# Bias in the Jury Box: The Sociological Determinants of Jury Selection for Capital Cases in North Carolina

By

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**Abstract**

An evaluation of four Wake County capital cases from 2014-2018 reveals the disparate effects that the jury selection process had on Black and female potential jurors and especially on Black female potential jurors. The requirement that capital jurors be willing and able to sentence death systematically excluded Blacks and females, with Black females excused for this reason at a rate over three times higher than White males. Black potential jurors not struck for death qualification were disproportionately excluded by prosecutorial peremptory strikes at a rate nearly two times greater than Whites. Questions about negative experiences with law enforcement also reduced the diversity of seated juries. Final analyses conclude that Black females had significantly lower probabilities of being seated on account of their racial and gender identity. This research highlights how the jury selection process produces White male-dominant juries that undermine defendants' Sixth Amendment right to a jury of their peers.

Keywords: Criminal justice, jury selection, death qualification, peremptory strikes, racial bias

## I. INTRODUCTION

The United States is one of the only democratic states that maintains capital punishment as codified law. This practice has fluctuated throughout American history, with historically high execution rates contrasted by modern-day lows. Capital punishment has been on the books since the country's founding and its constitutionality remained unquestioned until the Supreme Court case of *Furman v. Georgia* (1972), which concluded that the practice was "arbitrary and capricious" in part because of overreaching juror discretion that allowed extralegal factors to influence weighty decisions of life and death (Sites, 2006, p. 966). Consequently, the Court implemented a nationwide moratorium. States that intended to maintain their capital punishment statutes had to refine their procedures to protect against the vulnerabilities to bias that had concerned the Supreme Court's majority (Sites, 2006, p. 967). States scrambled to redefine their death sentencing parameters and established distinct statutes for capital cases in order to comply with the idea that sentencing death is different from other criminal punishments. However, throughout this wave of reforms that marked the onset of the modern era of the death penalty, states ignored the possibility that arbitrary and capricious influences in death sentencing may not be concentrated in the procedures a jury uses to sentence death, but rather in the procedures used to hand-pick jury members.

## II. RESEARCH QUESTIONS

Though the Sixth Amendment of the United States Constitution guarantees an impartial jury of one's peers to criminal defendants, the modern-day process of jury selection has been criticized for contributing to a lack of representation in the jury box (Semel et al., 2020, p. 3-4). This is especially true for capital cases, where jury selection is defined by the procedural requirement that jurors be "death qualified," or that they be admittingly willing and able to

sentence death (Butler and Moran, 2007, p. 58). Death qualification acts as a stringent parameter for those who can and cannot be selected for a jury, excluding individuals who have religious or personal hesitations to impose death. Requiring that jurors hold similar opinions about the death penalty to sit trial defines the jury pool by a parameter that may be intrinsically related to other sociological factors, such as race, gender, religion, age, etc., which may perpetuate the very biases the Supreme Court has been concerned about. Nonetheless, jury selection has been overlooked by the Supreme Court as a foundational explanation for partiality in death penalty application in the U.S. To determine if this nuance of the capital jury selection process is burdening the diversification of jury members, I evaluate whether death qualification systematically excludes potential jurors of a specific race and/or gender.

The process of jury selection also has a long history of racialized effects perpetuated by prosecutorial strategies. This history begins with the original interpretation of the Sixth Amendment, which promised only a jury of White peers, given that many states prevented the service of Black jurors (Semel et al., 2020, p. 36). It was not until the 1879 ruling of *Strauder v. West Virginia* that the Supreme Court found these provisions unconstitutional, stating that Blacks must be allowed to participate as jurors in order to fulfill the Sixth Amendment's promise (Semel et al. 2020, p. 2). Prosecutors and local officials abided by this ruling on its face while continuing to ensure the exclusion of Black potential jurors through discriminatory tests requiring that individuals meet arbitrary standards of moral character or intelligence to be jury-eligible (Semel et al., 2020, p. 2). Though the Supreme Court has since ruled that race cannot be a determining factor for selecting jurors, the racialized manipulation of the jury selection process has become ingrained in case procedures (Semel et al., 2020, p. 36).

To determine whether modern-day jury selection practices are continuing to infringe upon the constitutional rights of capital defendants, I study the extent to which jury selection processes contribute to the disproportionate exclusion of potential jurors by race and gender. In particular, I evaluate the effects of death qualification on the final racial and gender composition of capital juries. I also evaluate whether the prosecution uses its limited number of peremptory strikes—or rejections from sitting on the jury—to disproportionately remove jurors of a particular race. Finally, I analyze whether the incorporation of inquiries about an individual's experiences with law enforcement or the criminal justice system as standardized practice in jury selection leads to the systematic exclusion of Black jurors. Given data constraints, I narrow the scope of this project to North Carolina capital cases from 2014-2018.

## III. LITERATURE REVIEW

Social science research has examined biases in jury selection using a variety of methods, though the bulk of the literature has produced results through experiments. I evaluate these results in order to situate my study among existing theories about whether jury selection practices contribute to jury bleaching, or the process of making a jury more White. I start by explaining the procedural intricacies of jury selection for capital cases in North Carolina, as well as a history of Supreme Court decisions that have outlined the purpose and permissibility of death qualification. I then move to discuss my first area of interest, death qualification, and its impact on the final composition of the jury. To address other biases that have infiltrated the jury selection process, I introduce the breadth of legal history that outlines a prosecutor's ability to strike potential jurors from the venire, or the jury. I situate this history within a discussion of the literature that has identified the racialized impacts of prosecutorial peremptory strikes. I end this section by evaluating how inquiries during jury selection of an individual's law enforcement

and/or criminal justice experiences may be intrinsically linked to an individual's race. Although this aspect of jury selection has yet to be studied in a formal capacity, I rely on related literature to lay the theoretical groundwork for my study.

### *A. Jury Selection: The Procedural Rules*

During jury selection, the State and the defense are presented with two options for striking potential jurors: they may employ a for cause exclusion, arguing that an individual is not legally qualified to serve on the jury, or they may use peremptory strikes to strike potential jurors for any reason, so long as these are not motivated by the individual's race, gender, or ethnicity (Semel et al., 2020, p. 1). For cause excusals are unlimited and are used against individuals who demonstrate an inability to comply with or fulfill the legal duties of a juror. These types of excusals are used in capital trials against individuals who are not death qualified because they are unable to comply with the legal duty to sentence death even when the circumstances of the case warrant that punishment. They are also used to eliminate individuals who express biases against the State or the defense, or the criminal justice system in general, if it appears these opinions may significantly influence their conduct as jurors.

Peremptory strikes, on the other hand, are limited by state statutes and are not associated with an explicit reason for their usage. In North Carolina, both the State and the defense are allotted 14 peremptory strikes, with extras provided for each alternate juror, amounting to three extra strikes for capital cases (North Carolina Code § 15A‑1217). Peremptory strikes are free to be used as broadly as the prosecution or defense prefer, so long as neither side implicates race or gender in their decision to strike a juror. However, both sides are excused from providing any justification when a peremptory strike is used, unless the use of a strike is explicitly questioned in court. Peremptory strikes were adopted to ensure that all jurors are equipped to sit trial.

However, social science research has since evaluated whether in practice they do more harm than good.

*B. The Effects of Death Qualifying a Jury*

Death qualification was first questioned in the 1985 Supreme Court case *Wainwright v. Witt*, in which defendant Johnny Paul Witt argued that because the prosecutor weeded out potential jurors based on their opinions of the death penalty, his jury was hand-picked with the intent to sentence death (Butler and Moran, 2002, p. 176). The Supreme Court ruled against Witt, with the Court's majority arguing that the process of death qualification actually restrains the bias of venirepersons by preventing those who would never be able to sentence death—even if doing so would be justified given a state's criminal statutes—from sitting on the jury (Butler and Moran, 2002, p. 176). The Court also added that this logic can be applied in the reverse, such that potential jurors who express an affinity for sentencing death can be excluded from jury service because these individuals may be biased to sentence death even when doing so would not be proportional or in accordance with state statutes (Butler and Moran, 2002, p. 176). Despite the implementation of this safeguard, studies show that strong death penalty supporters are more likely to be deemed "fit to serve" than death penalty opponents because the strength of their opinions is less evident in questioning during jury selection than anti-death penalty sentiments (Sandys and Trahan, 2008, p. 394).

Death qualification jurisprudence has continued to reaffirm that this procedure in capital trials is impartial, constitutional, and necessary (*Lockhardt v. McCree 1986*) (Wasleff, 1986, p. 1075). Even though the Court's logic in reaffirming death qualification has been explained by a desire to restrain bias in capital cases, studies show that death qualification *creates* a bias in those selected for jury service that is rooted in the differences in the demographics of those in support

of the death penalty (Lynch and Haney, 2018, p. 150). Though death qualification is not necessarily tantamount to a person's death penalty opinions, given that an individual may support the death penalty and refuse to personally impose it, the two are highly related.

Death penalty opinions of Americans are systematically differentiated by several demographic and sociological characteristics. Surveys indicate that Blacks, women, young liberal individuals, and those of certain religious denominations are more inclined to oppose the death penalty (Godcharles et al., 2018, p. 17). In turn, research has bridged the gap between death penalty opinions and death qualification by evaluating whether those more likely to be in opposition to the practice are also more likely to be struck from capital case trials. For the purposes of my study, I am most interested in studying the effects of death qualification by race and gender because these characteristics significantly differentiate death penalty opinions. It is unclear how the bias introduced by eliminating death qualification and allowing jurors with mixed death penalty opinions would compare to the current bias of requiring favorable death penalty opinions, and whether one proves more or less threatening to the constitutional rights of criminal defendants. Nonetheless, continued research is necessary to parse the disparate effects of death qualification on the composition of a jury and to understand whether a process meant to eliminate bias is in fact doing just the opposite.

*a. Racial Effects*

Death qualifying a jury complicates the ability to compose a jury of one's peers because of the systematic differences in how Americans of different races feel about the death penalty. *Taylor v. Louisiana* (1975) ruled that a jury pool cannot be defined in a manner that results in the exclusion of people from "distinctive groups in the community" (Grosso and O'Brien, 2012, p. 1534). There is room to question whether the death qualification process abides by this guideline,

given that it may systematically redefine the jury pool based on how opinions of the death penalty are dispersed within a community. There is a clear and consistent racial gap in support for the death penalty, such that the mean difference in favorable opinions of the death penalty between Whites and Blacks is 20% (Godcharles et al., 2018, p. 19). A 2019 North Carolina public opinion poll shows that when asked to choose an appropriate punishment for first-degree murder, 30% of White respondents opted for the death penalty, compared to only 11% of Blacks (Public Policy Polling, 2019). These differences in death penalty support have the potential for disparate effects during jury selection. A survey conducted by Lynch and Haney of a jury-eligible subject pool in California determined that over half of Black respondents were deemed excludable by death qualification, compared to only 30% of Whites (2018, p. 165). A survey conducted by Summers and colleagues of 994 jury-eligible Nebraskans found similar results, with Blacks failing to meet death qualification at a rate two times higher than Whites, demonstrating how death qualification can contribute to the underrepresentation of Black jurors and may decrease their presence in the deliberation room (2010, p. 3229).

*b. Gender Effects*

Death qualification also has disparate impacts on the genders that comprise a jury, as there exists a relatively stable 12% mean difference in death penalty support between men and women that contributes to women being less likely to be death qualified than men (Godcharles et al., 2018, p. 19). A 2019 North Carolina public opinion poll showed congruence with these results, wherein 33% of males preferred the death penalty as a punishment for first-degree murder, compared to only 19% of females (Public Policy Polling, 2019). In the Lynch and Haney study, of those who would be excluded from the jury pool, 62% of women would be excluded for failing to be death qualified, compared to only 53% of men (2018, p. 165). The Summers and

colleagues study affirms these results, demonstrating consistency in the trends of gender-based exclusion due to death qualification (2010, p. 3229). Though I use the results of these studies to inform my research, rather than engineering a survey sampling jury-eligible individuals, I evaluate the actual jury pools summoned for a series of capital cases to determine the rate at which the death qualification process excluded Black potential jurors compared to Whites and female potential jurors compared to males.

### *C. Death Qualification and Death Sentencing*

The racial and gender gaps in death penalty favorability create a jury pool that is demographically distinct: death-qualified jurors are more likely to be White, male, conservative, and middle-class (Butler, 2007, p. 858). Studies show that death qualification not only determines the sociological characteristics of who sits on the jury, but it also influences the perspectives in the deliberation room. This effect would be irrelevant if the formative beliefs of death-qualified individuals–who are majority White males–had little to no influence on deliberations, but that is not the case (Butler, 2007, p. 857-8). However, in a survey of 212 venirepersons from the 12th judicial district in Florida, Butler found that death-qualified individuals were more likely to exhibit sentiments of homophobia, modern racism, and modern sexism than non-death-qualified individuals (Butler, 2007, p. 862-4). These prejudicial opinions could weigh on jury deliberations and prevent jurors' ability to uphold their promise of impartiality. Even more concerning, the perspectives of death-qualified individuals may hold disparate consequences for minority or female defendants facing death, an evident threat of arbitrary and capricious bias in death sentencing (Butler, 2007, p. 858).

Apart from increased prejudice in the jury box, death qualification also differentiates the lens with which evidence presented throughout a capital trial is evaluated by jurors. In a study by

Thompson and colleagues, a jury-eligible subject pool watched footage of conflicting testimony by a prosecution witness and a defense witness. Death-qualified individuals were significantly more likely to favor the prosecution than were non-death-qualified individuals, suggesting that those sitting on capital juries may be predisposed to aligning with evidence presented by the State, which could impact the likelihood of both a conviction and of a death sentence (1984, p. 67).

Importantly, existing literature goes beyond establishing a link between death-qualified individuals and their proclivity to hold biased opinions that *could* influence the decision to sentence death. Studies also demonstrate how death qualification directly impacts an individual's evaluations of the procedures used to determine a death sentence. For most death penalty practitioner states, including North Carolina, aggravating and mitigating circumstances define these procedures (Butler and Moran, 2007, p. 65). With this system, a death sentence is warranted if the aggravating factors, or the aspects of the crime that emphasize the offender's culpability, outweigh the mitigating factors, or the personal and situational circumstances considered to offer grace to offenders. Butler and Moran show that death-qualified individuals from a pool of 450 people called for jury duty in Florida provided higher endorsements for aggravating factors, and lower endorsements for mitigating factors when presented with facts from a hypothetical capital case (Butler and Moran, 2007, p. 65). These findings coincide with those in a study by Godcharles and colleagues, who noted lower levels of empathy of death-qualified individuals (2018, p. 28). These dispositions during deliberations could result in the imposition of a death sentence even in a case where the mitigating factors render such an extreme punishment disproportionate to the circumstances of the crime. Though studying the effect of death qualification on death sentencing is beyond the scope of my study, discussing this

research contextualizes the significance of my findings about the effects of death qualification on jury composition.

### *D. Other Biases in Jury Selection*

In recent years, the use of peremptory strikes by the State and the defense have been named a potential source of bias that depletes diversity in the jury box, much like death qualification. Presumably, these strikes are to be used against a select number of individuals that either the State or the defense think represent a potential for bias and are not fit to serve, though they may be qualified to do so given legal parameters. However, because these strikes generally do not require on-the-record justifications, it is difficult for courtroom officials to parse whether they are used with discriminatory intent.

It was not until the 1986 *Batson v. Kentucky* case that the Supreme Court evaluated whether prosecutors could use an individual's race as a justification for peremptorily striking them from the venire (Semel et al., 2020, p. 7). The Court ruled that this practice was in violation of the Equal Protection Clause and required that any strike by either the State or the defense be based solely on race-neutral and gender-neutral reasons—or reasons that are unrelated to one's race and/or gender (Semel et al., 2020, p. 7). In other words, striking potential jurors on the basis of race and/or gender was deemed discriminatory and unconstitutional.

Beyond this constitutional restriction, the use of peremptory strikes can be as arbitrary as calling into question the personal characteristics of a potential juror, making someone's marital status, employment history, or favorite pastimes valid reasons to prevent them from fulfilling their civic duty of sitting on trial (Semel et al. 2020, p. 17). Both the State and the defense can present *Batson* challenges against strikes that appear to have been motivated by race, which is the only instance in which either side is required to provide an explanation for their use of a

strike. However, the Court's outlined evidentiary framework requires that *Batson* claims prove purposeful discrimination in the use of a peremptory strike. This is a difficult standard to satisfy, which has resulted in very few successful *Batson* challenges, despite trends of racialized jury selection supported by existing literature (Baldus et al., 2012, p. 1465). Thus, research evaluating biases in peremptory strikes adds to the discussion of whether the parameters for successful *Batson* challenges are too narrowly defined, or if the permissibility of peremptory strikes is too broad by allowing any race-neutral justifications that could simply disguise racialized motives.

