Correspondence Addressed To:
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Dear Mr. Stull,

You asked me to evaluate transcripts and other materials related to 12 capital jury trials in Duval County, Florida, to determine whether and the extent to which death qualification impacts jurors disparately by race. You also asked me to assess any additional race effects of the prosecutors' use of peremptory strikes. As summarized in greater detail below, in these 12 trials, conducted from 2010 to 2018, death qualification disproportionately excluded people of color, and Black people, who make up roughly 30% of this county, in particular. In every model examined, Black people, as were other jurors of other color, were excluded at rates more than twice of White jurors. This effect only became more concerning when the prosecutors' peremptory strikes were assessed for their cumulative likelihood of excluding jurors of color: fully two thirds of Black women otherwise eligible, qualified, and willing to serve were excluded by the combination of death qualification and prosecutor peremptory strikes, as were 55% of Black men. The details of my investigation are set out further below.

I hope the information in this report is useful to you. If additional analyses are required, please let me know.

Sincerely,
Jacinta

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Study Background

This study began in November 2020 when ACLU Senior Staff Attorney Brian Stull contacted me to discuss his research needs. I hold a Ph.D. in criminal justice and am a tenured full professor in the Department of Criminal Justice at the University of Central Florida. I am currently acting in my own capacity as a subject-matter expert and not as a formal representative of my department or university. No payment was offered or accepted for my services; as such, I submit this report as the product of my investigation. I have no vested interest in the outcome of the ACLU's efforts in the present effort. My analyses were conducted solely for the purpose of fulfilling Attorney Stull's request for an inquiry into whether death disqualification appeared to exert disproportionate racial impacts.

Attorney Stull provided the transcripts analyzed here. The sample contained 12 defendants and 1,042 prospective jurors. The defendants and trial years were:
- Rasheem Dubose (2010)
- Justin McMillian (2010)
- Thomas Brown (2011)
- David Sparre (2011)
- Terrance Phillips (2012)
- Billy Jim Sheppard, Jr. (2012)
- Dennis Glover (2013)
- Kim Jackson (2013)
- Rodney Newberry (2014)
- Raymond Bright (2017)
- Keith Collins (2018)
- James Jackson (2018)

I am aware that there are five additional capital defendants from Duval County during the study time period that are not included in the present analysis because juror information has been sealed by court order. If the courts unseal the files, the data used here could be updated to include the new information and the analyses could be updated. It is unknown whether the addition of these five defendants' jury venires would change any of the conclusions in this report.

Methods and Data

The data file used in this study was constructed from three sources: trial transcripts, jury venire lists, and the list of juror candidates maintained as public records by the Duval County Clerk of Court under Fla. Stat. § 40.011 (1), which are derived from lists provided to the Clerk by the Department of Highway Safety and Motor Vehicles from driver's license and state-identification records. The sample contains 1,042 prospective jurors spread across 12 capital defendants tried between 2010 and 2018 in Duval County, Florida.

The jury venire lists were used to construct the list of names of individuals in each venire. Race, gender, and age for all people in the venire lists were then pulled from the clerk's juror-candidate

lists described earlier. These matchings were straightforward. The name of each prospective juror from the venire list was located in the Clerk of Court record. Use of first, middle, and last names ensured accurate identification of the prospective juror in the Clerk's file and thus accurate recording of race, gender, and age.

Outcomes for people in the venires were gleaned from the transcripts. This required close and careful reading of the transcripts to locate the type of outcome for each person in the venire and, for those who were removed, the type of removal and the reason for it. Nine outcomes were recorded:

- For-cause removal, not related to death disqualification
- Death disqualification
- Automatic death penalty disqualification
- Prosecution peremptory
- Defense peremptory
- Seated as juror or alternate
- Hardship excusal or other form of removal
- Did not reach

For-cause removals were those persons excluded due to bias, conflict of interest, or some other problem with impartiality or ability to serve. When the transcript contained no indication that a for-cause removal was related to the person's views about capital punishment, the person was coded as a for-cause removal unrelated to death penalty attitudes. Anyone removed for cause as a result of strong opposition to the death penalty was coded as death disqualified. A handful of people said they could only impose death upon someone convicted of murder and would not consider prison as an alternative. Those removed for this reason were coded as automatic death penalty removals.

Prospective jurors who were not removed for cause were sometimes later removed by peremptory strike. A few were excused for hardship (e.g., illness) or some other reason. A sizeable number were never reached at all because they were in the back of the seating chart and the court selected all necessary jurors and alternates before these individuals were ever considered. For present purposes, the people in the "Did not reach" category are excluded from the analyses. Seating is random. There is no reason to suspect that racial disparities exist in who is reached and who is not.

