OBJECT

to any strike you think was made based on race, gender, religion, or ethnicity

"This motion is made under the **5th, 6th and 14th Amendments to the U.S. Constitution, Art. 1, Sec. 19 and 23 of the N.C. Constitution, and my client's rights to due process and a fair trial.**"

- **You can object to the first strike.** "Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008).
- **Your client does not have to be member of same cognizable class as juror.** *Powers v. Ohio*, 499 U.S. 400 (1991).
- **You do not need to exhaust your peremptory challenges to preserve a *Batson* claim.**

AVOID "REVERSE *BATSON*"

- Select jurors based on their answers, not stereotypes
- Check your own implicit biases
  - What assumptions am I making about this juror?
  - How would I interpret that answer if it were given by a juror of another race?

STEP ONE: PRIMA FACIE CASE

You have burden to show an inference of discrimination

***Johnson v. California*,** 545 U.S. 162, 170 (2005).

"Not intended to be a high hurdle for defendants to cross." ***State v. Hoffman*,** 348 N.C. 548, 553 (1998).

Establishing a *Batson* violation does not require direct evidence of discrimination. ***Batson v. Kentucky***, 476 U.S. 79, 93 (1986) ("Circumstantial evidence of invidious intent may include proof of disproportionate impact. ")

"All circumstances" are relevant.
Snyder, 552 U.S. at 478.

- **Calculate and give the strike pattern/disparity.** *Miller-El v. Dretke*, 545 U.S. 231, 240-41 (2005).

> **"___% of the State's strikes have been against African Americans."**
>
> **and/or**
>
> **"The State has stuck ___% of African Americans and ___% of whites"**

- **Give the history of strike disparities and *Batson* violations in this DA's office/prosecutor.** *Miller-El*, 545 U.S. at 254, 264. (Contact CDPL for data on your county to reference.)
- **State questioned juror differently or very little.** *Miller-El*, 545 U.S. at 241, 246, 255.
- **Juror is similar to white jurors passed (describe how).** *Foster v. Chatman,* 136 S.Ct. 1737, 1750 (2016); *Snyder,* 552 U.S. at 483-85.
- **State the racial factors in case (race of Defendant, victim, any specific facts of crime).**
- **No apparent reason for strike.**

STEP TWO: RACE-NEUTRAL EXPLANATION

Burden shifts to State to explain strike

If the State volunteers reasons without prompting from the Court, the prima facie showing is assumed; move to step 3. ***Hernandez v. New York***, 500 U.S. 352, 359 (1991).

- **Keep your ears open for reasons that are not truly race-neutral (ex: member of NAACP).**
- **Prosecutor must actually give a reason.** *State v. Wright*, 189 N.C. App. 346 (2008).
- **Court cannot suggest its own reason for the strike.** *Miller-El*, 545 U.S. at 252.

STEP THREE: PURPOSEFUL DISCRIMINATION

You now have burden to prove race was a <u>significant factor</u>

Argue the State's stated reasons are pretextual

Race does not have to be the only factor. It need only be "significant" in determining who was challenged and who was not. *Miller-El*, 545 U.S. at 252.

The defendant does not bear the burden of disproving each and every reason proffered by the State. *Foster*, 136 S. Ct. at 1754 (finding purposeful discrimination after debunking only three of eleven reasons given).

- **The reason <u>applies equally to white jurors</u> the State has passed.** *Miller-El,* 545 U.S. at 247, n.6. Jurors don't have to be identical; "would leave *Batson* inoperable;" "potential jurors are **not** products of a set of **cookie cutters**."
- **The reason is <u>not supported by the record</u>.** *Foster,* 136 S.Ct. 1737, 1749.
- **The reason is <u>nonsensical or fantastic</u>.** *Foster*, 136 S.Ct. at 1752.
- **The prosecutor <u>failed to ask the juror any questions about the topic</u> that the State now claims disqualified them.** *Miller-El,* 545 U.S. at 241.
- **State's reliance on juror's <u>demeanor</u> is inherently suspect.** *Snyder*, 552 U.S. at 479, 488.
- **A <u>laundry list</u> of reasons is inherently suspect.** *Foster*, 136 S.Ct. at 1748.
- **<u>Shifting reasons</u> are inherently suspect.** *Foster*, 136 S.Ct. at 1754.
- **State's reliance on juror's expression of <u>hardship or reluctance to serve</u> is inherently suspect.** *Snyder*, 552 U.S. at 482 (hardship and reluctance **does not bias the juror** against any one side; only causes them to prefer quick resolution, which might in fact favor the State).
- **<u>Differential questioning</u> is evidence of racial bias.** *Miller-El,* 545 U.S. at 255.
- **<u>Prosecutor training and prior practices</u> are relevant.** *Miller-El*, 545 U.S. at 263-64.

<u>JUDGE GRANTS YOUR OBJECTION: REMEDY</u>

In judge's discretion to:

- **Dismiss the venire and start again** OR
- **Seat the improperly struck juror(s)** *State v. McCollum,* 334 N.C. 208 (1993).