When for cause strikes during the death qualification process do not sufficiently cleanse the jury pool of those who pose a threat to the success of the State, prosecutors can rely on their peremptory strikes to ensure that those who sit on their capital cases are more likely than not to secure a death sentence. This effectively translates to using these strikes against Black potential jurors, who pose the biggest threat to prosecutorial success on account of their death penalty opinions and empathetic viewpoints that favor the presentation of mitigating factors (Godcharles et al., 2018, p. 28). Thus, the State's determination to secure a pro-prosecution jury is evidently linked to race, as studies have confirmed how prosecutorial peremptory strikes create racialized effects on the demographics of the venire, furthering the effects of death qualification.

One method used in literature to evaluate biases operating behind the use of prosecutorial peremptory strikes is experimental mock jury selection. Michael Norton and Samuel Sommers used a focus group of college students, law students, and trial attorneys, providing all three groups pertinent evidence for a hypothetical case involving a Black defendant (2007, p. 266-9). The participants assumed the role of the prosecutor and were tasked with using a peremptory strike for one of two potential jurors who both exhibited different characteristics that could be cause for bias: the first being a journalist with background information of the case and the second

being skeptical of forensic evidence to be presented by the State. The participants were split into two groups, one where the first juror was Black and the second was White, and another where the race of the jurors was reversed. The Black juror in both groups was struck at a higher rate than the White juror, yet when asked, participants managed to provide race-neutral logic for their decision, demonstrating that it is feasible for a prosecutor to comply with *Batson* and still pursue discriminatory practices in the courtroom (2007, p. 269-71).

I rely on the second method existing literature has utilized to demonstrate racial biases in peremptory strikes, which involves statistical analyses of juror questionnaires—questionnaires completed by individuals at the start of the jury selection process that provide basic personal information—to understand how the sociological characteristics of a venireperson impacted their chances of being struck by the State. This information about potential jurors is also gathered from responses given during voir dire, or the pre-trial process of juror examination that occurs in the courtroom, where individuals are questioned either in groups or individually by the judge, prosecution, and defense about an array of personal characteristics to determine whether they are fit to sit trial. I hope that by using this quantitative method, my research will highlight how racial discrimination in jury selection actually operates in the courtroom, rather than painting the picture of how it may occur through a hypothetical laboratory experiment.

Baldus and his colleagues pioneered this methodology by evaluating the racialized use of peremptory strikes in over 300 Philadelphia County capital cases over a 17-year period, when controlling for race-neutral characteristics about an individual that could present as reasons to strike them (2012, p. 1460-5). The study found that, on average, prosecutors peremptorily struck 51% of Black potential jurors, but only 26% of comparable non-Black potential jurors. Interestingly, defense strikes showed an opposite trend, striking only 26% of Black potential

jurors, but 54% of comparable non-Black potential jurors (2012, p. 1465). I have chosen to focus my study on the racialized effects of prosecutorial strikes because even though this study shows that the defense also uses strikes disproportionately by race, the prosecution's actions diminish the diversity of a jury pool and undermine the promise to deliver a jury of one's peers. I also intend to mirror the methodology of this study by controlling for race-neutral sociological characteristics in my analyses, to determine whether disparate results in peremptory strikes are indicative of racialized motives.

Existing literature shows that even beyond Philadelphia County, racialized rates of peremptory strikes persist. Grosso and O'Brien examined whether race influenced prosecutorial peremptory strikes in the jury selection proceedings of each death row inmate in 2010, representing more than half of the counties in North Carolina over a 25-year period. The results showed Black potential jurors were struck at a rate 2.5 times higher than their non-Black counterparts, when controlling for relevant sociological characteristics (2012, p. 1552-3). This study acts as the baseline for mine because it informs the context of jury selection in North Carolina. However, my study analyzes peremptory strike rates in North Carolina for a shorter time period and within just one county. My research aims to demonstrate the extent that the racialized trends identified by Grosso and O'Brien persist within the scope of my study.

*E. Race-Neutral Questioning During Voir Dire*

Though death qualification and peremptory strikes are the most acknowledged pathways to the prejudicial exclusion of potential jurors in social science research, there exist more discreet methods adopted by prosecutors that may produce the same results. Though it is difficult to delineate whether any of these practices are rooted in efforts of purposeful discrimination, research has informed how tactics pursued by prosecutors at each stage of the jury selection

process ultimately result in a whitewashing of the jury effect, or the process of making a seated jury more White. Whether intentional or not, this effect is consequential for the representativeness of the jury, and, in turn, the perspectives present in the deliberation room.

For the prosecution, reasons to strike jurors for cause or peremptorily may be rooted in personal characteristics that signal bias against the State. To pinpoint these biases, jury questionnaires and voir dires involve extensive and intrusive questions about an individual's personal and family history. I am most interested in understanding if and how questions that present as race-neutral may actually be intrinsically related to race. Specifically, in recent decades, judges and prosecutors have begun to ask potential jurors during voir dire about their experiences with law enforcement and the criminal justice system in general. This method has been incorporated to exclude those who express explicit bias against the State. Since the prosecution often relies on law enforcement as key witnesses, a prosecutor may deduce that an individual that has attested to a negative encounter with an officer would be unable to remain impartial toward these testimonies. Though studies in this field are limited, Norton and colleagues demonstrate through a mock trial experiment that prosecutors choose jurors that will be favorable to their case, or those who are most likely to secure a guilty conviction and a death sentence, which affirms their likelihood to exclude individuals that may express potential biases against the State (Norton et al., 2007, p. 473). Though the defense uses similar tactics by excluding individuals who present biases against them or their defendant, studies affirm that their actions do not compromise the representative nature of the jury pool, which is why the defense's practices are not the subject of my study (Baldus et al., 2012, p. 1465).

On its face, striking a potential juror because of law enforcement attitudes does not implicate race, making it a valid reason to utilize a for cause or peremptory strike. However,

because there is a stark racial differentiation in who is most likely to answer yes to the question of negative police or criminal justice experiences, inquiring on this subject mirrors the racialized effect of death qualification (Voigt et al., 2017, p. 3). In 2017, 60% of Black Americans indicated that they or their family had experienced unfair treatment by the police, a phenomenon that is less common among White Americans (Neel, 2017). In North Carolina, this trend is exemplified by research showing that Black drivers pulled over due to a seat belt violation are 200% more likely to be searched by police than White drivers stopped for the same reason (Baumgartner et al., 2017, p. 113). In nearly every other type of routine traffic stop, Blacks were more likely to be searched and/or arrested than Whites, an effect that has only increased over time (Baumgartner et al., 2017, p. 107). Thus, it is not unsurprising that this suspicion of Black Americans by the police has caused racial differences in opinions about law enforcement, with surveys noting that 74% of White Americans gave "warm ratings" to officers, compared to only 30% of Black Americans (Fingerhut, 2017).

This distinction in favorability of law enforcement may further the racial gap instigated by death qualification and peremptory strikes, such that this "race-neutral" line of questioning could provide the prosecution with another opportunity to exclude Blacks from the jury box. As discussed, the problem with removing Black jurors goes beyond undermining the promise of a jury of one's peers by also potentially influencing the outcome of a capital case. Because studies show that, on average, Blacks are more accepting of mitigating factors than Whites, their perspectives can balance or counteract the more prejudicial perspectives of death-qualified White male jurors, which would be crucial for impartial deliberations (Butler, 2007, p. 862-4). However, this display of empathy toward the defendant undermines the prospects for

prosecutorial success, which is why bleaching the jury through questions of past law enforcement and criminal justice experiences is to the prosecution's benefit.

## IV. HYPOTHESES AND THEORY

Given the conclusions in relevant literature, there are several ways in which the jury selection process is vulnerable to racial biases that impact the final composition of the jury. My theory is that the jury selection process was designed to allow both the prosecution and the defense to excuse potential jurors who may compromise the impartiality of the jury. However, in practice, the exclusionary procedures of jury selection are subject to race and gender effects. I expect that these effects will align with the prosecution's motive to secure a jury that is more likely to favor their side by convicting and sentencing death. In other words, the prosecution will utilize these exclusionary practices by race and gender to ensure a pro-prosecution jury. A pro-prosecution jury is one that has more favorable opinions of the death penalty and is more likely to favor the State's presentation of evidence, which literature suggests are qualities more commonly held by White men (Godcharles et al., 2018, p. 28; Butler, 2007, p. 858). Thus, I expect the identity-based effects of jury selection will influence who is eventually seated on a jury, benefitting the presence of White males on capital juries while significantly threatening the presence of Blacks and females. My theory suggests that within the scope of my study, the exclusionary practices of jury selection will differentiate removals of potential jurors by sociological characteristics, namely race and gender, to ensure that the final seated juries align with the State's pro-prosecution ideal.

For the purposes of my study, I evaluate how the processes of death qualification, peremptory strikes, and questions about criminal justice experiences all aid in securing a pro-prosecution jury through disparate racialized and gendered effects on final jury pools. I

expect that the requirement to death qualify a capital jury will systematically exclude jurors in accordance with current trends of public opinions on the death penalty. My hypotheses for the death qualification effect are as follows:

H1: Black potential jurors will hold more negative opinions of the death penalty than their White counterparts, which will contribute to higher excusal rates due to death qualification rates for Black potential jurors compared to Whites.

H2: Female potential jurors will hold more negative opinions of the death penalty than their male counterparts, which will contribute to higher excusal rates due to death qualification rates for female potential jurors compared to males.

The theory motivating these hypotheses is rooted in the public opinion gap between Whites and Blacks and men and women in support of the death penalty (Godcharles et al., 2018, p. 17). Because the jury pool should operate as a representative sample of the community, these public opinion trends should persist for potential jurors, which would cause the disproportionate exclusion of Black and female jurors on the basis of not being death qualified.

I expect that even beyond the effects of death qualification, prosecutors will continue to narrow potential jurors based on race by finding other ways to exclude Black individuals, as supported by consistent findings in literature. I expect to find the following:

H3: Black potential jurors will have a disproportionately higher share of their total share of the jury pool struck by the State than Whites. When controlling for what that is known about a potential juror (their sociological characteristics and potential for biases), Black potential jurors will still have a higher likelihood of being struck by the State than their White counterparts.

Apart from death qualification and racialized peremptory strikes, there exist other processes of jury selection that also impact who is selected to sit trial. The judge, prosecution, and defense ask pointed questions during voir dire and analyze responses for signs of potential bias. This strategy becomes problematic when it simultaneously undermines the constitutional promise of a representative jury. To test if this is the case, I evaluate whether standardized questioning by the judge and the prosecution of potential jurors' experiences with law enforcement and the criminal justice system contributes to the systematic exclusion of Black potential jurors. I expect the following:

> H4: When asked about experiences with law enforcement and the criminal justice system during voir dire, a disproportionately higher share of Black potential jurors will recall a negative encounter on behalf of themselves or their friends and family compared to the share of White potential jurors who do so. This disproportionate racial difference in negative experiences will contribute to higher excusal rates due to this bias for Black potential jurors compared to Whites.

This hypothesis hinges on literature confirming that Black individuals have more negative experiences with law enforcement than do Whites (Voigt et al., 2017, p. 1; Baumgartner et al., 2017, p. 113). They may in turn be more likely to reference these experiences upon questioning during voir dire, which prosecutors can then use as demonstration of bias against the State, since the State is aligned with law enforcement. This provides an outlet to present a for cause motion against individuals who admit an inability to be impartial to the State or to law enforcement. For those who can still comply with the law despite their negative experiences, the State still has a seemingly race-neutral reason to strike these jurors, thus complying with

constitutional mandates, albeit still ensuring that there is a racialized effect on the composition of the jury, such that it remains as White and as likely to sentence death as possible.

I expect that as a result of death qualification, peremptory strikes, and questions about criminal justice experiences, the prosecution will secure final juries that do not reflect the shares of race and gender in the original jury pool and thus cannot truly be considered juries of one's peers. The final juries will reflect the race and gender effects of these three components of the jury selection process such that:

> H5: The final seated juries will be White male-dominant, overrepresenting the share of White males in the original jury pool and underrepresenting the share of Blacks and females.

If my hypotheses prove true, then these unassuming strategies of jury selection could be responsible for pro-prosecution biases in the jury box, potentially pointing to a source of arbitrary and capricious influence on death penalty application, which would be grounds for constitutional consideration based on past Supreme Court decisions. However, support for my hypotheses would most strongly suggest that the capital jury selection process systematically excludes individuals with specific sociological characteristics, calling into question whether the constitutional right to a representative jury is truly being upheld in capital trials.

## V. DATA COLLECTION

To conduct my analyses, I used jury selection data from the jury pools of the four capital case trials in Wake County, North Carolina between 2014-2018: *Devega v. State of North Carolina* (2014), *Smith v. State of North Carolina* (2016), *Holden v. State of North Carolina* (2017), and *Richardson v. State of North Carolina* (2018). The data I retrieved was publicly available via the Wake County clerk of court.

Wake County is a demographically diverse, heavily populated urban county, meaning the four jury pools should represent that diversity. If I had selected a more rural county as a data source, I may have evaluated jury pools that were disproportionately composed of a specific race that were not comparable to state-wide demographics, which justifies the selection of Wake County. Though courtroom practices for capital jury selection are somewhat standardized across North Carolina's prosecutorial districts, I cannot infer that my results apply to other geographical contexts given that different counties have different prosecutors that may abide by individualized strategies for jury selection. Thus, I am bound by my case selection, which limits the generalizability of my results.

The jury pools of the four capital cases are defined by statutory procedures that outline how residents of North Carolina are randomly summoned to jury duty, as well as the requirements for being jury-eligible. In North Carolina, juror summons are created from the source list of registered voters (ROV) and licensed drivers registered with the Department of Motor Vehicles (DMV). Those who are unregistered or unlicensed are automatically excluded from the population that is used to draw jury pool samples. Studies show that this basis for exclusion disproportionately affects Black and transient individuals (Semel et al., 2020, p. 4). For this reason, the jury pools of the four capital cases may not accurately or wholly represent the demographic diversity in Wake County. The jury pool is further narrowed by the jury-eligible qualifications enumerated by the state: jurors must be U.S. citizens, 18 years or older, a resident of the county in which they were summoned, able to speak English, and had their civil rights restored if previously convicted of a felony. These parameters define the individuals in the jury pools of all four capital cases included in my analysis.

The jury selection data includes juror questionnaires completed by all venirepersons who responded to their jury summons by appearing in court, as well as a clerk report for each capital case that records whether individuals summoned for that case were subsequently seated on the jury or excused from the jury. If an individual was excused, the type of strike is listed in the report: defense peremptory strike, State peremptory strike, defense for cause motion, State for cause motion, Court strike—wherein the judge presiding over the case finds cause that an individual is unfit to sit trial—or hardship—wherein an individual was unable to sit trial because of personal conflicts, such as work or childcare. I also created a variable to note the explicit reason or reasons why each individual across the four jury pools was struck. This data is recorded during the voir dire for each type of excusal except for State and defense peremptory strikes, which do not require explanations. This variable was used to track how many individuals were explicitly struck for death qualification or criminal justice biases (see Appendix 1).

There are 86 observations in my data that did not complete juror questionnaires because, even though they responded to their summons and appeared in court, they were granted hardship at the start of the jury selection process and were subsequently excused before the questionnaire or voir dire process commenced. This leaves a total of 465 individuals who were summoned, appeared in court, and completed the initial juror questionnaire. This questionnaire is quasi-standardized, with only the Devega case using a different questionnaire than what was used for the other three cases. However, the questions included in the Devega questionnaire are identical to those of the other questionnaires apart from the inclusion of one additional question: "What are your views on the death penalty?" Potential jurors summoned in the Devega case were given the liberty to hand-write their responses and be as succinct or expansive as they pleased.

Even though this question was not included in the questionnaire used for the other three capital cases, the judges presiding over these cases asked the same question of potential jurors during voir dire, and both the State and the defense followed up with each individual's response. Thus, I used the voir dire to collect death qualification data for the venirepersons of all four capital cases. Even though I had this information for the Devega case via the questionnaire, it was helpful to also code the in-court verbal response, as some individuals altered the strength of their opinions after having had time to reflect on them. However, some individuals who completed a questionnaire did not undergo the voir dire process. The court clerks randomly selected individuals from the jury pools to return for this phase of questioning for each case. This randomized process excludes individuals from voir dire because some of those selected are excused for hardship at the beginning of the process, do not appear, or are sent home once the jury has been selected and there is no longer a need to continue questioning other individuals. This means for the Smith, Holden, and Richardson cases I only collected data about death penalty opinions for individuals who made it to the voir dire stage.

