of parties).
    iii. Self-identification of race, gender, and ethnicity may be accomplished in one of two ways. The first is through distribution of juror questionnaires printed on forms in triplicate so that each party and the court receives a copy. The second is by instructing potential jurors to identify their race, gender, and ethnicity orally during recorded jury selection. For example, one North Carolina judge routinely instructs potential jurors as follows: "For statistical purposes, please identify your race, gender, and ethnic background."
    iv. It is not appropriate to place the burden of recording potential jurors' race on the parties, both because they will not necessarily have the opportunity to speak with the potential jurors prior to an exemption or strike, and because it could unfairly prejudice the party who is tasked with asking.

c. Raise *Batson* concerns sua sponte when opposing counsel fails to object to prima facie evidence of discrimination.[16] Such evidence may include disparate strike rates, differential questioning or other treatment of jurors correlated to race or another unlawful factor, or biased remarks during voir dire.

d. Demeanor-based strike justifications should be scrutinized carefully. Judges should make findings regarding the juror's non-verbal conduct on the record to enable appellate review of a *Batson* challenge when an attorney identifies non-verbal conduct as a reason for a peremptory strike.[17]

e. Hear objections to peremptory strikes outside of the earshot of the potential jurors, refrain from excusing potential jurors until objection has been resolved, and, upon finding of a *Batson* violation, seat improperly struck jurors whenever feasible.
    i. *Batson v. Kentucky* does not prescribe the remedy for a *Batson* violation.[18] However, given that *Batson* protects the rights of unlawfully struck jurors, judges should remedy *Batson* violations by seating improperly struck jurors whenever possible.[19]
    ii. Dismissing the entire venire is a less racially equitable remedy, as it upholds the unlawful strike, fails to vindicate the equal protection rights of the struck juror, wastes judicial time and resources, and may not deter improperly motivated peremptory strikes.[20]

iii. To enable reseating of an unlawfully struck juror, Superior Court judges should:
   1. At the outset of jury selection, instruct attorneys to make all challenges to juror strikes immediately in order to avoid a situation where an improperly struck juror becomes unavailable before the resolution of the *Batson* challenge.
   2. Hear all objections to peremptory strikes out of juror earshot by sending potential jurors out of the courtroom before conducting a *Batson* hearing.
   3. Refrain from excusing potential jurors until the objection has been resolved.

f. Critical perspectives on the criminal justice system are not equally distributed among races.[21] As such, challenges for cause related to this factor may have a disproportionate racial impact. Judges should focus on the juror's ability to be fair and impartial in the context of the particular case.[22]

g. Ultimately, as the North Carolina Supreme Court recently clarified, "the finding of a *Batson* violation does not amount to an absolutely certain determination that a peremptory strike was the product of racial discrimination. Rather, the *Batson* process represents our best, if imperfect, attempt at drawing a line in the sand establishing the level of risk of racial discrimination that we deem acceptable or unacceptable." *State v. Clegg*, ___N.C.___, 2022-NCSC-11 (Feb. 11, 2022).

III. Implicit Bias Education for Jurors and Court Actors (Recommendation 93)

Rationale for Recommendation 93 and related suggested practices.

Implicit bias poses a significant challenge to the guarantee of fair and impartial juries. The influence of bias on juror conclusions contravenes the core Sixth Amendment principle of impartiality. Eliminating juror bias is a daunting task:

> [A] typical trial courtroom setting mixes together many people, often strangers, from different social backgrounds, in intense, stressful, emotional, and sometimes hostile contexts. In such environments, a complex jumble of implicit and explicit biases will inevitably be at play. It is the primary responsibility of the judge and other court staff to manage this complex and bias-rich social situation to the end that fairness and justice be done--and be seen to be done.[23]

Judges should consider the following practices to strengthen the court's ability to mitigate the influence of implicit bias on criminal trials in North Carolina.

a. Take a comprehensive approach to guarding against the risks of implicit bias, as no single intervention will be sufficient to address the problem.[24]

b. Participate, along with other court actors who participate in the jury system, in meaningful implicit bias training and take implicit association tests to gain awareness of implicit biases.

