



PROTECTING JURORS FROM CHALLENGES FOR CAUSE

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UNC School of Government – 2026 Public Defender Spring Conference
Inclusive Juries Project, Duke University School of Law

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AGENDA

1. Losing Jurors at the Cause Stage
2. Statutory Framework & Cause Standard
3. Putting Unfavorable Case Law to Use
4. Rehabilitation & Objection
5. Final Tips & Takeaways

SOME CONTEXT

- Focusing on when the **judge** or the **prosecutor** attempts to remove a juror for cause.
- We will go over best practices to make the state use a peremptory strike or give yourself a chance to talk to that juror.
- Defense attorneys often report that jury panels becomes less diverse before they even have an opportunity to speak to any of the jurors.
- Empirically, diverse juries are better juries
 - longer deliberations
 - discuss more case facts
 - make fewer inaccurate statements
 - more likely to correct inaccurate statements
 - arrive at less biased verdicts
 - more likely to acquit

PROSECUTORS' PROBLEMATIC RECORD

FIGURE 2: RACIAL DISPARITIES IN PROSECUTORS' USE OF PEREMPTORY STRIKES AND CHALLENGES FOR CAUSE (LOUISIANA)

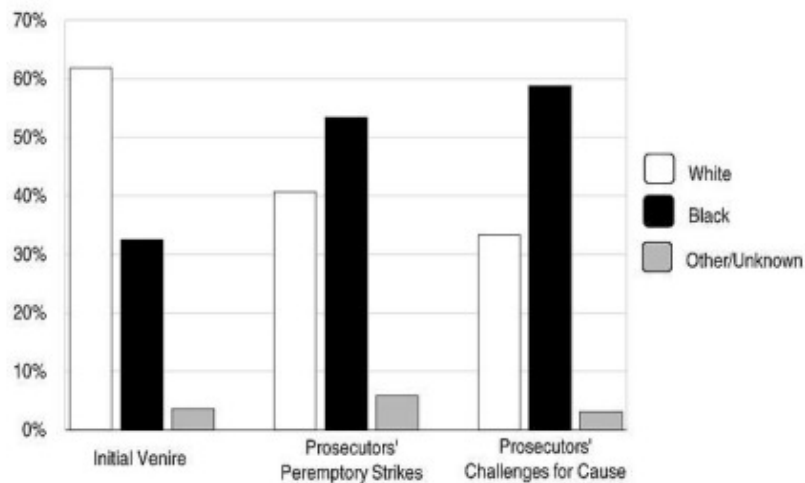
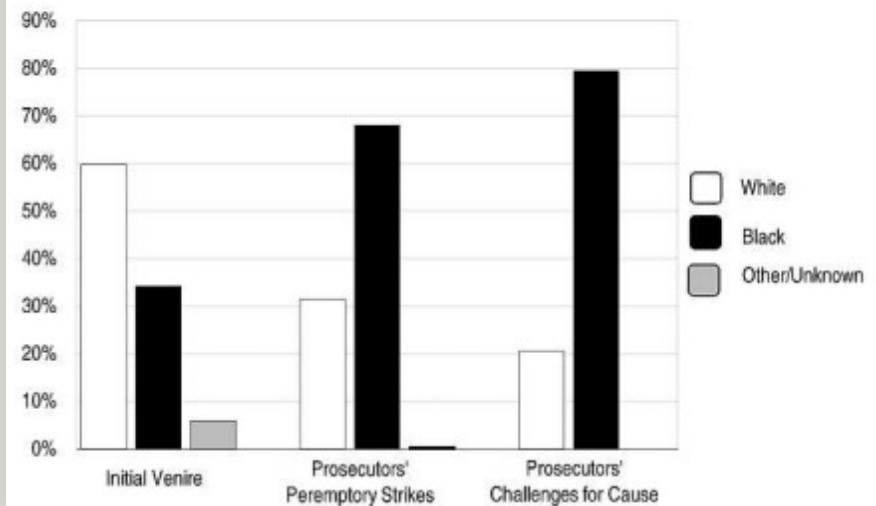


FIGURE 4: RACIAL DISPARITIES IN PROSECUTORS' USE OF PEREMPTORY STRIKES AND CHALLENGES FOR CAUSE (MISSISSIPPI)



Thomas Ward Frampton, *For Cause: Rethinking Racial Exclusion and the American Jury*, 118 Mich. L. Rev. 785 (2020).