Despite the death penalty opinion differentiation, all four questionnaires include the same inquiries: name, age, race, sex; marital status; employment status, spouse's employment status, children's employment status; highest level of education completed; whether or not an individual has ever served on a jury or been a witness or defendant in a criminal case; whether or not an individual been a victim of a crime or been convicted of a felony, or knows of anyone that has; whether or not an individual is a member of a church; whether or not an individual has close friends or family employed in law enforcement; what magazines/newspapers/or television shows an individual reads or watches. I converted this qualitative data for all 463 observations who completed a questionnaire into quantitative binary and categorical variables that are compiled in

a master dataset. The codebook is attached as an appendix to this paper for a complete and accurate list of included variables (see Appendix 1).

I created a categorical variable to represent responses to questions of an individual's death penalty opinions, which were used by the State and the defense to gauge death qualification. I applied this coding schema to the written responses of potential jurors in the Devega case, as well as the oral responses of potential jurors who reached the voir dire stage from the Devega, Smith, Holden, and Richardson cases. This variable is recorded as follows:

1: The respondent expresses an absolute inability to sentence death under any condition.

2: The respondent expresses a disinclination to sentence death, though acknowledges caveats to when and why they would choose to do so.

3: The respondent expresses an undecided or neutral perspective toward sentencing death.

4: The respondent expresses an inclination to sentence death, though acknowledges caveats to when and why they would choose not to do so.

5: The respondent expresses an absolute inclination to sentence death in all cases where the death penalty is an available punishment.

Because both the written and oral responses to the question of death qualification were incredibly varied, it was important that I created a measure that simplified and grouped these responses, while still capturing the nuances in individual opinions. For instance, many respondents expressed a hesitation to sentence death due to normative views but admitted that in exceptional cases a crime might warrant a death sentence. These individuals were coded in the second category. Another large sect of respondents expressed an ability to sentence death, but only when doing so would be proportional to the crime in question. These individuals were coded in the fourth category. Individuals who were coded as a 5 believed that the death penalty

should be applied in all first-degree murder cases–as this is the only offense that is death-eligible in the state.

The juror questionnaires do not ask potential jurors to elaborate on their experiences with law enforcement beyond asking if they have any personal connections to those employed in law enforcement. To test my hypothesis H5, I collected this data from the voir dires. I am missing this data for individuals who did not reach the voir dire stage, which restricts the sample size of my analyses. Along with the questionnaires and clerk reports, I obtained the complete transcripts of the voir dires of all four capital cases captured in my analysis, which totaled to more than 16,000 pages of transcription. Collecting data on responses to inquiries of law enforcement experiences required carefully reading through these transcripts to pinpoint when each individual was asked this question. I then recorded each individual's response as a categorical variable that defined the past criminal justice experience, along with a binary yes/no variable noting whether an individual recalled an adverse experience with law enforcement, the DA's office, or the criminal justice system in general (see Appendix 1).

Besides the discussion of criminal justice experiences, the voir dire also provided insight on other areas of interest for both the State and the defense. The voir dire is an extension of the questionnaires, giving the State and the defense an opportunity to ask potential jurors to elaborate on certain questionnaire responses. By reading through the voir dire, I identified and coded additional variables not included in the questionnaires that were potentially relevant to whether a juror was excused or seated. This included information about whether an individual knew anyone from the State team or the defense team, knew the victim, the defendant, or their families, or knew anyone on the witness list for either side, among other things. These additional variables capture potential reasons to excuse a juror and coding these variables allowed me to

include them as controls in the models I used to test each of my hypotheses. These variables and their coding schema are noted in Appendix 1.

In order to accurately and efficiently record relevant information from all four capital case voir dires as quantitative data, I applied for and received funding from Honors Carolina to employ four undergraduate students to assist in the process. I trained these students on how to interpret responses in the voir dire and how to appropriately code them in accordance with the codebook (see Appendix 1). Though training these students and providing stringent protocols for measurement was one method to ensure reliability, I also conducted random tests of interrater reliability throughout the data collection stage. This involved randomly choosing a handful of data entries completed by Student A to be re-done by Student B. Without Student B seeing how Student A coded these entries, I requested that Student B complete the same set of entries in order to ensure that the data was being recorded identically between students.

The work completed by all four undergraduate students accounts for nearly 26% of the observations, or potential jurors, in the dataset. The information compiled for all other observations was a result of my own coding. Each observation coded by a student on the team was not included into the master dataset without my review. When coding death qualification responses or other data relevant to my analyses, students noted the page numbers of the voir dire documents that they used to justify their coding decisions. This made it such that when reviewing students' work, I was able to quickly refer to the point in the voir dire document that each potential juror was asked about death qualification, for example. I then used this information to decide whether the response a juror gave during voir dire aligned with the coding inputted by the student. This process detected and prevented human error, as well as instances where students may have interpreted a potential jurors' response in a way that biased their categorization or

coding, though an exact record of how often coding errors were made on final coding submissions by students was not kept. Despite these preventative measures, I acknowledge that the results of my analyses could have been threatened by human error in the data collection process. Though I reviewed the data for each observation in my dataset, I cannot confirm that there are no misalignments with the coding schema.

## VI. METHODOLOGY

To evaluate my hypotheses H1 and H2, I first analyze the share of death penalty opinions by race and then by gender to determine whether Blacks and females are in fact less likely to favor the death penalty than their White and male counterparts. I utilize a multivariate regression to test how an individual's sociological characteristics, including race and gender, are associated with their score on the death qualification scale I devised. Then, I compare the rate of excusals for death qualification for Black potential jurors compared to White, as well as for females compared to males. This is how I determine whether there was a statistically significant difference in death qualification excusals by race or by gender. I also discuss whether individuals who are not being excused on account of their negative death penalty opinions are still being excused through other avenues with relation to their negative views. I then complete these analyses for a combination of both race and gender.

My hypotheses H3 and H4 are concerned with how other jury selection methods reinforce the hypothesized racialized and gendered impacts of death qualification. For H3, I emulate methodology by Baldus et al., which evaluates the statistical significance of racial disparities in prosecutorial peremptory strikes, as well as the persistence of these disparities after the introduction of controls from the questionnaire data (Baldus et al., 2012, p. 1465). To do so, I first evaluate the distribution of State strikes by race and gender. I then use a series of logistic

regression models to analyze the relationship between an individual's race and gender and their likelihood of being struck by the prosecution, when controlling for other relevant information that could influence the State's decision to strike a juror. By controlling for what is known about potential jurors, I can uncover the extent to which the use of prosecutorial peremptory strikes is systematically differentiated by race. I compare this analysis to the use of defense strikes by race and gender.

To test my hypothesis H4, I first evaluate whether individuals who recalled negative criminal justice experiences during voir dire on behalf of themselves or their close friends and family are significantly differentiated by race. I also evaluate how excusals on account of negative criminal justice experiences are distributed by race alone and race and gender together. Then, I discuss the outcomes of individuals who noted negative experiences with the criminal justice system but were not excused on account of these experiences to determine how influential this line of questioning is to the final compositions of the jury pools.

The analysis of my hypothesis H5 includes several logistic regression models displaying the relationship between race and gender and one's likelihood of being seated, when holding constant what is known about a potential juror that could also impact their odds of being seated on a jury. I display a series of figures representing differences in the predicted probability of being seated by race and gender when holding constant what is known about a potential juror that could also impact their odds of being seated on a jury. These analyses reveal whether race and gender alone are the explicit targets of exclusion from the jury pool, putting into perspective whether even in the absence of death qualification, State strikes, and questions about criminal justice experiences there would still be racialized and gendered effects on final jury compositions.

## VII. RESULTS

Before discussing the results of my analyses, I present summary statistics about my observations. Across all the capital cases evaluated, 551 individuals were summoned, replied to their summons, and were assigned to either the Devega, Smith, Holden, or Richardson trial. All of these observations are captured in my dataset, but those who did not reach the questionnaire or voir dire stage are missing critical data. Though all 551 observations note gender, only 490 observations have race data. Because race is critical to my analyses, observations missing race data are excluded from all analyses. Of the 490 observations that identify race, only 338 reached the voir dire. The rest were either excused for hardship or because they were unneeded if the jury had already been seated. Although 338 individuals reached voir dire, some were excused before answering questions about death qualification or adverse criminal justice experiences, which further limits my sample size for analyses including these variables. I recognize that these sample size restrictions could hinder the significance of my results.

**Table 1: Distribution of Race of All Potential Jurors**

| Juror Race | White | Black | Other | Total |
|---|---|---|---|---|
| **N** | 356 | 86 | 48 | 490 |
| **%** | 72.65% | 17.55% | 9.80% | 100.00% |

Table 1 shows the race distribution of the 490 observations in my dataset, with 72.65% White potential jurors, 17.55% Black, and 9.80% who identified as another race. The small sample size for individuals of other races across all four jury pools is important to note, as it suggests that analyses of this population may not be statistically significant. Table 1 reflects the race distribution of Wake County residents captured in the 2020 U.S. Census, wherein 58.76% of residents identified as White and no other ethnicity, 18.46% identified as Black, and 22.1% residents identified as another race (U.S. Census Bureau, 2020). Whites are a slightly greater

proportion of the jury pools compared to their share of the Wake County population recorded in the 2020 U.S. Census. This is expected given the fact that Blacks are less likely to be summoned to jury duty due to how the summons are compiled (Semel et al., 2020, p. 4).

Table 2 shows the distribution of gender for all observations that had race recorded. The distribution shows that 45.92% of the jury pools defined by these parameters were females compared to 54.08% males. Table 3 combines information from Tables 1 and 2 to show the distribution of both race and gender in the jury pool, with White men comprising the largest share.

**Table 2: Distribution of Gender of All Potential Jurors**

| Juror Gender | Female | Male | Total |
|---|---|---|---|
| **N** | 225 | 265 | 490 |
| **%** | 45.92% | 54.08% | 100.00% |

**Table 3: Distribution of Race and Gender of All Potential Jurors**

| Juror Race and Gender | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **N** | 196 | 160 | 43 | 43 | 26 | 22 | 490 |
| **%** | 40.00% | 32.65% | 8.78% | 8.78% | 5.31% | 4.49% | 100.00% |

To have a sense for the most common types of excusals for all observations across the jury pools, Table 4 shows the frequency usage of different methods of juror eliminations. Hardships were the leading cause for excusal. Many of the observations excused for hardship did not reach the questionnaire or the voir dire stage, so they comprise the majority of the missing data. The next highest frequency of eliminations derives from State motions, which nearly quadruples the amount of defense motions. This is because the voir dire process is conducted such that the State is the first to question each potential juror, since they have the burden of

proof. Before the defense is able to question a juror, the State has already had the opportunity to either make a motion for cause if the individual is unfit to sit trial, use a peremptory strike, or approve a potential juror to be seated. This table shows how the State's advantage during voir dire significantly influences who is excused from the jury before the defense has a say.

**Table 4: Distribution of Outcomes for All Potential Jurors**

| Outcome | N | % |
|---|---|---|
| **Hardship** | 118 | 24.08% |
| **Court Strike** | 63 | 12.86% |
| **State Motion** | 91 | 18.57% |
| **State Strike** | 47 | 9.59% |
| **Defense Motion** | 26 | 5.31% |
| **Defense Strike** | 52 | 10.61% |
| **Seated** | 59 | 12.04% |
| **Unneeded** | 34 | 6.94% |
| **Total** | 490 | 100.00% |

Table 5 represents the percent of individuals by both race and gender across all four jury pools who were either seated or excused. Excusals include all outcomes listed in Table 4 that are not "Seated." The statistical significance indicates that there is a meaningful relationship between a juror's race and gender and whether they are seated on the jury. This offers initial support for my theory that the jury selection process is subject to racial and gender effects that influence the final composition of the jury. Black females, females of other races, and males of other races were the least represented in the final juries across all four capital cases. Because the largest share of seated jurors were White males, there is also initial support for my expectation that White male jurors are seated at a rate that overrepresents their original share of the jury

pools. Nonetheless, Table 5 does not confirm whether the three jury selection processes I have identified (death qualification, peremptory strikes, and questions about criminal justice experiences) are contributing to the racial and gender composition of the final jury pools. Thus, to further gauge support for my hypotheses and understand jury selection significantly differentiates seated juries by sociological characteristics like race and gender, I begin by evaluating the extent to which death qualification led to the disproportionate excusal of Black jurors compared to White jurors.

**Table 5: Distribution of Excused Versus Seated Jurors by Race and Gender**

| | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **Not Seated on Jury** | 163 (83.16%) | 143 (89.38%) | 36 (83.72%) | 42 (97.67%) | 25 (96.15%) | 22 (100.00%) | 431 (87.96%) |
| **Seated on Jury** | 33 (16.84%) | 17 (10.62%) | 7 (16.28%) | 1 (2.33%) | 1 (3.85%) | 0 (0.00%) | 59 (12.04%) |
| **Total** | 196 (100.00%) | 160 (100.00%) | 43 (100.00%) | 43 (100.00%) | 26 (100.00%) | 22 (100.00%) | 490 (100.00%) |
| $\boldsymbol{p = 0.017}^{**}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | | | | |

*a. The Racialized Effect of Death Qualification*

An understanding of the distribution of race, gender, types of eliminations, and eliminations by race and gender is essential to contextualize the test of my first hypothesis regarding the differential impact of death qualification by race. To conduct my analysis, I first evaluated the distribution of death penalty opinions for those who made it to the voir dire, were asked this question, and had race recorded. Questions about death penalty opinions would not have been asked if a potential juror was struck early in the voir dire process for a different reason. Given these restrictions, the sample size for my analyses of death penalty opinions is 304, which is slightly over half of the total 551 individuals summoned to jury duty.

As previously discussed, a 1 on the death qualification scale was recorded for potential jurors who were always opposed to the death penalty, a 2 was recorded for those who were almost always opposed, a 3 was recorded for those who had neutral views, a 4 was recorded for those who were almost always in favor of the death penalty, and a 5 was recorded for those who were always in favor (see Appendix 1). The majority of respondents across all capital cases were on the 4-5 end of the scale, indicating relative or full support for the imposition of the death penalty, respectively (see Table 6). Nonetheless, there is still a significant amount of observations who did not support the death penalty under any circumstance, or who only supported the death penalty in the most extreme cases, scoring a 1 or a 2 respectively. I hypothesized that observations on the 1-2 end of the scale would disproportionately represent Black respondents, which would call for the excusal of Black potential jurors due to death qualification at a higher rate than Whites.

**Table 6: The Distribution of Death Penalty Opinions***

| Death Qualification Scale | N | % |
|---|---|---|
| **1 Always Opposed** | 64 | 21.05% |
| **2** | 64 | 21.05% |
| **3 Neutral** | 2 | 0.66% |
| **4** | 147 | 48.36% |
| **5 Always Favor** | 27 | 8.88% |
| **Total** | 304 | 100.00% |

***Note:** Data was obtained for individuals who had race and death penalty opinions data.

Table 7 shows the distribution of death penalty opinions by race, (significant at $p < 0.00$). Over 60% of White jurors expressed either conditional or full-fledged support for the death penalty, scoring either a 4 or a 5, respectively, whereas over 60% of Black jurors were either

entirely opposed or almost always opposed to the death penalty, scoring a 1 or a 2, respectively. This differentiation in death penalty opinions by race offers initial support for my hypothesis H1.

**Table 7: The Distribution of Death Penalty Opinions by Race***

| Death Qualification Scale | White | Black | Other Races | Total |
|---|---|---|---|---|
| **1 Always Opposed** | 38 (17.04%) | 20 (35.71%) | 6 (24.00%) | 64 (21.05%) |
| **2** | 44 (19.73%) | 14 (25.00%) | 6 (24.00%) | 64 (21.05%) |
| **3 Neutral** | 0 (0.00%) | 1 (1.79%) | 1 (4.00%) | 2 (0.66%) |
| **4** | 120 (53.81%) | 20 (35.71%) | 7 (28.00%) | 147 (48.36%) |
| **5 Always Favor** | 21 (9.42%) | 1 (1.79%) | 5 (20.00%) | 27 (8.88%) |
| **Total** | 224 (100.00%) | 56 (100.00%) | 25 (100.00%) | 304 (100.00%) |
| $p = 0.001^{***}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | |

***Note:** Data was obtained for individuals who had race and death penalty opinions data.

Model 1 shows the results of several multivariate regressions testing the relationship between an individual's score on the death penalty opinion scale (1-5) and their race, where Black potential jurors and jurors of other races are compared to White potential jurors, who are the reference group. Controls include a potential juror's level of education, level of religious involvement, whether they have previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience. Controls were chosen based on their potential to influence death penalty opinions and are consistent across all models. Given that many potential jurors are missing data for information collected via the questionnaire or voir dire, I chose to be parsimonious with how many controls I included in

my models as additional controls would have further compromised the sample size and significance of my results. These controls are consistent throughout the paper.