c. Lead, in partnership with other court actors and community members, a review of courthouse imagery such as portraits and artwork to ensure that the courthouse environment is welcoming and inclusive.[25]

d. Consider using a checklist such as the "Mindful Courtroom Checklist" developed by the ABA to decrease the influence of implicit biases on the administration of justice.[26]
    i. The "Mindful Courtroom Checklist" was developed in response to research showing that checklists increase focus and may help counteract implicit biases.[27] The purpose of the checklist is to "combat quick unconscious responses by calling on more conscious, deliberative, reflective thinking and responses."[28] The list is meant to be illustrative and adapted by courts to fit the specific needs of the jurisdiction.
    ii. Examples of items on the suggested checklist include: "To avoid implicit cues regarding status, everyone in my courtroom is given similar time for responding and shown similar levels of attention" and "at key decision points, I ask myself if my opinion or decision would be different if the people participating looked different, or if they belonged to a different group."[29]

e. Screen an implicit bias video during orientation.
    i. To help jurors guard against the influence of implicit bias on decision making, potential jurors should be shown an educational video on implicit bias (also referred to as unconscious bias) during juror orientation.
    ii. The NC Judicial College at the UNC School of Government recently released the jury video Understanding and Countering Bias, which is available for screening in courthouses statewide.
    iii. This unconscious bias video, an adapted version of a video produced for the U.S. District Court for the Western District of Washington, has been shown in Buncombe, Durham, Wake, and other counties during jury orientation, immediately following screening of the "You, the Juror" Administrative Office of the Courts jury orientation video.

f. Instruct jurors to guard against the influence of implicit bias on their decision-making. Judges may consider using a range of implicit bias jury instructions developed or adopted in jurisdictions around the country.
    i. *See* Examples of Implicit Bias Jury Instructions, attached as Appendix C.
    ii. Implicit bias jury instructions used in *State v. Chauvin* (see *id.*).
    iii. Suggested implicit bias jury instructions developed by the NC Implicit Bias Video Advisory Group (see Appendix D).

g. Ask jurors to sign juror pledge to emphasize importance of guarding against the influence of implicit bias.[30]

h. Allow appropriate discussions of race during jury selection to enable removal of biased jurors.
    i. North Carolina Supreme Court decisions recognize the value of "making race salient" as a strategy for decreasing the influence of stereotypes and implicit

biases on decision-making. *See* Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. Rev. 1555, 1563 (2013), quoted in *State v. Crump*, 376 N.C. 375, 392 (2020) and *State v. Copley*, 374 N.C. 224, 235 (2020) (Earls, J., concurring).

ii. Superior court judges should allow appropriate discussions of race and racial bias during jury selection. *See State v. Crump*, 376 N.C. 375, 393 (2020) ("court abused its discretion and prejudiced defendant by restricting all inquiry into prospective jurors' racial biases and opinions regarding police-office shootings of black men").

i. Consider curative instructions or mistrial after improper or biased racial references that may prejudice jury.[31]

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[1] *See* Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition in Jury Deliberation*, 90 J. Personality and Soc. Psychol. 597, 608 (2006) ("By every deliberation measure . . . heterogeneous groups outperformed homogeneous groups.").

[2] Both the American Bar Association and the National Center for State Courts recommend updating juror lists at least annually. *Assessing and Achieving Jury Pool Representativeness*, The Judges' Journal, Vol. 55 No. 2 (Spring 2016). *See also* National Center for State Courts Characteristics of an Effective Master Jury List (techniques to maintain accurate and updated jury lists can include renewing the master jury list more frequently than the maximum allowable period prescribed by law).

[3] *See, e.g.,* Judge William Caprathe (ret.) et al*., Assessing and Achieving Jury Pool Representativeness*, The Judges' Journal, Vol. 55 No. 2 (Spring 2016) (master jury list should be updated at least annually to ensure the accuracy of the addresses); *Improving Juror Response Rates in the District of Columbia: Final Report, Council for Court Excellence* March 2006, National Center for State Courts (13% reduction in undeliverable summonses by increasing frequency of juror list updates).

[4] *See Jury Managers' Toolbox: Best Practices for Jury Summons Enforcement*, National Center for State Courts (2009) (concluding that strategies that increase jury yield also increase jury representativeness).

[5] Paula Hannaford-Agor, National Center for State Courts, Center for Jury Studies, *An Overview of Jury System Management* (May 2011) (reporting that non-response and failure-to-appear rates are 34% - 46% less than in courts that do not follow up with additional mailings to non-responders).

[6] In response to TREC's judicial survey one judge noted, "We found that our biggest problem wasn't the composition of the list but rather the number of people who did not respond to the jury summons. We started sending letters to those who didn't respond, reminding them of their duty and the penalty for failing to respond. This improved our response rate. We think it improved the diversity of the jury pools but we don't have any data of which I'm aware."

[7] Jurisdictions, including New Jersey and Washington DC, have also experimented with text or email communication for summonses. *See* DC Superior Court Introduces New ESummons for Jurors.