Available at: <https://repository.law.umich.edu/mlr/vol118/iss5/3>

NORTH CAROLINA DATA: RACIAL DISPARITIES IN REMOVALS FOR CAUSE

- In a 2018 study of 1,306 felony jury trials across all 100 North Carolina counties, judges removed 3,277 jurors for cause.
- Unclear whether the prosecutor, defense attorney, or judge initiated the challenge for cause.
- We *do* know that jurors of color were removed for cause at higher rates than their white counterparts.
- Judges removed Black jurors at 1.3x the rate of their white counterparts. In other words, across this data set, Black jurors were 30% more likely than white jurors to be removed for cause.
- Judges removed jurors of other races at 2.1x the rate of their white counterparts.

Ronald F. Wright et al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. ILL. L. REV. 1410 (2018).

Available at: <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3136&context=facpubs>

U.S. CONSTITUTION REMEDY?

Unfair Cause Challenge Practices →

~~6th A Fair Cross Section~~

~~14th A Equal Protection Clause~~

~~6th A Impartial Jury + 14th A Due Process Clause~~

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APPELLATE COURTS DEFER TO TRIAL JUDGES' REMOVALS FOR CAUSE

1412

UNIVERSITY OF ILLINOIS LAW REVIEW

[Vol. 2018

The statutes and judicial opinions dealing with for-cause removals share two important features. First, the standards defer to trial judges. Appellate courts apply an “abuse of discretion” standard to these questions and rarely overturn the trial judge’s decision to grant or deny a party’s request to remove a juror for cause.⁶ Second, the law of for-cause removal of jurors looks to one trial at a time. Any challenge to the judge’s decision begins with a review of the court transcript for evidence of the individual juror’s alleged bias. A comparison to some other juror in the same case might be relevant, but the judge’s habits across many cases—or the actions of the local judiciary more generally during questions of removal—do not matter for litigators. Indeed, there are no aggregate data sources that could show how often trial judges remove jurors for cause. Litigators see this issue case by case, and appellate courts normally conclude that the trial judge acted within her discretion, whatever she chose.

NCGS § 15A-1212

GROUND FOR CHALLENGE FOR CAUSE

8

- (1) Does not qualify under NCGS § 9-3
- (2) Mental or physical infirmity
- (6) Formed opinion on guilt/innocence
- (7) Presently charged with a felony
- (8) “As a matter of conscience,” unable to render a verdict
- (9) “For any other cause is unable to render a fair and impartial verdict.”

LITIGATION TOOL

THE MECHANICS

State moves for cause

1. Ask to question the juror (if yes, rehabilitation, below)

2. Ask to be heard

AND

3. Ask the court to retain the juror

4. Take a moment to form your objection

REHABILITATE

Different perspectives and opinions are a normal, welcome part of the process.

Walk the juror toward questions about the verdict being fair and impartial. Step by step. Be patient.

Script: *Knowing that it's individual citizens like you that make the jury system work, could you listen to the evidence in this case? Could you determine what the facts are based on what you see and hear? Could you listen to the judge explain the law? Could you deliberate with other jurors? And, if or when you and your other jurors reach a verdict, would your participation in with your jurors render that verdict unfair or unjust?*

The SCT on the role of the jury:

• "The diverse and representative character of the jury must be maintained 'partly as an assurance of diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.'" Justice Kennedy in *J.E.B. v. Alabama*, 511 U.S. 127, 134 (1994).

• "[T]he jury is a necessary check on governmental power." *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 860 (2017).