**Model 1: Death Penalty Opinions and Race**

| | (1) Reduced Model | (2) Education | (3) Religious Involvement | (4) Prior Jury Service | (5) Law Enforcement | (6) Criminal Justice Experience |
|---|---|---|---|---|---|---|
| | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions |
| **Race (Whites are reference group)** | | | | | | |
| **Black** | -0.760*** | -0.854*** | -0.718*** | -0.717*** | -0.711*** | -0.630** |
| | (0.000) | (0.000) | (0.001) | (0.002) | (0.002) | (0.014) |
| | | | | | | |
| **Other** | -0.228 | -0.103 | -0.047 | -0.002 | 0.053 | 0.817* |
| | (0.423) | (0.722) | (0.873) | (0.995) | (0.870) | (0.051) |
| | | | | | | |
| **Level of Education** | | -.151* | -0.123 | -0.128 | -0.127 | -0.065 |
| | | (0.082) | (0.155) | (0.167) | (0.175) | (0.515) |
| | | | | | | |
| **Level of Religious Involvement** | | | -0.155*** | -0.158*** | -0.159*** | -0.105 |
| | | | (0.005) | (0.007) | (0.008) | (0.110) |
| | | | | | | |
| **Prior Jury Service** | | | | .166 | 0.168 | 0.244 |
| | | | | (0.505) | (0.503) | (0.384) |
| | | | | | | |
| **Law Enforcement** | | | | | 0.059 | -0.016 |
| | | | | | (0.735) | (0.934) |
| | | | | | | |
| **Criminal Justice Experience** | | | | | | -0.0409 |
| | | | | | | (0.155) |
| ***N*** | 304 | 297 | 291 | 265 | 264 | 198 |
| $R^2$ | 0.045 | 0.051 | 0.075 | 0.077 | 0.077 | 0.112 |

**Exponentiated coefficients; *p*-values in parentheses**

*** *p* < .10, ** *p* < .05, *** *p* < .01**

Throughout all six versions of Model 1, Black potential jurors scored significantly lower on the death penalty opinion scale compared to the average score of White potential jurors. In version 6 of Model 1, which accounts for all of the control variables, the average score on the death penalty opinion scale of Black potential jurors scored was .63 points lower than the

average for Whites. Model 1 also identifies religious involvement as a sociological characteristic that is significantly related to death penalty opinions, wherein increased involvement in religion indicates decreased favorability for the death penalty. It is important to note that given the $R^2$, the variables included in all versions of Model 1 have low explanatory power, suggesting that there are likely uncaptured variables that better explain differences in death penalty opinions. Nonetheless, the significant mean difference in the death penalty opinions between White and Black potential jurors lends initial support to my hypothesis that Black potential jurors have less favorable views about the death penalty than their White counterparts. My hypothesis suggests that because death penalty opinions are significantly related to race, there will also be a significant differentiation in death qualification excusals by race.

**Table 8: Death Qualification Excusals by Race***

| | **White** | **Black** | **Other** | **Total** |
|---|---|---|---|---|
| **Not Struck for Death Qualification** | 168 (75.34%) | 27 (48.21%) | 16 (64.00%) | 211 (69.41%) |
| **Struck for Death Qualification** | 55 (24.66%) | 29 (51.79%) | 9 (36.00%) | 93 (30.59%) |
| **Total** | 223 (100.00%) | 56 (100.00%) | 25 (100.00%) | 304 (100.00%) |
| $p = 0.000^{***}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | |

***Note:** Data was only obtained for individuals who had race and death penalty opinions data. The individuals captured in this table that were struck for death qualification were struck on account of unfavorable death penalty opinions (scoring a 1 or a 2 on the death qualification scale).

Table 8 represents the share of individuals by race who were explicitly excused due to not being able to sentence death, or not being death qualified (significant at $p < 0.00$). All individuals who scored a 1 on the death qualification scale were excused for this reason, while 45.31% of individuals who scored a 2 were excused for this reason. Individuals who scored a 2 but were not

excused for this reason expressed an ability to comply with the law, which rendered them ineligible to be excused by a for cause motion for death qualification. No observations who scored in the 3-5 range were excused because of an inability to sentence death. Overall, 30.59% of individuals who reached the voir dire stage were struck because of an expressed inability to sentence death, which demonstrates the significant role death qualification plays in whether a potential juror is seated or not. Of all the Black potential jurors who reached the voir dire stage and were asked about their death penalty opinions, 51.79% were subsequently excused because their views rendered them unable to sentence death, which is more than double the share of Whites excused for this reason (24.66%). This differentiation in death qualification excusals by race supports my hypothesis H1.

It is important to note that when conducting this analysis for each of the four capital cases in isolation, statistically significant results for the relationship between death qualification excusals and race were only present for the Holden and Smith cases (significant at $p < 0.05$). For both of these cases, the proportion of Black potential jurors who were excused on account of unfavorable views more than doubled the proportion of Whites excused for this reason. Though results for the Devega and Richardson cases were not significant, there were sizable gaps in exclusion rates for death qualification between Blacks and Whites and statistical significance could have been jeopardized by small sample sizes. Conducting this analysis on a case-by-case basis emphasizes the fact that small sample sizes could make it appear that death qualification does not result in differential impacts for Black potential jurors. However, when analyzing the results across all jury pools, the opposite is true, which is why conducting aggregate analyses proves useful in this field of research.

Potential jurors who scored a 5 on the death qualification scale could have also been deemed not death qualified due to the fact that their beliefs favored the imposition of the death penalty for all first-degree murder cases, even when North Carolina statutes would suggest that a death sentence is not a proportional punishment. Like individuals who scored a 2 on the scale, not all who scored a 5 were the automatic subject of a death qualification excusal. Instead, only individuals who expressed that they would be unable to set aside their views and follow the judge's instructions were deemed not death qualified and subsequently excused. Individuals who scored a 5 but vouched for their impartiality were not eligible for a for cause death qualification excusal.

Of the individuals who were coded as a 5 on the death qualification scale, 48.15% were subsequently excused due to their bias in favor of sentencing death that deemed them not death qualified. The majority of these excusals for death qualification were by defense motions, whereas the State only excused one potential juror for cause for this reason. This follows my theoretical reasoning that the State is not incentivized to excuse potential jurors who strongly favor the death penalty even if they outwardly admit bias because these individuals would ensure prosecutorial success at trial. Thus, it is the defense's burden to excuse these individuals.

Appendix 2 Table 1 shows the distribution of excusals on account of overly favorable views of the death penalty by race (not significant at $p < 0.10$). Of the White potential jurors, 4.93% were excused for this reason, compared to 0.00% of Black potential jurors. All other individuals who scored a 5 on the death qualification scale but were not excused for cause were peremptorily struck. The defense struck 25.93% of individuals who scored a 5, while the State only struck 3.70%, which reaffirms the State's disinclination to strike those in favor of the death penalty.

Individuals who were not excused explicitly due to death qualification could have still been disproportionately struck from the jury on the basis of death penalty opinions. This could have been the case for individuals who expressed either strong opposition or preference for the death penalty but admitted they would be able to abide by the judge's instructions, rendering them ineligible for excusal for cause. In these instances, my theory would suggest that the State would have been incentivized to excuse potential jurors who hold unfavorable opinions of the death penalty because these individuals could hinder the State's ability to secure a death sentence at trial. Given that my results have confirmed the relationship between death penalty opinions and race, the State's decision to exercise peremptory strikes on this basis would further the exclusion of Black jurors that is already being promulgated through death qualification.

To analyze the extent to which death penalty opinions related to excusals made not explicitly on the basis of death qualification, I evaluated the use of State strikes by death qualification scores. The analysis revealed that half of the State strikes used against Black potential jurors were against those who scored a 2 on the death qualification scale. The majority of State strikes used against White potential jurors were against those who scored a 4 on the death qualification scale, which could be due to the fact that significantly more Whites scored 4s than 2s. This differentiation in State strikes by race and death penalty opinions is not statistically significant, which could be a result of the small sample size ($n = 46$). It is important to note that the use of State strikes in these instances could have been accounted for by other unevaluated differences between potential jurors, besides their race and death penalty opinions, that may also influence the prosecution's decision to strike an individual. Thus, these insignificant differences in State strikes by race and death penalty opinions could be the result of other uncaptured variables. For these reasons, I cannot confirm support for the claim that the State uses its strikes

disproportionately against those who score lower on the death qualification scale or that they target Black potential jurors in doing so.

Conducting the same analyses for defense strikes showed that the defense did not use any strikes against Black potential jurors or potential jurors of other races who scored a 2 or 3 on the death qualifications scale. This is because all the Black individuals who expressed unfavorable views toward the death penalty–scoring either a 1, 2, or a 3–were excused by either the State or the Court before the defense had the opportunity to commence its portion of the voir dire. This trend across all four capital cases suggests that because the jury selection process gives the State the advantage to start the voir dire process, they have higher odds of ensuring a pro-prosecution jury by denying all Black potential jurors with even slightly unfavorable views toward the death penalty.

In line with my theory about State strategies during jury selection, I would expect that the defense would use its strikes against individuals with more favorable views of the death penalty to decrease the odds that a death sentence is imposed at trial. Of all the White potential jurors struck by the defense, 12.77% scored a 5 on the death qualification scale and 78.72% scored a 4. Given that the majority of White potential jurors scored within the 4-5 range, this distribution of defense strikes is not unsurprising. This differentiation in defense strikes by race and death penalty opinions is not statistically significant and, as previously mentioned, could simply be the result of other unaccounted for differences between potential jurors that influenced the defense's decision to use a peremptory strike ($n = 52$).

My analyses do not confirm a significant difference in State or defense peremptory strikes by race and death penalty opinions, meaning it is unclear whether those not excused for death qualification are still targeted on account of their opinions of the death penalty and with

relation to their race. Because peremptory strikes do not require an on-the-record explanation unless a *Batson* challenge is made, it remains unclear whether a potential juror's death penalty opinions played a role in either the State or the defense's decision to strike them. However, it is evident that death penalty opinions as well as motions made for cause against non-death-qualified individuals are significantly differentiated by race, supporting my hypothesis H1 and suggesting that the death qualification process is inherently tied to identity-based characteristics. The relationship between race, death penalty opinions, and juror outcomes are analyzed further in later sections of this paper.

*b. The Gendered Effect of Death Qualification*

**Table 9: The Distribution of Death Penalty Opinions by Gender***

| Death Qualification Scale | Female | Male | Total |
|---|---|---|---|
| **1 Always Opposed** | 33 (24.63%) | 31 (18.24%) | 64 (21.05%) |
| **2** | 32 (23.88%) | 32 (18.82%) | 64 (21.05%) |
| **3 Neutral** | 0 (0.00%) | 2 (1.18%) | 2 (0.66%) |
| **4** | 58 (43.28%) | 89 (52.35%) | 147 (48.36%) |
| **5 Always Favor** | 11 (8.21%) | 16 (9.41%) | 27 (8.88%) |
| **Total** | 134 (100.00%) | 170 (100.00%) | 304 (100.00%) |
| ***p* = 0.254** $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.00$ | | | |

***Note:** Data was obtained for individuals who had race and death penalty opinions data.

My hypothesis H2 expects that females will have more negative opinions of the death penalty than males, which will result in their disproportionate exclusion due to death

qualification. Table 9 shows the distribution of death penalty opinions by gender for individuals who were asked about their death penalty opinions and had race data. The majority of both men and women scored on the 4-5 end of the scale. However, 48.51% of females scored on the 1-2 end of the scale, compared to 37.06% of males. Nonetheless, the difference in the distribution of death penalty opinions by gender is not statistically significant. Therefore, I cannot support the claim that the distribution of death penalty opinions across all four jury pools was significantly differentiated by gender.

Model 2 shows the results of a multivariate regression analyzing the relationship between an individual's score on the death penalty opinion scale (1-5) and their gender, when controlling for a potential juror's level of education, level of religious involvement, whether they have previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience. In all six versions of Model 2, the average death penalty opinion score for female potential jurors was significantly lower than the average for males, with females scoring about .34 points lower on average than males on the five-point scale in version 6 of Model 2. As in Model 1, which evaluated this relationship for race, higher levels of religious involvement were significantly associated with less favorable death penalty opinions.

The results of Models 1 and 2 confirm that average scores on the death penalty opinion scale are significantly different between White and Black potential jurors and female and male potential jurors. Thus, while the distribution of death penalty opinions was not significantly different between men and women (see Table 9), Model 2 suggests that average opinions of the death penalty do significantly differ by gender, which offers initial support for my hypothesis H2.

**Model 2: Death Penalty Opinions and Gender**

| | (1) Reduced Model | (2) Education | (3) Religious Involvement | (4) Prior Jury Service | (5) Law Enforcement | (6) Criminal Justice Experience |
|---|---|---|---|---|---|---|
| | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions |
| **Gender (Males are the reference group)** | | | | | | |
| **Females** | -0.293* | -0.300* | -0.331** | -0.306* | -0.308* | -0.314* |
| | (0.065) | (0.062) | (0.039) | (0.072) | (0.073) | (0.092) |
| | | | | | | |
| **Level of Education** | | -0.041 | -0.029 | -0.030 | -0.026 | 0.032 |
| | | (0.615) | (0.725) | (0.733) | (0.763) | (0.735) |
| | | | | | | |
| **Level of Religious Involvement** | | | -0.194*** | -0.194*** | -0.195*** | -0.155** |
| | | | (0.000) | (0.001) | (0.001) | (0.017) |
| | | | | | | |
| **Prior Jury Service** | | | | 0.186 | 0.188 | 0.354 |
| | | | | (0.462) | (0.459) | (0.216) |
| | | | | | | |
| **Law Enforcement** | | | | | 0.054 | -0.130 |
| | | | | | (0.761) | (0.499) |
| | | | | | | |
| **Criminal Justice Experience** | | | | | | -.620** |
| | | | | | | (0.026) |
| ***N*** | 304 | 297 | 291 | 265 | 264 | 198 |
| $R^2$ | 0.011 | 0.012 | 0.054 | 0.054 | 0.055 | 0.074 |

**Exponentiated coefficients; *p*-values in parentheses**

*** *p* < .10, ** *p* < .05, *** *p* < .01**

Full support for my hypothesis H2 would require that differences in death penalty opinions by gender result in a greater share of females being excused on account of negative opinions of the death penalty than the share of men excused. Table 10 shows that individuals struck on account of unfavorable death penalty opinions is significantly differentiated by gender at $p < 0.00$. Of all the female potential jurors who were asked about their death penalty opinions and had race data, 38.81% were subsequently excused because their views rendered them unable to sentence death, whereas only 24.12% of male potential jurors were excused for this reason.

When analyzed on a case-by-case basis, only the Devega and Holden cases had statistically different death qualification removals by gender at $p < 0.05$. Nonetheless, the aggregate disparity across all four capital cases in death qualification removals by gender supports my hypothesis H2. It is important to note that this gap in excusals for death qualification is slimmer than the gap by race, suggesting race is more strongly related to removals for death qualification than gender.

**Table 10: Death Qualification Excusals by Gender***

| | **Female** | **Male** | **Total** |
|---|---|---|---|
| **Not Struck for Death Qualification** | 82 (61.19%) | 129 (75.88%) | 211 (69.41%) |
| **Struck for Death Qualification** | 52 (38.81%) | 41 (24.12%) | 93 (30.59%) |
| **Total** | 134 (100.00%) | 170 (100.00%) | 304 (100.00%) |
| $\boldsymbol{p = 0.006^{***}}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | |

***Note:** Data was only obtained for individuals who had race and death penalty opinions data. The individuals captured in this table that were struck for death qualification were struck on account of unfavorable death penalty opinions (scoring a 1 or a 2 on the death qualification scale).