[8] Elsewhere in the country, jury pools comprised of drivers and voters have been shown to underrepresent people of color. *See, e.g.*, Elizabeth M. Neeley, *Nebraska Minority Justice Committee, Representative Juries: Examining the Initial and Eligible Pools of Jurors* (2008) (where juror names are drawn from a combination of driver and voter lists, study concluded that racial and ethnic minorities were significantly underrepresented in the initial and eligible pools of jurors); *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service* 41-42 (Feb. 2004) ("The study concluded that the racial and ethnic composition of registered voters and licensed drivers did not totally reflect the diversity of the population of Lucas County."); Paula Hannaford-Agor, *Systematic Negligence In Jury Operations: Why The Definition Of Systematic Exclusion In Fair Cross Section Claims Must Be Expanded*, 59 Drake L. Rev. 761, 779–82 (2011) ("Courts have no control over whether an individual chooses to register to vote, but as the Supreme Court of California recognized, courts do have control over which source lists to use in compiling the master jury list."); Jeffrey Abramson, *Jury Selection in the Weeds: Whither the Democratic Shore?*, 52

U. Mich. J.L. Reform 1, 33 (2018) ("[i]f supplementing the voter registration list with other sources of juror names can eliminate these disparities, then courts should try supplementation").

[9] *National Center for State Courts Characteristics of an Effective Master Jury List* (many courts also conduct National Change of Address (NCOA) updates before printing and posting summonses).

[10] Guaranteeing representative juries involves actively monitoring jury pool demographic data to determine whether the jury pool reflects the community at large. For this reason, it is widely recognized that the routine collection, analysis, and reporting on jury data is critical. *See* Judge William Caprathe (ret.) et al., *Assessing and Achieving Jury Pool Representativeness*, The Judges' Journal, Vol. 55 No. 2 (Spring 2016) (identifying several recommended steps jurisdictions should take to safeguard the fair cross section guarantee); Ronald F. Wright et al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. Ill. L. Rev. 1407 (2018). This could be accomplished through the development of court rules, *see, e.g.*, Minnesota Court Rule 2 (anonymized jury records presumptively accessible to the public). *See also* Nina W. Chernoff and Joseph B. Kadane, *Preempting Jury Challenges: Strategies for Courts and Jury System Administrators*, The Justice System Journal, Vol. 33, Number 1 (2012) ("The best way to collect race, ethnicity, and gender data is to incorporate mandatory questions into the juror summons or questionnaire, along with the standard eligibility questions, such as citizenship and age."). Judges and or/judicial district executive committees may contact UNC Political Science Professor Frank Baumgartner for assistance with data collection and analysis. *See* Appendix A, Jury Study Proposal. Professor Baumgartner, University of Michigan Post-Doc Marty Davidson, and attorney Emily Coward have designed a study to begin comparing North Carolina jury pools with the adult population of North Carolina. Work on the first stage of the project—comparing statewide jury lists with the overall adult population—is underway.

[11] *See* Wright, Ronald F. and Chavis, Kami and Parks, Gregory Scott*, The Jury Sunshine Project: Jury Selection Data as a Political Issue* (June 28, 2017). 2018 U. Ill. L. Rev. 1407 (2018) ("accessible public [jury] records could transform criminal justice; [w]e believe that sunshine will open up serious community debates about what is possible and desirable in the local criminal justice system.").

[12] In June 2019, Senior Resident Superior Court Judge Joseph Crosswhite issued such an order in Iredell County. An example of a proposed order similar to the one issued by Judge Crosswhite is attached to these suggested practices as Appendix B.

[13] Mecklenburg County provides onsite childcare to children ages 6 weeks through 12 years for jurors and others conducting business at the courthouse through Larry King's Clubhouse, a non-profit organization. King County Washington currently offers childcare to jurors at the Regional Justice Center in Kent, Washington, and the Washington State Jury Diversity Task Force supports the concept of all courts providing childcare for jurors throughout the state. *See* Washington State Minority and Justice Commission Jury Diversity Task Force: 2019 Interim Report.

[14] *See* The Employers' Guide to Jury Service, North Carolina Judicial Branch Communications Office.

[15] "Defendants are entitled to have their *Batson* claims and the trial court's rulings thereon subjected to appellate scrutiny. . . . Thus, we urgently suggest that all criminal defense counsel follow the better practice and request verbatim transcription of jury selection if they believe a *Batson* challenge might be forthcoming. [Without all relevant evidence in the record], it is highly improbable that such a challenge will succeed. Such is the pitfall of defendant's case in this appeal." *State v. Campbell*, 272 N.C. App. 554, 846 S.E.2d 804, 811–12, review allowed, 376 N.C. 531, 851 S.E.2d 42 (2020).