My research assistant and I ensured the reliability of the outcome determinations through continuous communication and verification. Two final reliability checks were conducted before the analyses were run. First, a random sample of 10% of cases was drawn. I gave my research assistant a file containing the names of each person in this subsample and the defendant in the case; the file did not contain the outcomes. My research assistant read the transcripts to identify the outcomes. When she finished, we compared the new file to the existing one for similarities and discrepancies. There were very few discrepancies. When they arose, I revisited the transcript to determine how the differences should be resolved. Finally, I sent my research assistant a list of all the people removed for cause and had her verify these outcomes again. I did the same thing

with all the people removed for death disqualification. Minor edits were needed, but the vast majority were determined to have been coded correctly. Notes were taken about each prospective juror to help us understand and remember why each person was removed so that we could properly distinguish between the different types of for-cause removals.

A list of venire persons' names, races, genders, and outcomes can be downloaded here. It is possible that someone else who constructed their own data file based on these transcripts would arrive at alternative conclusions about a small number of the outcomes for prospective jurors, but I am confident that the discrepancies would be minor and would not impact the substantive conclusions contained in this report.

Findings

Description of Sample

Across all 12 defendants, 26.2% of people in the venire were Black, 65.2% were White, 3.5% were Hispanic, 2.8% were Asian, and 2.3% were of other races. In the following analyses, Hispanic, Asian, and other-race individuals will be combined into a single category. It would be ideal to analyze them each separately, but the extremely small numbers make this impractical from a statistical standpoint. The mean age was 45.8 years (sd = 13.6) and 53.6% were women.

Table 1 displays the outcome breakdown with those who were not reached excluded, yielding a sample of 802 people. Death disqualification removed 23% of potential jurors, more than the percentage excluded for non-death penalty related causes or for intense pro-death penalty attitudes.

**Table 1. Outcomes across all Venires, excluding those Not Reached**

Outcome	*Percent (n)*
Death Disqualification	22.3 (n = 179)
Defense Peremptory	15.0 (n = 120)
Prosecution Peremptory	13.5 (n = 108)
For Cause	13.7 (n = 110)
Automatic Death Penalty	6.5 (n = 52)
Other Removal	7.6 (n = 61)
Seated as Juror or Alternate	21.4 (n = 172)
	Total N = 802

Figure 1 displays the race of all people within the venire (including those not reached; n = 1,041) compared to the racial breakdown among people excluded for death disqualification (n = 178).[1] In Figure 1, the two bars for each racial group would be of equal height if there were no racial disparities in death disqualification. If the bar marking a racial group's percentage of the entire

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[1] Race information was unobtainable for one juror. This was Lesley Rae Grimes, who was in the venire for the Glover trial. She was excluded by death disqualification. This will cause a reduction in the sample size (n) by one person in all analyses that include race as a variable.

venire is higher than the bar marking that group's percentage among death-disqualified persons, then that group is said to be underrepresented among the death disqualified. If the percentage bar for the venire is shorter than the death-disqualified percentage bar for a certain group, then that group is underrepresented. As can be seen in the figure, White individuals are underrepresented in the death-disqualified group, while every other racial group is overrepresented.