Being that the distribution in death penalty opinions was not significantly differentiated by gender across the jury pools, this gendered difference in death qualification removals suggests female potential jurors may have been targeted for their negative death penalty opinions more so than men. This is evidenced by the fact that while the same number of men and women scored a 2 on the death qualification scale, nearly 60% of these women were excused for not being death qualified, which is nearly double the share of men scoring 2s that were deemed not death qualified. However, I cannot confirm that the death penalty opinions between men and women who scored 2s were identical. It could have been the case that women in this category expressed more unequivocal opposition than did men, which may not have been accurately captured in the

data and could explain why they were excused at a higher rate. Nonetheless, Table 10 confirms that death qualification is significantly linked to gender and aids in allowing the prosecution to keep more males than females in the jury pool. This offers additional support for my theory that the death qualification process is intrinsically linked to identity-based characteristics, which allows the prosecution to secure a pro-prosecution White male-dominant jury without sounding alarms about explicit racial or gender biases.

Appendix 2 Table 2 shows the rate of excusal of potential jurors who expressed overly favorable views of the death penalty–scoring a 5 on the death penalty opinion scale–by gender. Only 3.03% of female potential jurors were excused on account of overly favorable death penalty opinions, compared to 5.45% of male jurors, though this gap is not statistically significant. The majority of both men and women who scored a 5 on the death penalty scale were excused by the defense either for cause or peremptorily, supporting my theory that the prosecution is less inclined to excuse those who strongly favor the death penalty, given that these individuals could improve the prosecution's odds of securing a death sentence. Of the potential jurors who scored a 5 and were excused by the State either for cause or peremptorily, a greater proportion were females than males, though the difference was not statistically significant.

To understand whether individuals not excused due to death qualification were still excused with relation to both their death penalty opinions and gender, I first evaluated the use of State strikes by death penalty opinions and gender. Interestingly, the same proportion of male and female potential jurors who scored a 2 on the death qualification scale were struck by the State. Although these results are not statistically significant, ($n$ = 46), I expected a greater share of women to have been struck by the State on account of less favorable views of the death penalty than men. Of all women struck by the defense, 13.64% scored a 2 on the death qualification

scale, compared to 3.33% of men. These results were also not statistically significant ($n = 52$). These insignificant difference in strikes by death penalty opinions and gender could be the result of other uncaptured differences between these individuals.

Though I expected peremptory strikes to be differentiated by death penalty opinions and gender, wherein the State would disproportionately exclude females with negative opinions compared to men with similar opinions, there is not sufficient evidence to confirm that claim. While it is unclear how death penalty opinions influence peremptory strikes by race or gender, the analyses of my hypotheses H1 and H2 confirm that negative death penalty opinions differentiate for cause exclusions by these identity-based characteristics.

*c. The Effect of Death Qualification by Race and Gender*

**Table 11: The Distribution of Death Penalty Opinions by Race and Gender***

| | **Juror Race and Gender** | | | | | | |
|---|---|---|---|---|---|---|---|
| **Death Qualification Scale** | **White Male** | **White Female** | **Black Male** | **Black Female** | **Other Male** | **Other Female** | **Total** |
| **1 Always Opposed** | 16 (12.80%) | 22 (22.45%) | 12 (38.71%) | 8 (32.00%) | 3 (21.43%) | 3 (27.27%) | 64 (21.05%) |
| **2** | 20 (16.00%) | 24 (24.49%) | 7 (22.58%) | 7 (28.00%) | 5 (35.71%) | 1 (9.09%) | 64 (21.05%) |
| **3 Neutral** | 0 (0.00%) | 0 (0.00%) | 1 (3.23%) | 0 (0.00%) | 1 (7.14%) | 0 (0.00%) | 2 (0.66%) |
| **4** | 75 (60.00%) | 45 (45.92%) | 11 (35.48%) | 9 (36.00%) | 3 (21.43%) | 4 (36.36%) | 147 (48.36%) |
| **5 Always Favor** | 14 (11.20%) | 7 (7.14%) | 0 (0.00%) | 1 (4.00%) | 2 (14.29%) | 3 (27.27%) | 27 (8.88%) |
| **Total** | 125 (100.00%) | 98 (100.00%) | 31 (100.00%) | 25 (100.00%) | 14 (100.00%) | 11 (100.00%) | 304 (100.00%) |
| $p = 0.001^{***}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | | | | |

***Note:** Data was obtained for individuals who had race and death penalty opinions data.

To further investigate the effect of death qualification excusals, I completed the analyses of hypotheses H1 and H2 for a combination of both race and gender. This analysis captures more nuance than that for race and gender alone and informs whether death penalty opinions and death qualification excusals are related to specific race and gender interactions (see Table 11). Table 11 shows that more than 70% of White men who reached the voir dire stage and were asked about their opinion of the death penalty expressed favorable views, scoring a 4 or a 5 on the death qualification scale. A slimmer majority of the share of White females and females of other races also scored on the favorable end of the spectrum, which calls into question the extent to which gender alone is associated with negative death penalty opinions, rather than a combination of race and gender. Over 60% of both Black females and Black males expressed views in opposition to the death penalty, scoring a 1 or a 2 on the death qualification scale.

Model 3 replicates the analyses of Models 1 and 2 for race and gender to show how different race-gender interactions score on the death penalty scale on average, compared to White men. Across all six versions of the regressions in Model 3, there were significantly lower average death penalty opinion scores for White females, Black males, and Black females, when compared to the average scores of White men. Results from individuals of other races were not consistently significant, likely because their total sample size is too small to garner significant results. Version 6 of Model 2 controls for a potential juror's level of education, level of religious involvement, whether they have previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience. In this model, the average death penalty opinion score for White females was about .50 points lower than the average score for White men. In the same model, the average death penalty opinion score for Black females was .74 points lower than the average for White men. The greatest mean

difference is between White men and Black men, as the average death penalty opinion score for Black men was about .98 points lower than the average for White men.

**Model 3: Death Penalty Opinions and Race-Gender Interactions**

| | (1) Reduced Model | (2) Education | (3) Religious Involvement | (4) Prior Jury Service | (5) Law Enforcement | (6) Criminal Justice Experience |
|---|---|---|---|---|---|---|
| | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions | Death Penalty Opinions |
| **Race and gender (White males are the reference group)** | | | | | | |
| **White Females** | -0.500*** | -0.514*** | -0.544*** | -0.509*** | -0.506** | -0.495** |
| | (0.006) | (0.005) | (0.003) | (0.009) | (0.010) | (0.021) |
| | | | | | | |
| **Black Males** | -1.053*** | -1.142*** | -1.025*** | -1.019*** | -1.017*** | -0.975*** |
| | (0.000) | (0.000) | (0.000) | (0.001) | (0.001) | (0.005) |
| | | | | | | |
| **Black Females** | -0.888*** | -1.019*** | -0.887*** | -0.881*** | -0.872*** | -0.741** |
| | (0.003) | (0.001) | (0.004) | (0.005) | (0.006) | (0.022) |
| | | | | | | |
| **Other Males** | -0.694* | -0.642* | -0.556 | -0.512 | -0.447 | 0.346 |
| | (0.067) | (0.089) | (0.151) | (0.231) | (0.321) | (0.594) |
| | | | | | | |
| **Other Females** | -0.135 | 0.121 | 0.077 | 0.083 | 0.092 | 0.779 |
| | (0.748) | (0.782) | (0.859) | (0.853) | (0.838) | (0.148) |
| | | | | | | |
| **Level of Education** | | -0.160* | -0.133 | -0.138 | -0.137 | -0.088 |
| | | (0.062) | (0.121) | (0.135) | (0.140) | (0.376) |
| | | | | | | |
| **Level of Religious Involvement** | | | -0.158*** | -0.164*** | -0.164*** | -0.114* |
| | | | (0.004) | (0.005) | (0.006) | (0.081) |
| | | | | | | |
| **Prior Jury Service** | | | | 0.149 | 0.150 | 0.199 |
| | | | | (0.550) | (0.548) | (0.481) |
| | | | | | | |
| **Law Enforcement** | | | | | 0.038 | -0.048 |
| | | | | | (0.827) | (0.801) |
| | | | | | | |
| **Criminal Justice Experience** | | | | | | -0.437 |
| | | | | | | (0.127) |
| ***N*** | 304 | 297 | 291 | 265 | 264 | 198 |
| $R^2$ | 0.073 | 0.082 | 0.108 | 0.105 | 0.104 | 0.140 |

**Exponentiated coefficients; *p*-values in parentheses**

*** *p* < .10, ** *p* < .05, *** *p* < .01**

This gap in support for the death penalty between White men and White women, White men and Black women, and White men and Black men suggests that death qualification may have a stronger effect by a combination of race and gender than my analyses of hypotheses H1 and H2 revealed. These results by race and gender also confirm that White men have a significantly higher favorability for the death penalty on average than other potential jurors, which my theory would suggest would make the prosecution more likely to seat these individuals. Later analyses regarding the final compositions of the four capital juries serve to either confirm or deny this logic.

**Table 12: Death Qualification Excusals by Race and Gender***

| | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **Not Struck for Death Qualification** | 103 (82.40%) | 65 (66.33%) | 17 (54.84%) | 10 (40.00%) | 9 (64.29%) | 7 (63.64%) | 211 (69.41%) |
| **Struck for Death Qualification** | 22 (17.60%) | 33 (33.67%) | 14 (45.16%) | 15 (60.00%) | 5 (35.71%) | 4 (36.36%) | 93 (30.59%) |
| **Total** | 125 (100.00%) | 98 (100.00%) | 31 (100.00%) | 25 (100.00%) | 14 (100.00%) | 11 (100.00%) | 304 (100.00%) |
| $p = 0.000^{***}$ <br> $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.00$ | | | | | | | |

***Note:** Data was only obtained for individuals who had race and death penalty opinions data. The individuals captured in this table that were struck for death qualification were struck on account of unfavorable death penalty opinions (scoring a 1 or a 2 on the death qualification scale).

The statistically significant results in Table 12 confirm that death qualification excusals for individuals with negative opinions of the death penalty (scoring a 1 or a 2) are not only differentiated on account of race and gender alone but are also disproportionately affected by the interaction between the two. The most prominent gap in death qualification excusals is between White males and Black females, as Black females were deemed not death qualified due to negative opinions of the death penalty at a rate over 3 times higher than the White men. Over

half of Black females who reached the voir dire stage were struck due to negative views of the death penalty, which shows the significant impact this process has on this group of potential jurors. No other race and gender combination had a majority share of their representation in the jury pools struck for death qualification.

These results expand upon my hypotheses H1 and H2 and suggest that within the scope of my analysis, the practice of death qualifying the juries systematically removed Black females and decreased their chances of being represented in the seated capital juries. Black males had the next largest share of their representation across the jury pools struck for death qualification, emphasizing the important role race plays in this trend.

*d. The Race and Gender Effect of Peremptory Strikes*

**Table 13: State Strikes by Race***

| | **White** | **Black** | **Other** | **Total** |
|---|---|---|---|---|
| **Not Struck by the State** | 327 (91.85%) | 72 (83.72%) | 44 (91.67%) | 443 (90.41%) |
| **Struck by the State** | 29 (8.15%) | 14 (16.28%) | 4 (8.33%) | 47 (9.59%) |
| **Total** | 356 (100.00%) | 64 (100.00%) | 48 (100.00%) | 490 (100.00%) |
| $\boldsymbol{p = 0.068^{*}}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | |

***Note:** Data was only obtained for individuals who had race data.

My hypothesis H3 expects the disproportionate use of prosecutorial peremptory strikes against Black potential jurors compared to the use of these strikes against White potential jurors. Table 13 shows significant results for the distribution of State peremptory strikes by race. Of all those summoned to jury duty across the four capital cases, Black potential jurors had the highest proportion of their total share across the jury pools struck by the prosecution (16.28%). The

share of Black jurors struck by the State was nearly two times greater than the share of White jurors. The share of females struck by the State was not significantly different from the share of males struck (9.51% and 7.64% respectively).

Conducting this analysis by both race and gender also did not produce significant results (see Table 14). However, White women, Black women, and women of other races had higher shares of their population struck than their male counterparts. Black females were the most heavily targeted, with 18.60% of their total share of the jury pools eventually being struck by the State, whereas only 7.14% of the total share of White men were struck by the State. These trends show that Black potential jurors, especially Black women, are peremptorily struck by the State at higher rates than Whites, especially White men. Though there are no significant results in the distribution of State strikes by gender or by race and gender, I can confirm that the State used peremptory strikes disproportionately against Black potential jurors compared to their total share of the jury pool, offering initial support for my hypothesis H3.

**Table 14: State Strikes by Race and Gender***

| | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **Not Struck by the State** | 182 (92.86%) | 145 (90.62%) | 37 (86.05%) | 35 (81.40%) | 24 (92.31%) | 20 (90.91%) | 443 (90.41%) |
| **Struck by the State** | 14 (7.14%) | 15 (9.38%) | 6 (13.95%) | 8 (18.60%) | 2 (7.69%) | 2 (9.09%) | 47 (9.59%) |
| **Total** | 196 (100.00%) | 160 (100.00%) | 31 (100.00%) | 43 (100.00%) | 26 (100.00%) | 22 (100.00%) | 490 (100.00%) |
| $p = 0.265$ <br> $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.00$ | | | | | | | |

***Note:** Data was only obtained for individuals who had race data.

## Model 4: Odds of Prosecutorial Strikes and Race-Gender Interactions

| | (1) Reduced Model | (2) Death Penalty Opinions | (3) Education | (4) Religious Involvement | (5) Prior Jury Service | (6) Law Enforcement | (7) Criminal Justice Experience |
|---|---|---|---|---|---|---|---|
| | State Strike (0,1) | State Strike (0,1) | State Strike (0,1) | State Strike (0,1) | State Strike (0,1) | State Strike (0,1) | State Strike (0,1) |
| **Race and gender (White males are the reference group)** | | | | | | | |
| **White Females** | 1.345 | 1.570 | 1.602 | 1.624 | 1.481 | 1.471 | 1.877 |
| | (0.445) | (0.287) | (0.270) | (0.259) | (0.385) | (0.395) | (0.186) |
| | | | | | | | |
| **Black Males** | 2.108 | 2.186 | 2.468 | 2.224 | 1.879 | 1.863 | 2.198 |
| | (0.152) | (0.206) | (0.170) | (0.233) | (0.379) | (0.130) | (0.304) |
| | | | | | | | |
| **Black Females** | 2.971** | 5.004*** | 5.457*** | 5.052*** | 4.982** | 4.863** | 3.804** |
| | (0.023) | (0.004) | (0.006) | (0.009) | (0.012) | (0.014) | (0.048) |
| | | | | | | | |
| **Death Penalty Opinion Scale (4 scores are the reference group)** | | | | | | | |
| **2 - Almost always opposed** | | 2.417** | 2.424** | 2.270** | 1.842 | 1.863 | 1.945 |
| | | (0.020) | (0.021) | (0.034) | (0.135) | (0.130) | (0.128) |
| | | | | | | | |
| **5 - Always in favor** | | 0.292 | 0.290 | 0.283 | 0.261 | 0.259 | 0.317 |
| | | (0.247) | (0.244) | (0.234) | (0.207) | (0.205) | (0.285) |
| | | | | | | | |
| **Level of Education** | | | 1.015 | 1.010 | 1.027 | 1.029 | 1.063 |
| | | | (0.943) | (0.518) | (0.903) | (0.896) | (0.788) |
| | | | | | | | |
| **Level of Religious Involvement** | | | | 1.086 | 1.109 | 1.113 | 1.104 |
| | | | | (0.518) | (0.437) | (0.424) | (0.490) |
| | | | | | | | |
| **Prior Jury Service** | | | | | 0.849 | 0.839 | 1.234 |
| | | | | | (0.778) | (0.762) | (0.738) |
| | | | | | | | |
| **Law Enforcement** | | | | | | 0.897 | 0.964 |
| | | | | | | (0.787) | (0.931) |
| | | | | | | | |
| **Criminal Justice Experience** | | | | | | | 1.354 |
| | | | | | | | (0.666) |
| ***N*** | 238 | 220 | 216 | 211 | 191 | 191 | 156 |
| **Pseudo $R^2$** | 0.092 | 0.095 | 0.098 | 0.097 | 0.089 | 0.089 | 0.085 |

**Exponentiated coefficients; *p*-values in parentheses**

*** $p < .10$, ** $p < .05$, *** $p < .01$**

To further analyze my hypothesis H3, I ran a series of logistic regressions evaluating the relationship between a potential juror's race and their likelihood of being struck by the State from 0 to 1, where 0 indicates an individual was not struck by the State and 1 indicates that they were (see Model 4). Version 7 of Model 4 controls for an individual's death penalty opinions, level of education, level of religious involvement, whether they have previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience, as these variables have the potential to influence the State's decision to strike an individual. Given the results of previous analyses, I chose to exclude individuals of other races from Model 4, as their small sample sizes have produced consistently insignificant results. I also chose to narrow the death penalty opinion scale such that the only categories included were 2, 4, and 5, where 4 was the reference group. This is because all individuals who scored a 1 were excused for cause, which means they perfectly predicted failure to be struck by the State in Model 4. I also excluded 3 due to insufficient data. However, it is important to note that in excluding these categories from both race and death penalty opinions, I compromised the overall sample size.