SYSTEM-SKEPTICAL JUROR

Law

Carolina Beach Chief of Detectives, Lt. Goodson, was properly retained on the jury where the Lt. said he:

- "attach(ed) a great deal of credibility to law enforcement officers"
- Felt "a closeness to law enforcement officers" in his "bones"
- Would "be more inclined to assign more credibility to the officer over . . . the civilian"

State v. Cummings, 361 N.C. 438, 453-56 (2007)

Argument

The State's cause challenge is properly denied even where:

- A juror is skeptical of the credibility of law enforcement officers

- A juror feels aligned with racial justice issues including BLM and criminal legal reform
- A juror is more inclined to assign credibility to a civilian over an officer.

DISTRACTED-BY-CIRCUMSTANCE JUROR

Law

Juror seated despite repeatedly voicing concerns that finances would be on his mind such that it would interfere with his ability to pay attention, to take his time, and to listen to the evidence.

State v. Reed, 355 N.C. 150, 151-60 (2002)

Argument

Juror who repeatedly expresses concerns about circumstances (finances, job, caretaking, etc.) is still qualified where the juror can follow the law, listen to the evidence, and be fair to both sides.

HONEST-ABOUT-BIAS JUROR

Law

Two jurors (a police officer and a relative of an ADA) were retained where both:

- Could not positively rule out having a pro-prosecution bias, but
- Ultimately "indicated that [they] would render a fair and impartial decision."

Because:
The jurors' responses "represent nothing more than total honesty and their import is characteristic of any prospective juror whose individual biases are not instantly shed upon being summoned for jury duty."

State v. Whitfield, 310 N.C. 608, 612 (1984)

Argument

Whitfield directs that a juror who has expressed a bias or preference, but ultimately indicates they can participate in coming to a fair and impartial verdict, should be seated.

- Research indicates jurors' self-assessment of their biases is unrelated to jurors' ability to determine facts and "largely independent of their final verdict preferences."

Thomas Ward Frampton, For Cause: Rethinking Racial Exclusion and the American Jury, 118 Mich. L. Rev. 785, 831 (2020).

JUROR WHO KNOWS THE CASE, CLIENT, OR PLACE

Law

State v. Grooms: Juror knew victim and attended a pretrial protest of delay in bringing case to trial. 353 N.C. 50, 69 (2000)

State v. Lasiter: Juror had "several personal and social" ties to LEOs and courthouse personnel, her husband was a bailiff, and she knew the ADA trying the case. 361 N.C. 299, 301-05 (2007)

State v. Hunt: Juror/officer knew the testifying officers and had heard the defendant's case discussed by other

Argument

Juror who knows your client and expresses concern about the prosecution of the case should be allowed to serve.

- Juror who knows anyone associated with the client or the defense should be allowed to serve.

Juror who knows testifying witnesses and has heard others discussing the case should be allowed to serve.

PRESERVE

Always condition your acceptance of the jury:

"The defense is satisfied but for our continued objection to the challenge for cause of juror [name]."

RENDER A FAIR AND IMPARTIAL VERDICT

- It is ok for the juror to have biases!
 - “The operative question is not whether the prospective juror is biased but whether that bias is surmountable with discernment and obedience to the law . . .” *State v. Smith*, 352 N.C. 531, 545 (2000)
- The standard is not “can you be fair and impartial?”
- Be prepared to educate the judge on the case law.



CASE LAW TRANSLATOR*

Case law
protecting
the right of a
juror with
pro-state bias



Protect the
right of the
juror with a
[insert state's
complaint] bias

*Credit to Elizabeth Gerber of the Mecklenburg County Defender's Office

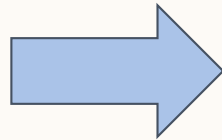
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So long as the juror will participate in reaching a fair and impartial verdict by listening to the evidence in *this* case and apply the law in *this* case.