[16] *See, e.g.*, *State v. Evans*, 998 P.2d 373, 383 (Wash. Ct. App. 2000) ("[W]e hold that a court may, in the sound exercise of its discretion, raise sua sponte a *Batson* issue."); *Williams v. State*, 669 N.E.2d 1372, 1382 (Ind. 1996); *Brogden v. State*, 649 A.2d 1196, 1199 (Md. Ct. Spec. App. 1994); *Lemley v. State*, 599 So. 2d 64, 70-71 (Ala. Crim. App. 1992).

[17] "[D]emeanor-based explanations . . . are particularly susceptible to serving as pretexts for discrimination" and are "not immune from scrutiny or implicit bias." *State v. Alexander*, ___ N.C. App. ___ (Oct. 20, 2020) (internal quotation omitted). *See also State v. Clegg*,– ___N.C. ___, 2022-NCSC-11 (Feb. 11, 2022) ("historical context cautions courts against accepting overly broad demeanor-based justifications without further inquiry or corroboration"); *Davis v. Fisk Elec. Co*., 268 S.W.3d 508, 518 (Tex. 2008) ("Peremptory strikes may legitimately be based on nonverbal conduct, but permitting strikes based on an assertion that nefarious conduct 'happened,' without identifying its nature and without any additional record support, would strip Batson of meaning."); *Avery v. State*, 545 So. 2d 123, 127 (Ala. Crim. App. 1988) (reasons such as looks, body language, and negative attitude are susceptible to abuse and must be "closely scrutinized" by courts); *Batson v. Kentucky*, 476 U.S. 79, 106 (1986)

(Marshall, J., concurring) ("[L]itigants [may] more easily conclude that a prospective black juror is 'sullen,' or 'distant"); Berkeley Law Death Penalty Clinic, Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors, 16 (June 2020) ("We determined that prosecutors most often relied on demeanor as a reason for striking Black juror . . . reasons correlate with racial stereotypes of African Americans because we unconsciously and reflexively categorize people based on demeanor"); *see also* Smith, Robert J. and Levinson, Justin D*., The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, SEATTLE U. L. REV., Vol. 35, No. 795, 2012 ("Implicit racial bias might help to explain why egalitarian-minded prosecutors nonetheless disproportionately strike black jurors. . . . If a prosecutor questions a prospective black juror, the simple act of even talking to that person might activate any of these negative stereotypes as well as more general negative implicit attitudes, causing the prosecutor to think or feel negative thoughts about the juror. The prosecutor might project this negativity through body language and gestures, which could, in turn, cause jurors to avoid eye contact, provide awkward answers that make the juror appear less intelligent, or simply fidget and look nervous. Thus, even accurate race-neutral behavior descriptions might stem from racialized assessments (albeit, without conscious thought) of the characteristics of individual jurors.").

[18] *Batson v. Kentucky*, 476 U.S. 79, 99 n.24 (1986) (declining to determine whether it is "more appropriate in a particular case . . . to discharge the venire . . . or to disallow the discriminatory challenges and resume selection with the improperly challenged jurors reinstated on the venire").

[19] *See* Jeffrey Bellin & Junichi P. Semitsu, *Widening* Batson's *Net to Ensnare More than the Unapologetically Bigoted or Painfully Unimaginative Attorney*, 96 CORNELL L. REV. 1075, 1110-12 (2011) (seating unlawfully struck juror voids the unconstitutional act, vindicates equal protection right, promotes administrative efficiency, and is a remedy explicitly contemplated by the *Batson* court).

[20] Earlier *Batson* decisions in North Carolina recognized that a trial judge has the authority to seat an improperly struck juror but opined that the better practice was to dismiss the venire because an improperly struck juror may have difficulty being impartial. *See State v. McCollum*, 334 N.C. 208 (1993). This view did not consider the rights vindicated by the seating of the improperly struck juror, nor did it contemplate the court practices suggested here that protect the impartiality of the improperly struck juror. *See* Alyson A. Grine & Emily Coward, Raising Issues of Race in North Carolina Criminal Cases § 7.3F, Remedy for *Batson* Violations at Trial (2014).

[21] *See generally* John Gramlich, From Police to Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System, Pew Res. Ctr. (May 21, 2019); North Carolina Commission on the Administration of Law and Justice, Public Trust and Confidence in North Carolina State Courts (Dec. 15, 2015) (reporting that confidence in North Carolina courts varied with race of person surveyed, "Black and Other race groups more critical of system fairness").