Throughout all versions of the model, Black women had significantly higher odds of getting struck by the State compared to White men. In version 7 of the logistic regression model, Black females had 280% higher odds of being struck by the State than White males, when holding the other independent variables constant. No other race and gender combination had significantly higher or lower odds of being struck by the State in any version of Model 4, which emphasizes how the use of State strikes across all jury pools targeted these potential jurors. These results support my claim that Black potential jurors are disproportionately struck by the State and suggest that this is particularly true for Black females.

Model 4 also highlights the significant role death penalty opinions played in the odds that an individual was struck by the State, even when controlling for race and gender. I chose to make a death penalty opinion score of 4 the reference category to highlight the difference in excusal rates against individuals who were almost always in favor of the death penalty, as my theory would suggest the State would opt not to strike these individuals. Given the pseudo $R^2$ calculations, the version of the model wherein the included independent variables have the most explanatory power over the variation in state strikes is version 3. In that version of the model, potential jurors who scored a 2 on the death penalty scale but were willing and able to sentence death had about 142% higher odds of being struck by the State than did potential jurors who scored a 4, which supports my theory. However, the difference in the probability of being struck between individuals who scored a 2 versus those who scored a 4 was not statistically significant as more controls were added and the sample size declined. Nonetheless, the significant results in Model 4 point to the State's strategy to strike potential jurors on the basis of race and gender as well as by negative death penalty opinions. This finding supports my hypothesis H3 and my theory that the State excludes individuals from the jury who are not pro-prosecution, which includes Black females and those with unfavorable death penalty opinions.

When conducting these analyses for each capital case individually, the results were not consistently significant on account of each additional control variable decreasing the sample size. This finding once again affirms the importance of aggregate analyses.

It is important to note that across all four cases included in my analysis, 9 *Batson* claims were made by the defense against peremptory strikes used by the State. One *Batson* claim was made against a White man, who the defense suspected was unconstitutionally struck on account of his disability. However, the other 8 claims were made against White women and Black

women. The defense argued these motions by stating that the State used peremptory strikes against Black or White female potential jurors in instances where White male jurors with similar juror profiles (death penalty opinions, employment status, etc.) were not struck by the prosecution. The *Batson* procedure called for the State to defend their use of peremptory strikes in these 9 cases with on-the-record explanations verifying that race and/or gender did not motivate their decision to strike these individuals. The justifications provided by the State to strike these jurors included: age, education, marital status, employment status, death penalty opinions, biases against law enforcement, experiences with the criminal justice system, etc. All these explanations were accepted at face-value by the presiding judges as being both race and gender-neutral, which resulted in no successful *Batson* claims. Nonetheless, my results suggest that even when controlling for reasons that might justify the State's decision to strike a juror–including some of the actual justifications the State provided during *Batson* motions–Black potential jurors and specifically Black females had significantly increased odds of being struck by the State compared to their White male counterparts. Although my results support the basis for these *Batson* claims, the procedure in place allowed the prosecution to evade consequences for the racialized and gendered effects of their peremptory strikes.

Though my hypothesis H3 is only concerned with State strikes, I conducted the same analyses for defense strikes to gauge whether the defense also utilized its strikes in a manner that had racialized effects. It is important to emphasize that by the time the defense had been able to question potential jurors during the voir dire, the State had already decided whether to make a motion for cause against a potential juror, strike them peremptorily, or accept them. Table 13 and Model 4 show that the State's stage of the voir dire resulted in the disproportionate exclusion of Black jurors. In other words, by the time the defense had to make decisions on whether to strike

a potential juror, the jury pools were already disproportionately White. At the start of the defense's stage of the voir dires, the combined jury pools consisted of 137 individuals with 86% Whites and 8% Blacks. The share of Black potential jurors at this stage was less than half of their original share of the combined jury pools. However, the share of White potential jurors at this stage had increased more than 10% from their original share of the combined jury pools, on account of the processes of death qualification and peremptory strikes that my results confirm contributed to the disparate exclusion of Black potential jurors compared to Whites.

**Table 15: Defense Strikes by Race***

| | White | Black | Other | Total |
|---|---|---|---|---|
| **Not Struck by the Defense** | 309 (86.80%) | 84 (97.67%) | 45 (93.75%) | 438 (89.39%) |
| **Struck by the Defense** | 47 (13.20%) | 2 (2.33%) | 3 (6.25%) | 52 (10.61%) |
| **Total** | 356 (100.00%) | 86 (100.00%) | 48 (100.00%) | 490 (100.00%) |
| ***p* = 0.008*** <br> * $p < 0.10$, ** $p < 0.05$, *** $p < 0.00$ | | | | |

***Note:** Data was only obtained for individuals who had race data.

Table 15 shows that Whites were disproportionately struck by the defense. However, the fact is that by the time the defense was able to make decisions about potential jurors, there was an overwhelming share of White potential jurors and few Black potential jurors. Thus, the racialized difference in defense strikes could be the result of the defense's careful decision to strike as few Black potential jurors as possible to increase their odds of being seated, rather than the result of bias against White jurors. Appendix 2 Table 3 shows the results of Table 15 by both race and gender, which is significant at $p < 0.05$. White men had the highest share of their total population struck by the defense (14.29%), compared to all other race-gender interactions.

Analyzing Model 4 for defense strikes, while maintaining the same controls, shows that no race-gender combination had significantly lower or higher odds of being struck by the defense than White males. When conducting these analyses assigning Black females as the reference group, White males did not have significantly lower or higher odds of being struck by the defense. While analyses of State peremptory strikes confirmed my hypothesis H3 in revealing a significant difference in the odds of being struck between Black females and White males, the reverse was not true for defense strikes. Thus, the exclusion of Whites, and especially of White males, by the defense is likely in response to the actions the State took to disproportionately exclude Black potential jurors from the jury pools.

*e. The Law Enforcement/Criminal Justice System Effect*

My hypothesis H4 is concerned with the effect that questions about experiences with law enforcement or the criminal justice system during voir dire have on the final composition of the jury pool. Individuals who express that themselves or their friends and family have had a negative experience with the criminal justice system that would impede upon their ability to be fair to the State can be the subject of Court strikes or for cause motions. However, some individuals who reference negative experiences may still be able to be impartial and follow the judge's instructions. These individuals would have not been the subject of a for cause motion, but they could have been excused by peremptory strikes instead. Given what is known about interactions between Black individuals and law enforcement, I hypothesized that Black potential jurors would be more likely to reference negative experiences than Whites, which would increase the share of their total population excused for this reason.

To analyze the validity of H4, I start by introducing the basic statistics related to the data collected about negative criminal justice experiences. Of the 237 individuals who were asked this

question during voir dire, only 11.81% recalled a negative experience on behalf of themselves or their friends and family. Table 16 shows the distribution of answers by race and gender, which is statistically significant at $p < 0.00$. Of all the individuals who were asked this question, the largest share of affirmative answers came from Black potential jurors, specifically Black males. Of the total share of Black males who were asked this question, 37.50% noted a negative experience with the criminal justice system, which is over 6 times greater than the share of White males who noted a negative experience. This supports my expectation that Black potential jurors would be significantly more likely to recall a negative experience with the criminal justice system.

**Table 16: Criminal Justice Experiences by Race and Gender***

| | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **No Negative Experience** | 94 (94.00%) | 71 (95.95%) | 15 (62.50%) | 16 (69.57%) | 7 (87.50%) | 6 (75.00%) | 209 (88.19%) |
| **Yes Negative Experience** | 6 (6.00%) | 3 (4.05%) | 9 (37.50%) | 7 (30.43%) | 1 (12.50%) | 2 (25.00%) | 28 (11.81%) |
| **Total** | 100 (100.00%) | 74 (100.00%) | 24 (100.00%) | 23 (100.00%) | 8 (100.00%) | 8 (100.00%) | 237 (100.00%) |
| $\boldsymbol{p = 0.000^{***}}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | | | | |

***Note:** Data was only obtained for individuals who had criminal justice experience and race data.

Of the individuals who noted a negative criminal justice experience, only about 21% were explicitly excused on account of those experiences. About 19% of the Black potential jurors who noted negative criminal justice experiences were excused for this reason, whereas about 33% of White potential jurors with negative experiences were excused for this reason. This difference is not significant and could be explained if Black individuals who noted negative

experiences were more likely to be able to comply with the law and remain impartial–preventing them from being excused for cause–than Whites with negative experiences.

**Table 17: Negative Criminal Justice Experience Excusals by Race***

| | White | Black | Other | Total |
|---|---|---|---|---|
| **Not Excused** | 172 (98.85%) | 44 (93.62%) | 15 (93.75%) | 231 (97.47%) |
| **Excused** | 2 (1.15%) | 3 (6.38%) | 1 (6.25%) | 6 (2.53%) |
| **Total** | 174 (100.00%) | 47 (100.00%) | 16 (100.00%) | 237 (100.00%) |
| ***p* = 0.079*** <br> * $p < 0.10$, ** $p < 0.05$, *** $p < 0.00$ | | | | |

***Note:** Data was only obtained for individuals who had race data.

Table 17 shows the distribution of those excused on account of negative criminal justice experiences by race for all individuals who answered questions about their experiences with law enforcement or the criminal justice system. About 6.38% of the share of Black potential jurors who were asked about their experiences with the criminal justice system were subsequently excused for cause because of these negative experiences, compared to only 1.15% of Whites (significant at $p < 0.10$). This finding supports my hypothesis H4, which expected that a disproportionate share of Black potential jurors would be excused on account of negative criminal justice experiences. Conducting this analysis by both race and gender produced no significant results. However, the largest share of juror excusals for this reason by race and gender came from Black females and females of other races. As with death qualification and State peremptory strikes, Black females are among the most affected by questions about negative criminal justice experiences.

Given that less than a quarter of the individuals who noted a negative criminal justice experience were subsequently excused for that reason, it is unclear if this line of questioning is a

leading contributor to racialized excusals from the jury pools, although I had expected it to be. Table 18 further contextualizes how negative criminal justice experiences influenced an individual's outcome in the jury pool. Of the share of individuals who noted a negative criminal justice experience, 9 times as many potential jurors were excused by the State than were excused by the defense. This disparity could be the result of the fact that the State had the chance to excuse these individuals before the defense. However, it also supports my theory that the State is inclined to excuse these individuals, either for cause or peremptorily, given that they do not align with the pro-prosecution ideal.

**Table 18: Outcomes of Individuals with Negative Criminal Justice Experiences***

| Court Strike | State Motion | State Strike | Defense Motion | Defense Strike | Seated | Total |
|---|---|---|---|---|---|---|
| 5 (17.86%) | 12 (42.86%) | 6 (20.00%) | 1 (3.57%) | 1 (3.57%) | 3 (10.71%) | 28 (100.00%) |

***Note:** Data was only obtained for individuals who had race data.

To expand upon Table 18, I conducted an analysis of all types of excusals by race for individuals who recalled a negative criminal justice experience. Of the 9 White potential jurors who had a negative experience, about 89% were removed from the jury pools–either on account of these experiences or otherwise–and 1 White male was seated. Of the 16 Black individuals who noted a negative experience, about 88% were removed from the jury pools by some means, with 1 Black male and 1 Black female eventually seated on a jury. Given that there was almost no difference in the share of Whites and Blacks with negative criminal justice experiences who were excused, I cannot conclude that of those who noted a negative criminal justice experience, significantly more Blacks were excused either for this reason or otherwise than Whites.

The analyses of my hypothesis H4 confirms that Black potential jurors were significantly more likely to report negative experiences than their White counterparts. The results also suggest

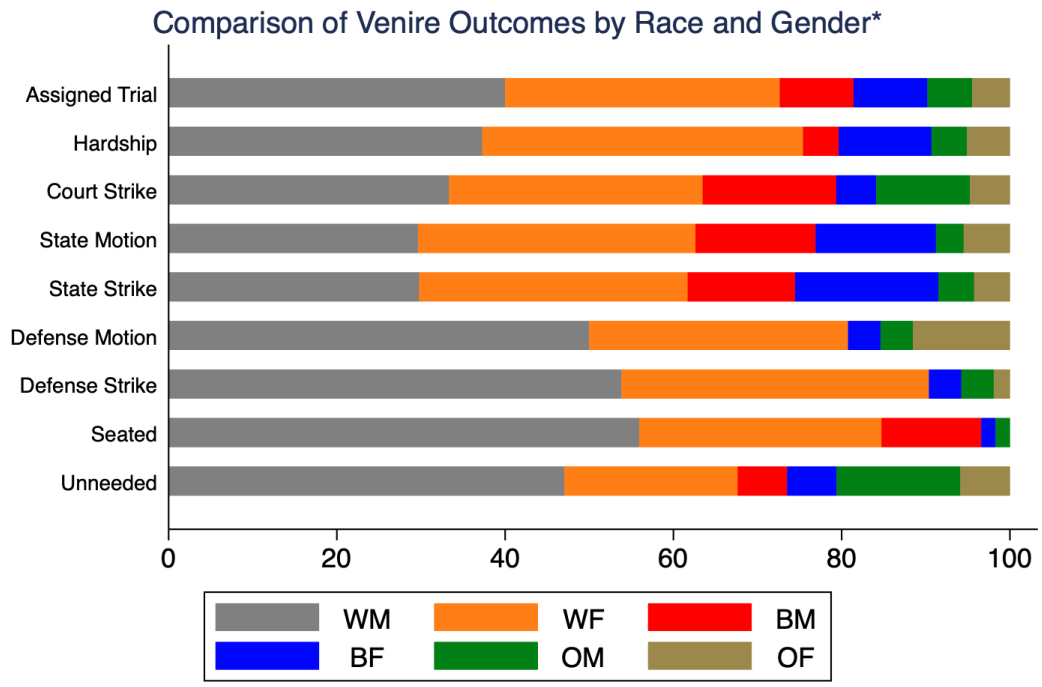
that while very few potential jurors were excused explicitly on account of these negative experiences, the excusals were significantly differentiated by race. In turn, my expectation that Black potential jurors would be more likely to note negative experiences and thus be excused on account of them is supported. However, it is still important to note that this method of excusal was not prevalent within the scope of my study. Analyses of other methods of removals from the jury for individuals who recalled negative experiences revealed the significant role of the State's actions. My theory is supported by these results, as it lends itself to the logic that the State was incentivized to excuse these individuals due to the potential for bias they presented against the prosecution's case. Nonetheless, a small number of both White and Black individuals who noted negative experiences were still seated on final juries, such that recalling a negative experience with the criminal justice system did not guarantee excusal within the scope of my study.

*f. The Outcomes of Potential Jurors by Race and Gender*

My final hypothesis H5 posited that White men would be overrepresented on seated juries compared to their original share across the jury pools because the jury selection processes of death qualification, prosecutorial peremptory strikes, and questions about criminal justice experiences would have allowed the State the opportunity to construct a pro-prosecution jury, or one that is as White and as likely to sentence death as possible. Table 5 showed that White males and Black males had the highest share of their jury pool populations seated on the juries, followed by White females, males of other races, Black females, and women of other races. Figure 1 contextualizes that data in showing the original distribution of race and gender of all individuals that were assigned to one of the four capital case trials in my study as a proportion out of 100% (labeled "Assigned Trial"). This is compared to the share of race and gender across the four seated juries (labeled "Seated"). Figure 1 also shows the proportion of race and gender

combinations excused by each type of excusal in the voir dire: hardship, Court strikes, State motion or strike, defense motion or strike, and unneeded–for surplus individuals that were not called to voir dire and were excused after the jury was seated. The y-axis is in order from top-to-bottom based on the sequential stages of the jury selection process.

**Figure 1***




*Data only obtained for individuals with race and gender data (N = 490).
WM is White Male, WF White Female, BM Black Male, BF Black Female, OM Other Male, OM Other Female.

Figure 1 confirms the significant overrepresentation of White males, whose share of the final juries was nearly 20% more than their original share across the jury pools. This is explained by the fact that the State excused small shares of White men. Even though the defense struck a greater proportion of White men than their original share on the jury pool, this did not mitigate the effect of the State's actions, resulting in the disproportionate representation of White men on the final juries. This finding lends initial support to my hypothesis H5 and to my overarching theory that the State would seat as many White males as possible, as their generally pro-death penalty and pro-prosecution beliefs provide the best odds for a conviction and a death sentence.