HONEST-TO-A-FAULT JUROR

Law

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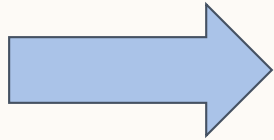
Q. Do you think it [would] impair your ability to listen to the evidence in the case [fairly]?

A. Yes, I do.

Q. You do?

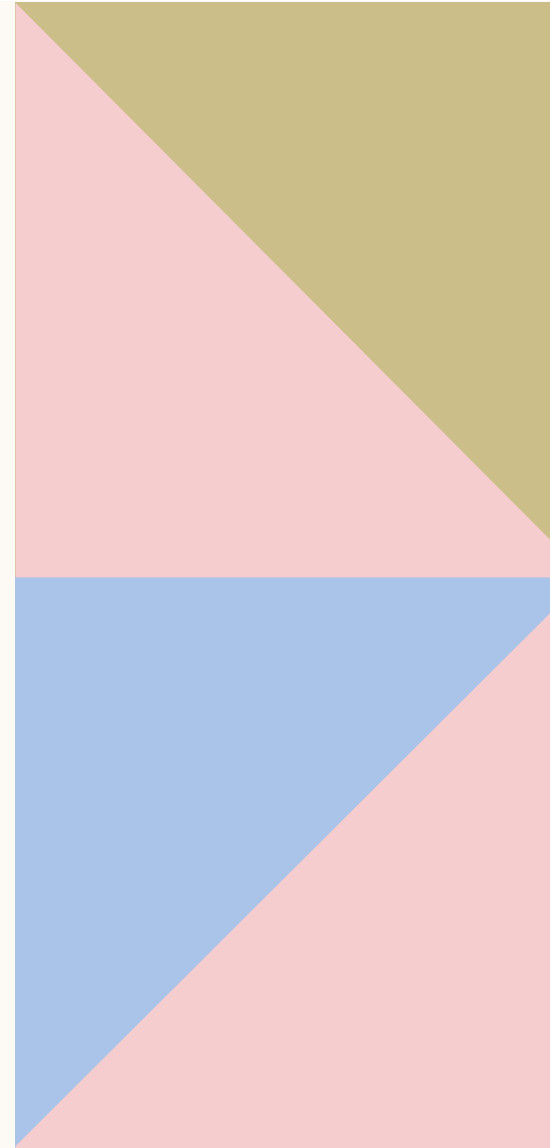
A. Yes.

***State v. Reed, 355 N.C. 150, 151-60
(2002)***



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REHABILITATION

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- Tell the juror about SCT language about the role of the jury:
 - “The diverse and representative character of the jury must be maintained ‘partly as an assurance of diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.’” Justice Kennedy in *J.E.B. v. Alabama*, 511 U.S. 127, 134 (1994).
 - “[T]he jury is a necessary check on governmental power.” *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 860 (2017).
- Tell the juror having different perspectives and opinions is ok!
 - We all come with biases and perspectives. Our differences and perspectives make the jury system function.
- Walk the juror toward questions about the verdict being fair and impartial. Step by step. Be patient.
 - Ex: Knowing that it’s individual citizens like you that make the jury system work, could you listen to the evidence in this case? Could you determine what the facts are based on what you see and hear? Could you listen to the judge explain the law? Could you deliberate with other jurors? And, if or when you and your other jurors reach a verdict, would your participation in with your jurors render that verdict unfair or unjust?

HOW TO OBJECT

- Use your quick guide!
- State the legal basis
- Translate the case law
- Point out any other relevant unfairness you see

PRESERVATION

- Mechanics are on the quick guide
- Focus on the impact at your trial
 - Possible to win the issue
 - Stem unfair actions of opposing counsel/judge
 - Ripple effects

FINAL TIPS & TAKEAWAYS

- Expand the notion of who is a qualified juror
- If you see unfairness, say something
 - Disparate questioning
 - Different degree of vigor
 - Structural issues - childcare, low juror pay
- Consider:
 - A pretrial motion alerting the court to the data/issue
 - Bring copies of the case law and Frampton article



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