[22] "The operative question is not whether the prospective juror is biased but whether that bias is surmountable with discernment and an obedience to the law…" *See State v. Smith*, 352 N.C. 531, 545 (2000). *See also State v. Cummings*, 361 N.C. 438, 453-56 (2007); *State v. Moses*, 350 N.C. 741, 757 (1999); *State v. McKinnon*, 328 N.C. 668, 676-77 (1991) *State v. Whitfield*, 310 N.C. 608 (1984). The Massachusetts Supreme Judicial Court recently held that a juror cannot be struck for cause for expressing her belief that "the system is rigged against young, African American males." *Commonwealth v. Quinton K. Williams* (2019) ("asking a prospective juror to put aside his or her preconceived notions about the case to be tried is entirely appropriate (and indeed necessary); however, asking him or her to put aside opinions formed based on his or her life experiences or belief system is not."). "To many people, excluding qualified Black jurors based on their negative experiences with law enforcement or the justice system must seem like adding insult to injury . . . It is time to reassess whether the law should permit the real-life experiences of our Black citizens to be devalued in this way. At stake is nothing less than public confidence in the fairness of our system of justice." *People v. Triplett*, 48 Cal. App. 5th 655, at *693-94 (2020) (Liu, with Cuéllar, J., dissenting from the denial of review).

[23] Jerry Kang, *Implicit Bias: A Primer for Courts* 6 (National Center for State Courts 2009).

[24] *See, e.g.*, Achieving an Impartial Jury Toolbox, American Bar Association (proposing a "rich set of tools that offer courts options for best practices"). Retired federal judge Mark Bennett, a pioneer in studying and addressing implicit juror bias, teaches that juror education on implicit bias is most effective when woven throughout the juror's courthouse experience. *See* Judge Bennett's Implicit Bias Jury Instructions; Jerry Kang et al., Implicit Bias in the Courtroom, 59 UCLA L. Rev. 1124, 1181–82 (2012) (describing Judge Bennett's use of an illustrative video, discussions of implicit bias throughout juror instructions, interactions with the defendant intended to counteract possible implicit biases, and a signed juror pledge).

[25] *See* North Carolina Bar Association Statement on Court Spaces, Adopted June 17, 2021 ("Court Spaces Should Reflect the Impartial Delivery of Justice: All persons entering courthouses and courtrooms in North Carolina should experience an environment which promotes trust and confidence that justice is administered fairly and without favor. If elements of the physical surroundings foster the perception of preference, bias, or prejudice, our court spaces cannot reflect fairness, respect, and equal justice to all who come there to seek it. We encourage careful evaluation of our court spaces to ensure each conveys the impartiality and neutrality of our legal system to all with business there and that appropriate changes be made where deficiencies exist.") *See also* Justin Jouvenal, *"Va. judge rules Black defendant can't get a fair trial in courtroom largely featuring portraits of White judges*," Washington Post, Dec. 22, 2020 (discussing judge's ruling in *Commonwealth of Virginia v. Terrance Shipp, Jr.*); Achieving Impartial Juries Toolbox American Bar Association (updated 2015) (observing that "a diverse environment and positive exemplars can be valuable de-biasing tools" and recommending courthouses create and display posters featuring counter-stereotypical images of people of color); Jerry Kang & Kristine Lane, *Seeing Through Colorblindness: Implicit Bias and the La*w, 58 UCLA L. REV. 465, 476–81 (2010); Supreme Court to Remove Portrait of Thomas Ruffin from its Courtroom, North Carolina Supreme Court Press Release, Dec. 22, 2020.

[26] Achieving an Impartial Jury Toolbox at 13-15, American Bar Association (updated 2015).

[27] *See generally* Atul Gawande, THE CHECKLIST MANIFESTO, Profile Books, 2011.

[28] Achieving an Impartial Jury Toolbox at 13-15, American Bar Association (updated 2015).

[29] *Id.*

[30] *See* Appendix E, Implicit Bias Juror Pledge developed by retired Judge Mark Bennett, US District Court Judge for the Northern District of Iowa.

[31] *State v. McCail*, 150 N.C. App. 643 (2002), (where the prosecutor compared the Black defendant to fictional monkey Curious George, the judge intervened ex mero motu and instructed the jury to disregard the characterization of the defendant); *State v. Jones,* 355 N.C. 117, 129 (2002) (it is incumbent on trial judge to vigilantly monitor closing arguments, "to intervene as warranted, to entertain objections, and to impose any remedies pertaining to those objections"); *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473 (1967) (listing several methods by which a trial judge, in his or her discretion, may correct an improper argument). *See also* State v. Wilson, 404 So. 2d 968 (La. 1981) (in a case involving both indirect and direct appeals to racial prejudice in the prosecutor's closing argument to an all-white jury, references to the black defendants as animals were so prejudicial that a mistrial should have been granted).