White females, Black females, and females of other races were all underrepresented compared to their original share across the jury pools, albeit to varying degrees. Men were seated on final juries at a rate 2 times higher than females, confirming that seated juries were male-dominant. Interestingly, Figure 1 shows that Black males were overrepresented on the final juries compared to their original share of the jury pools, which contradicts my expectations. Even though the Court and the State moved to excuse a greater proportion of Black male jurors than were originally in the jury pools, the defense did not excuse any Black males that reached their stage of the voir dires. Thus, Black males had the opportunity to sit on final juries on account of the defense's careful actions. However, the overrepresentation of Black males on seated juries does not negate my findings that death qualification, prosecutorial peremptory strikes, and questions about law enforcement and criminal justice experiences contributed to the disproportionate exclusion of Black potential jurors. Instead, it suggests that these exclusions did not significantly affect the likelihood that Black males were seated on final juries.

My results have confirmed that the sociological characteristics of race and gender are significantly linked to processes of jury selection. However, to further understand whether race and gender alone significantly affected the odds of being seated on a capital jury, I analyzed a series of logistic regression models testing the relationship between the odds of being seated on a jury from 0 to 1–where 0 indicates an individual was not seated on a jury and 1 indicates that they were–and a potential juror's race and gender, controlling for their death penalty opinions, level of education, level of religious involvement, whether they previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience (see Model 5).

## Model 5: Odds of Being Seated and Race-Gender Interactions

| | (1) Reduced Model | (2) Death Penalty Opinions | (3) Education | (4) Religious Involvement | (5) Prior Jury Service | (6) Law Enforcement | (7) Criminal Justice Experience |
|---|---|---|---|---|---|---|---|
| | Seated (0,1) | Seated (0,1) | Seated (0,1) | Seated (0,1) | Seated (0,1) | Seated (0,1) | Seated (0,1) |
| **Race and gender (White males are the reference group)** | | | | | | | |
| **White Females** | 0.587* | 0.686 | 0.682 | 0.755 | 0.856 | 0.882 | 1.041 |
| | (0.096) | (0.296) | (0.302) | (0.455) | (0.693) | (0.752) | (0.927) |
| | | | | | | | |
| **Black Males** | 0.960 | 1.433 | 1.576 | 1.571 | 1.573 | 1.572 | 1.136 |
| | (0.929) | (0.511) | (0.440) | (0.454) | (0.483) | (0.484) | (0.865) |
| | | | | | | | |
| **Black Females** | 0.118** | 0.147* | 0.151* | 0.154* | 0.155* | 0.167 | 0.142* |
| | (0.038) | (0.071) | (0.079) | (0.083) | (0.088) | (0.104) | (0.090) |
| | | | | | | | |
| **Death Penalty Opinion Scale (4 scores are the reference group)** | | | | | | | |
| **2 - Almost always opposed** | | 0.361** | 0.384** | 0.379** | 0.362** | 0.344** | 0.520 |
| | | (0.014) | (0.021) | (0.021) | (0.022) | (0.017) | (0.165) |
| | | | | | | | |
| **Level of Education** | | | 1.010 | 1.004 | 1.030 | 1.023 | 0.981 |
| | | | (0.958) | (0.985) | (0.885) | (0.910) | (0.930) |
| | | | | | | | |
| **Level of Religious Involvement** | | | | 1.051 | 1.052 | 1.037 | 0.984 |
| | | | | (0.671) | (0.684) | (0.776) | (0.909) |
| | | | | | | | |
| **Prior Jury Service** | | | | | 1.257 | 1.319 | 1.423 |
| | | | | | (0.658) | (0.595) | (0.568) |
| | | | | | | | |
| **Law Enforcement** | | | | | | 1.491 | 1.582 |
| | | | | | | (0.272) | (0.257) |
| | | | | | | | |
| **Criminal Justice Experience** | | | | | | | 1.677 |
| | | | | | | | (0.528) |
| ***N*** | 442 | 198 | 194 | 189 | 169 | 169 | 141 |
| **Pseudo $R^2$** | 0.029 | 0.063 | 0.061 | 0.061 | 0.064 | 0.070 | 0.055 |

**Exponentiated coefficients; *p*-values in parentheses**

*** $p < .10$, ** $p < .05$, *** $p < .01$**

For this series of regressions, I further narrowed the death penalty opinion scale such that the only categories included were 2 and 4, with the first being compared to the latter. This is because all individuals who scored a 1, 3, or a 5 were excused, meaning they would perfectly

predict failure to be seated in every version of Model 5. Only individuals who scored a 2 or a 4 were eventually seated on the juries, given that these were the categories that indicated an ability to sentence death within the scope of the law.

The difference in the probability of being seated between individuals who scored a 2–or were disinclined to sentence death–versus those who scored a 4–or were inclined to sentence death–on the death penalty opinion scale was nearly always significant. In version 6 of Model 5, wherein the independent variables had the highest explanatory power over variation in a potential juror's odds of being seated, individuals who scored a 2 on the death penalty opinion scale had about 66% lower odds of being seated on the jury than those who scored a 4, when controlling for other sociological characteristics relevant to jury selection, including race and gender. However, as the sample size decreased in version 7 of Model 5, there was not a significantly different relationship in the probability of being seated between individuals who scored a 2 on the death penalty opinion scale and those who scored a 4. This decrease in significance could also be due to the fact that death penalty opinion scores and whether an individual had a negative criminal justice experience are negatively correlated at $p < 0.05$.

The models that show a statistically significant difference in the odds of being seated by death penalty opinions is an important finding, given that both individuals who score a 2 and those who score a 4 are qualified by North Carolina statute to sit on capital juries, yet individuals with less favorable death penalty opinions had a lower likelihood of being chosen to do so. Thus, seated capital juries are not representing the opinions of summoned jury pools. This is further evidenced by Appendix 2 Table 4, which shows the distribution of death penalty opinions for seated jurors by race and gender. Though not significant, only 15.25% of seated jurors scored 2s on the death penalty opinion scale while all others scored 4s. The only seated jurors who scored

2s were White. All Black seated jurors scored 4s, even though this does not align with the distribution of death penalty opinions among the Black individuals summoned to jury duty (see Table 7). The lack of variation in death penalty opinions of seated jurors made it such that an overwhelming majority of those seated were in favor of the death penalty, which aligns with my theory that the prosecution would aim to seat jurors that are most likely to sentence death.

An individual's level of education, level of religious involvement, whether they previously served on a jury, whether they have friends or family in law enforcement, and whether they have had a negative criminal justice experience were not significantly associated with their likelihood of being seated on a jury. The insignificant results for the relationship between negative criminal justice experiences and the probability of being seated call into question the validity of my hypothesis H4. Upon further analysis, these two variables are not significantly negatively correlated with one another. Though my previous analyses have shown that negative criminal justice experiences and excusals for this reason are differentiated by race, it is clear that when controlling for race and gender and other sociological characteristics, negative criminal justice experiences do not significantly impact the likelihood of being seated on a jury within the scope of my study. This finding does not support my theory, as I would have expected the prosecution to systematically excuse individuals with negative experiences, since they do not comply with the ideal of a pro-prosecution jury candidate. However, these insignificant results could also be accounted for by the small sample of individuals with criminal justice experience data. Further research could increase the sample size by using data from additional capital juries to provide more insight into this relationship.

Version 1 of Model 5 shows that White females have a significantly lower likelihood of being seated than White males. However, this relationship was no longer significant after the

inclusion of death penalty opinions as a control variable. Black males did not have a significantly higher or lower likelihood of being seated compared to White males in any version of Model 5. This finding is counter to my expectations, given that my results for hypotheses H1-H4 identified racialized effects of jury selection that I theorized would result in the disproportionate exclusion of Black men from final juries. However, Figure 1 shows that Black males were actually overrepresented on seated juries, which could mean that exclusions by race were disproportionately affecting Black females compared to Black males.

The results of Model 5 show that Black females had a significantly lower probability of being seated than White males. However, results for version 6 of Model 5 were slightly above the $p < 0.10$ threshold for statistical significance. This is important to note given that this version of Model 5 included the most explanatory independent variables, and the additional control variable in version 7 of Model 5 did not contribute any new information to the model. Nonetheless, the significance consistently remains around the $p < 0.10$ threshold throughout all versions of the model, supporting the idea that Black females have disproportionately lower odds of being seated. In version 7 of Model 5, significant results show that Black females had about an 86% lower likelihood of being seated on a jury compared to White males, when controlling for other sociological characteristics.

To further understand the relationship between race and gender and being seated on a capital jury, Figures 2 through 5 represent the predicted probability of being seated for versions 1, 3, 6, and 7 of the logistic regression models displayed in Model 5, respectively, where each displayed predictive probability by race and gender accounts for the control variables included in each model. The controls hold an individual's death penalty opinions, level of education, level of religious involvement at mean value, whereas the binary control variables–whether an individual

previously served on a jury, whether they have friends or family in law enforcement, and whether they or their friends and family had a negative criminal justice experience–are held at median value. Figures 2 and 5 are included to display the differences between the reduced model and the version of the model accounting for all controls. Figure 3 is included to show the change when controls are added. Figure 4 is included because the model it represents had the highest pseudo $R^2$ value. The dotted line reflects the average probability that any individual across the four jury pools was seated on a jury, as shown in Table 5.

**Figure 2:**

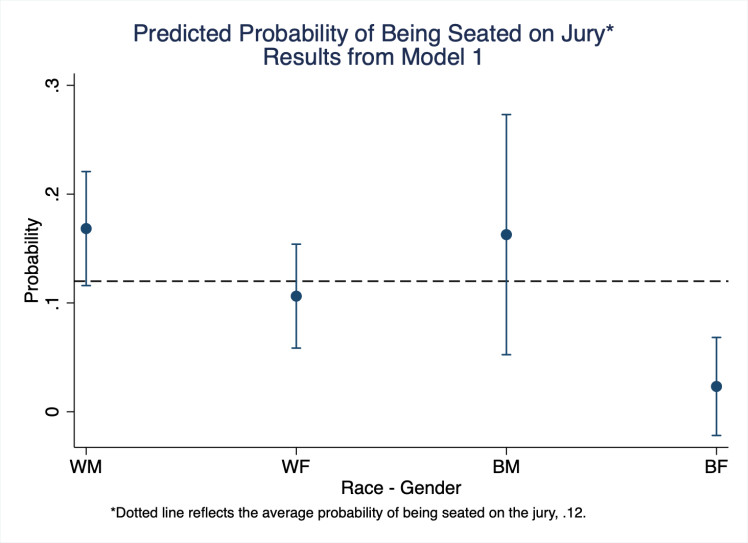



**Figure 3:**

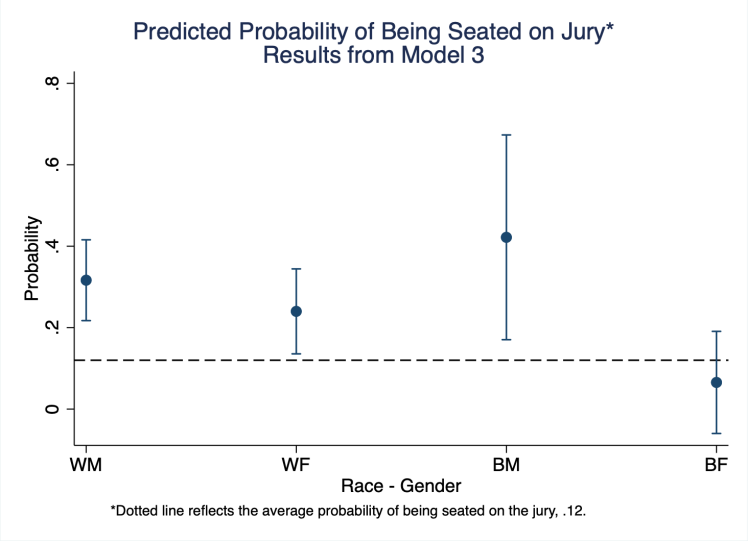


**Figure 4:**

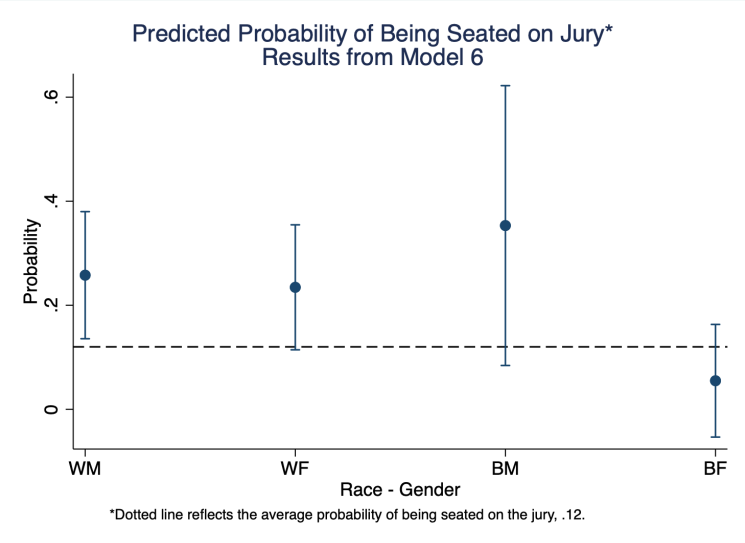
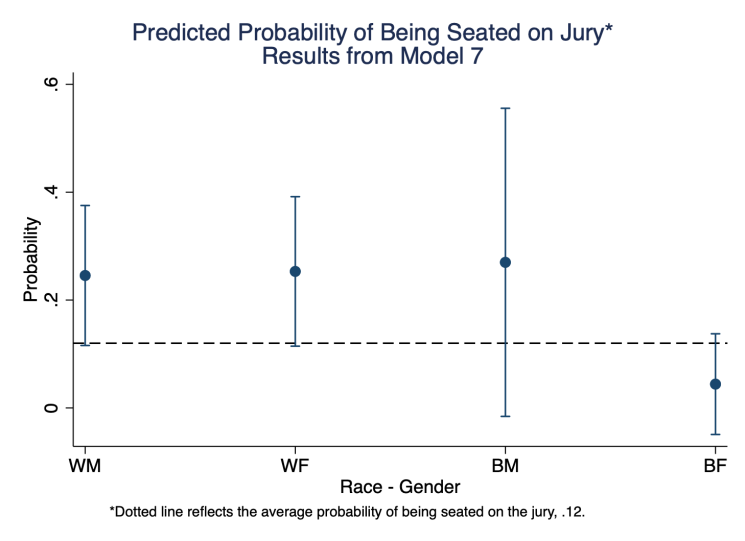



**Figure 5:**




The results from the reduced model displayed in Figure 2 show that Black females had a significantly lower predicted probability of being seated when no controls were included, compared to the overall average likelihood of being seated. The range of confidence intervals for Black females did not overlap with the average probability marker, though confidence intervals for all other race-gender combinations did overlap with the average. White men and Black men had estimations above the average, whereas White women and Black women did not. The figure

most clearly displays the significant difference in the predicted probability of being seated between White males and Black females, with White males having a predicted probability of being seated about 5 times higher than that of Black females.

Model 3 held constant an individual's death penalty opinions and level of education. Model 6 held constant an individual's death penalty opinions, level of education, level of religious involvement, whether or not they had previously served on a jury, and whether or not they had family or friends in law enforcement. In both of these models, the lower range of the confidence intervals of White men were above the marker delineating the average odds of being seated. Though the higher range of the confidence interval for Black females slightly overlapped with this average in both of these displays, their predicted probability estimation was still below the average and significantly different from the predicted probabilities of other race-gender combinations, even when holding sociological characteristics and determinants of jury selection–such as one's death penalty opinions–constant. The figures displaying Models 3 and 6 show that White men had a predicted probability of being seated that was about 3 times higher than that of Black women. Interestingly, in both of these models the estimation of the predicted probability of being seated for Black men was slightly higher than the estimation of both White men and women, which is counter to my expectations. However, Black men had the widest confidence intervals in these figures, suggesting this estimation is less certain.

The display of Model 7 holds constant an individual's death penalty opinions, level of education, level of religious involvement, whether or not they had previously served on a jury, whether or not they had family or friends in law enforcement, and whether or not they had a negative experience with the criminal justice system. Figure 5 displays wider confidence intervals for race-gender combinations that all overlap with the average marker. In this figure, the

estimation of the predicted probability of being seated is about equal for White males, White females, and Black males, while Black females maintained a significantly lower estimation. Thus, this figure shows that even when holding both death penalty opinions and experiences with the criminal justice system constant for all potential jurors, Black females are still likely to be disproportionately excluded from seated juries compared to other jurors. Though I expected these jury selection processes to be explaining racialized and gendered exclusions from seated juries, it can be deduced that for Black females, their race and gender alone is also negatively impacting their odds of being seated. This Black female effect furthers the racialized and gendered effects of death qualification, peremptory strikes, and questions about negative criminal justice experiences, which have all been found to disproportionately exclude Black females.

In Figures 2 through 5, the predicted probability of being seated for Black females remained consistently below the average and significantly below the predicted probability estimations of other race-gender combinations, even when holding additional variables constant. These results suggest that the predicted probability of being seated is influenced by race and gender in isolation. However, these results do not negate the impact that the processes of death qualification and questions of criminal justice experiences had on the composition of the final jury, but instead suggest that even in the absence of these processes, Black females would still have a significantly lower probability of being seated compared to other race and gender combinations. Thus, Black females bear the brunt of the racialized and gendered effects of jury selection, which systematically denies them from serving on capital juries.

## VIII. DISCUSSION & CONCLUSION

The results of my analyses confirm that within the scope of my study, the defendants' Sixth Amendment constitutional right to a jury of their peers was not upheld. This promise was

first targeted by the death qualification process, which systematically excluded Blacks and females, with disparate impacts for Black females. These results affirm that the death qualification process decreased the likelihood that seated jurors in the Devega, Smith, Holden, and Richardson trials were Black or female. Because the defendants in these trials were Black males, the representation of Black jurors was even more critical in the judgment of these men.

The death qualification process also impacted the opinions held by seated jurors. Since individuals can only be seated if they are willing and able to sentence death, the opinions in the deliberation room are inherently skewed. Existing literature supports the idea that death-qualified individuals also have systematically different thought patterns that are less likely to be empathetic toward mitigating circumstances and more likely to favor the case presented by the State (Godcharles et al., 2018, p. 28; Butler, 2007, p. 858). Thus, the death qualification process makes it such that seated jurors are differentiated in ways that make them more pro-prosecution and more inclined to sentence death. This effect calls into question whether the current application of the death penalty is in accordance with the *Gregg v. Georgia* ruling that the death penalty cannot be applied in a capricious and arbitrary manner. Eliminating the death qualification requirement would allow jurors to have different opinions of the death penalty, potentially increasing the diversity in the demographics of those seated and allowing more impartial and balanced deliberations. However, further research would benefit from evaluating whether not death qualifying a jury would present more threatening biases in opinions that could also affect the imposition of a death sentence.

Peremptory strikes furthered the racialized and gendered impact of death qualification and specifically resulted in the disproportionate removal of Black females. This further validates the claim that the Sixth Amendment is being undermined during jury selection, as Black females

are systematically denied the right to fulfill their civic duty when summoned for jury duty. Given the ease with which *Batson* claims are denied, there is essentially no safeguard in place to identify or prevent racialized or gendered prosecutorial peremptory strikes. Although my results confirmed biased peremptory strikes, the lack of successful *Batson* claims against these strikes suggests there must be serious consideration as to whether the *Batson* standard of purposeful discrimination is too difficult to satisfy. There must also be discussion about whether allowing peremptory strikes during jury selection is doing more harm than good. Though the motivation behind peremptory strikes is to give the State and the defense limited liberty in who they see fit to sit on the jury, the result is evidently counteracting the constitutional liberties of defendants.

The exclusion of Black potential jurors was also promulgated via questions about negative experiences with law enforcement and the criminal justice system in general. Given that a significantly higher proportion of Blacks recalled negative experiences than Whites, they had higher chances of being subject to for cause exclusions. Though not all Black jurors who noted negative experiences were struck from the jury, an overwhelming majority were. Standardizing this question in the jury selection process not only highlights the mistreatment of Blacks by the criminal justice system, but also subsequently punishes them for it through their exclusion from the jury pool. While asking about these experiences is meant to aid in removing jurors with biases against the State, in practice it provides the State with another avenue to continue to exclude Black jurors in pursuit of their goal to seat pro-prosecution jurors. Once again, the result of this procedure weakens the criminal justice system's promise of a jury of one’s peers.

My study affirms the fact that the jury selection process targets Black and female potential jurors, with an emphasis on the exclusion of Black females. The end result is a White male-dominant jury that denies the constitutional rights of criminal defendants. Though my

results are bound by data from Wake County between 2014-2018 and thus subject to external validity constraints, existing literature has confirmed these trends in a slew of different contexts. Given the fact that jury selection is a quasi-standardized practice across North Carolina, there is reason to believe that these biases have impacted other capital cases across the state, which calls into question the fairness of the trials of the 134 current North Carolina death row inmates. To confirm that claim, further research would benefit from a state-wide analysis of how death qualification, prosecutorial peremptory strikes, and questions about experiences with law enforcement or the criminal justice system have impacted the final composition of capital juries. A state-wide analysis would include a larger sample size, which would address the weaknesses my study had regarding generalizability and statistical significance. Given that evaluating the potential racial biases in questions about experiences with law enforcement or the criminal justice system is novel in this field, further research could offer more clear conclusions on whether this practice is significantly affecting the final composition of capital juries. Given the time-consuming nature of reading through several capital case voir dires to collect data about death penalty opinions and negative experiences with the criminal justice system, expansion of this work would be difficult without a team of trained researchers.

My analyses demonstrated evident and consistent racialized and gendered biases in the jury selection practices of four capital cases in Wake County, North Carolina. This study adds to a breadth of existing social science research identifying jury selection as a detriment to defendants' Sixth Amendment constitutional right. The State of North Carolina should not wait for more research to confirm these results. These biases in capital jury selection pose a significant threat to the constitutionality of the death penalty application within the state, which begs the question: Is it time to do away with this antiquated criminal punishment?

## **Appendix 1:** Codebook

### **Data collected from clerk reports and juror questionnaires:**

**Defendant Name:** The name of the defendant in the case for which an individual was summoned for jury duty.

**Juror Race:** W indicates white, B indicates black, O indicates other. 99 indicates missing information if an individual did not identify their race on the juror questionnaire.

**Juror Gender:** F indicates female, M indicates male. 99 indicates missing information if an individual did not identify their gender on the juror questionnaire.

**Outcome:** The outcome for each observation as reported in the clerk report. Outcomes include seated, seatedA (for alternate jurors only), State motions, defense motions, hardship, court strike, State strike, defense strike, excused - unneeded (for individuals excused because the jury had been selected).

**Dismissal Reason:** This column is a follow-up to the previous "Outcome" variable and will provide categorical reasons, when it is clear and known, that an individual was struck. If the individual was seated, N/A coded. If not, a qualitative explanation for why they were struck is provided (2-3 words). It is not known why an individual was struck if their outcome variable is coded as State or defense Strike. If the reason is unknown, "No reason." If an individual was struck because they were not death qualified on account of negative opinions of the death penalty, "Not death qualified" is coded. If an individual was struck because they would apply death penalty in all first-degree murder cases, "Not death qualified 5/5" is coded, to indicate they are a 5 out of 5 on the death penalty opinion scale. After obtaining this data for each observation, I identified overarching patterns in dismissal reasons and grouped observations by these categories.

**Law Enforcement Relationships:** 1 if an individual indicated on their questionnaire that they have friends or family who work in law enforcement, 0 if they indicated that they did not. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Victim of Crime:** 1 if an individual indicated on their questionnaire or in the voir dire that they have been a victim of a crime, 0 if they indicated they have not. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Convicted of Crime:** 2 if an individual indicated on their questionnaire or in the voir dire that they have been convicted of a crime, 1 if an individual indicated on their questionnaire or in the voir dire that their family member has been convicted of a crime, 0 if they indicated they have not. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Level of Education:** A number is assigned to each observation based on their highest level of completed education:

1: The respondent completed a high school education or lower.

2: The respondent attended/completed some college.

3: The respondent completed or is currently working toward a four-year degree.

4: The respondent completed a postgraduate degree.

99 indicates missing information if an individual did not respond on the juror questionnaire.

**Church Involvement:** 1 if an individual indicated on their questionnaire that they are involved in a local church/religion, 0 if they indicated they are not. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Level of Church Involvement:** For those who indicated church involvement: 0 if an individual indicated on their questionnaire that they are not involved in their church/religion, 1 if they indicated they are involved “A little,” 2 if they indicated they are involved “Sometimes,” 3 if

they indicated they are involved "Frequently," 4 if they indicated they hold an office in their church. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Prior Jury Experience:** 1 if an individual indicated on their questionnaire or in the voir dire that they had previously sat on a jury, 0 if they indicated they had not. 99 indicates missing information if an individual did not respond on the juror questionnaire.

**Data collected from the voir dires:**

**Criminal Justice Encounter:** A brief qualitative description of an individual's criminal justice encounter or the encounters of their close friends or family, either as a victim of a crime or if convicted of a crime. Page number of the voir dire is noted. For example: "Cousin was robbed, p. 3002" or "Pled guilty for DUI p. 2050."

**CJ Encounter Re-coded*:** 0 if no criminal justice encounters; 1 if an individual indicated on their questionnaire or in the voir dire that their family has been victim or convicted of petty theft or a misdemeanor of similar caliber; 2 if the individual indicated they have been victim or convicted or a misdemeanor of similar caliber; 3 if family has been victim or convicted of a more serious crime that did not result in death, but involved violence or a weapon; 4 if the individual indicated they have been victim or convicted of a more serious crime that did not result in death, but involved violence or a weapon; 5 if family has been victim or convicted of a crime that resulted in death or serious assault, 6 if the individual indicated they have been victim or convicted of a crime that resulted in death or serious assault. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

***Note:** Given that the coding schema was subject to misinterpretations, this data was not included in my analyses.

**Adverse Criminal Justice Experience:** If when asked a potential juror did not express any negative attitudes with the criminal justice system, a 0 was coded. If the individual recalled a negative experience, a 1 was coded. If the individual's friends or family had a negative experience, a 2 was coded. 99 indicates missing information if an individual was not asked or did not respond during voir dire. Page number of the voir dire is noted.

**Weighting of Police Testimony:** 0 if an individual indicated in the voir dire that they would neither give more or less weight to police testimony, 1 if an individual indicated in the voir dire that they would give less weight to police testimony, 2 indicated in the voir dire that they would give more weight to police testimony. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Mention of Traffic Citation:** 0 if no traffic citation was mentioned, 1 if it was. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Familiarity with the Crime:** 0 if an individual indicated in the voir dire that they had no familiarity with the crime (i.e., have heard nothing about it before being summoned to jury duty), 1 if they had some familiarity with the crime (i.e., live around the area where the crime occurred and overheard conversations about it), 2 if they had extensive knowledge about the crime (i.e., frequent the area where the crime occurred, have kept up with the development of the case on the news, etc.). 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Familiarity with Actors:** 0 if an individual indicated in the voir dire that they do not know anyone of relevance to the case (including, but not limited to, the prosecutorial team, the defense team, the defendant, the victim/s, family members of the defendant or the victim/s, those on the prosecutor's key witness list, those on the defense's key witness list), 1 if an individual indicated

in the voir dire that they know of someone of relevance to the case but only by name or not on a personal level, 2 if an individual indicated in the voir dire that they know of someone of relevance to the case on a personal level. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Death Qualification:** A number is assigned to each individual based on their death penalty opinions expressed during the voir dire:

1: The respondent expresses an absolute inability to sentence death under any condition.

2: The respondent expresses a disinclination to sentence death, though acknowledges caveats to when and why they would choose to do so. ("I could only apply the death penalty in the most extreme case, otherwise I am against it" "I am against sentencing death, but I see some benefit (i.e., deterrence effects, etc.)" are only some examples)

3: The respondent expresses an undecided or neutral perspective toward sentencing death.

4: The respondent expresses an inclination to sentence death, though acknowledges caveats to when and why they would choose not to do so. ("I can apply the death penalty only when it is appropriate." "I am in favor of the death penalty within the bounds of the law" or "I favor the death penalty but am concerned about innocence" are only some examples)

5: The respondent expresses an absolute inclination to sentence death in all cases where the death penalty is an available punishment. In this category, an individual would apply the death penalty in all first-degree murder cases.

Page number of the voir dire is noted. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Ability to Comply with Law:** 2 if an individual indicated in the voir dire that they have cannot apply or comply with the law in hearing and sentencing a case, 1 if an individual indicated in the voir dire that they have some hesitation applying or complying with the law in hearing and sentencing a case, 0 if an individual indicated in the voir dire that they have no hesitation applying or complying with the law in hearing and sentencing a case. Page number of the voir dire is noted. 99 indicates missing information if an individual was not asked or did not respond during voir dire.

**Responses to Flag:** This column is reserved to mark instances where an individual gave a response during voir dire that may be worth flagging as a potential reason for the State or defense to have reason to strike or remove the individual. This may be used at the coder's discretion. Write a short note of what is worth flagging and include the page number of the relevant document (i.e., Page 105 of Devega Voir Dire File 1).

**Appendix 2:** Additional Tables and Models

**Table 1: Death Qualification Excusals by Race***

| | White | Black | Other | Total |
|---|---|---|---|---|
| **Not Struck for Death Qualification** | 212 (95.07%) | 56 (100.00%) | 23 (92.00%) | 291 (95.72%) |
| **Struck for Death Qualification** | 11 (4.93%) | 0 (0.00%) | 2 (8.00%) | 13 (4.28%) |
| **Total** | 223 (100.00%) | 56 (100.00%) | 25 (100.00%) | 304 (100.00%) |
| ***p* = 0.180** <br> $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.00$ | | | | |

***Note:** Data was only obtained for individuals who reached the voir dire stage and had race and death penalty opinions data. The individuals captured in this table that were struck for death qualification were struck on account of favorable death penalty opinions (scoring a 5 on the death qualification scale).

**Table 2: Death Qualification Excusals by Gender***

| | Females | Males | Total |
|---|---|---|---|
| **Not Struck for Death Qualification** | 130 (97.01%) | 161 (94.71%) | 291 (95.72%) |
| **Struck for Death Qualification** | 4 (2.99%) | 9 (5.29%) | 13 (4.28%) |
| **Total** | 134 (100.00%) | 170 (100.00%) | 304 (100.00%) |
| ***p* = 0.323** <br> $^{*}p < 0.10$, $^{**}p < 0.05$, $^{***}p < 0.00$ | | | |

***Note:** Data was only obtained for individuals who reached the voir dire stage and had race and death penalty opinions data. The individuals captured in this table that were struck for death qualification were struck on account of favorable death penalty opinions (scoring a 5 on the death qualification scale).

**Table 3: Defense Strikes by Race and Gender***

| | White Male | White Female | Black Male | Black Female | Other Male | Other Female | Total |
|---|---|---|---|---|---|---|---|
| **Not Struck by the Defense** | 168 (85.71%) | 141 (88.12%) | 43 (100.00%) | 41 (95.35%) | 24 (92.31%) | 21 (95.45%) | 438 (89.39%) |
| **Struck by the Defense** | 28 (14.29%) | 19 (11.88%) | 0 (0.00%) | 2 (4.65%) | 2 (7.69%) | 1 (4.55%) | 52 (10.61%) |
| **Total** | 196 (100.00%) | 160 (100.00%) | 43 (100.00%) | 43 (100.00%) | 26 (100.00%) | 22 (100.00%) | 490 (100.00%) |
| $p = 0.008^{***}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | | | | |

***Note:** Data was only obtained for individuals who had race data.

**Table 4: Death Penalty Opinions by Race and Gender for Seated Jurors***

| | White Male | White Female | Black Male | Black Female | Other Male | Total |
|---|---|---|---|---|---|---|
| **2 Almost Always Opposed** | 6 (18.18%) | 3 (17.65%) | 0 (0.00%) | 0 (0.00%) | 0 (0.00%) | 9 (15.25%) |
| **4 Almost Always Favor** | 27 (81.82%) | 14 (82.35%) | 7 (100.00%) | 1 (100.00%) | 1 (100.00%) | 50 (84.75%) |
| **Total** | 33 (100.00%) | 17 (100.00%) | 7 (100.00%) | 1 (100.00%) | 1 (100.00%) | 59 (100.00%) |
| $p = 0.000^{***}$ <br> $^{*}p < 0.10, ^{**}p < 0.05, ^{***}p < 0.00$ | | | | | | |

*Other females were excluded, as there were no other females seated on the juries.

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