Figure 1. Race of Persons in Entire Venire and Race of Persons Excluded for Death Disqualification (Percentages)
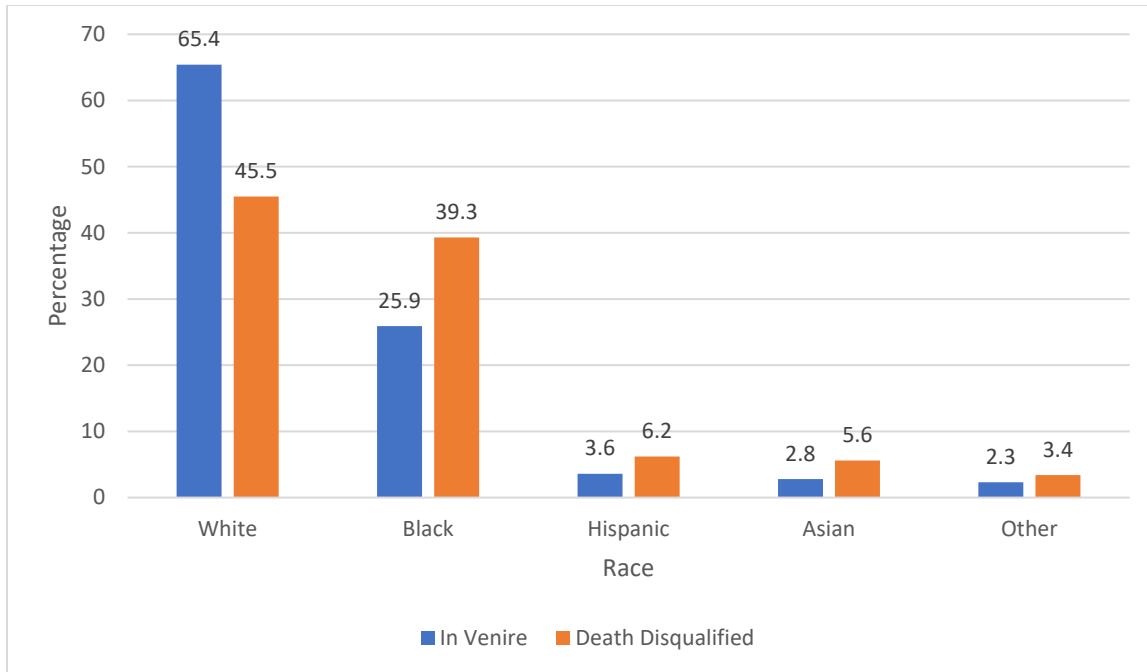
The analysis turns now from an overview of the univariate descriptives to bivariate tests for statistical relationships between venire member race and voir dire outcome. This report presents the inquiries you have asked me to undertake, based on what you believe is legally probative to this case. If the Court or parties ask for different inquiries, I can likely perform those on this same dataset.

Death Disqualification Removals by Race

Starting in this section and continuing for the remainder of the report, the following acronyms are employed:

- Death disqualification removal (DD)
- Automatic death penalty removal (ADP)
- For cause removal (FC)
- Prosecution peremptory strike (PP)

- Defense peremptory strike (DP)
- Hardship and other excuses (OE)
- Seated as juror or alternate (JA)

The DD and ADP categories were constructed in two alternative ways. First is a version coded to include people who may have also had some potential underlying for-cause removal. For instance, someone who expressed skepticism about police officers telling the truth during courtroom testimony and additionally reported strong objection to capital punishment would be technically excused as a DD removal, but would probably have been an FC removal anyway (independent of death-penalty opposition) because of an impartiality impairment. Similar instances occurred in the ADP group, too. Thus, in Table 3 (as in Tables 1 and 2), the more expansive coding is used. To designate this, the categories DD and ADP will be called DD+ and ADP+. Here and moving forward, those people in the venires who were Hispanic, Asian, or of another race are collapsed into an "other" category. The sample sizes for each race were small and would have created problems in the analyses. In the tables, percentages are presented first and underneath them is the sample size enclosed in parentheses.

Table 2. Outcomes by Race, Expansive (Row Percentages)

Race	DD+	DP	PP	FC	ADP+	OE	JA	Total (Row)
				Outcome				
Black	33.8	3.4	16.4	14.5	5.3	7.7	18.8	n = 207
	(70)	(7)	(34)	(30)	(11)	(16)	(39)	
White	15.5	20.3	12.6	13.8	6.9	7.6	23.3	n = 523
	(81)	(106)	(66)	(72)	(36)	(40)	(122)	
Other	38.0	9.9	11.3	11.3	7.0	7.0	15.5	n = 71
	(27)	(7)	(8)	(8)	(5)	(5)	(11)	
Total	20.0%	15.0%	13.5%	13.7%	6.5%	7.6%	21.5%	
(Column)	n = 178	n = 120	n = 108	n = 110	n = 52	n = 61	n = 172	N = 801

The percentages in Table 2 go across the rows to show the percentage of people *within each racial group* who received each outcome. In Table 2, it can be seen that 34% of Black venire persons are excluded due to death disqualification, as are 38% of people of other races. By contrast, just 16% of White venire persons are removed for this reason.

A chi-square test for the numbers in Table 2 revealed statistically significant differences between races on these outcomes ($\chi^2 = 66.369$, df = 12, p < .001). The statistical significance of the chi-square test means that the differences between groups cannot be attributed to chance alone. In other words, there are systematic patterns in outcomes by race.

Figure 2 graphically depicts some of the numbers from Table 2. The figure shows the proportion of people in each racial group that was removed for strong death-penalty opposition. Black individuals are more than twice as likely as White individuals to be removed for this reason, and other people of color (Asian, Hispanic, etc.) are even more likely than their Black peers to be prohibited from jury service for opposing the death penalty.
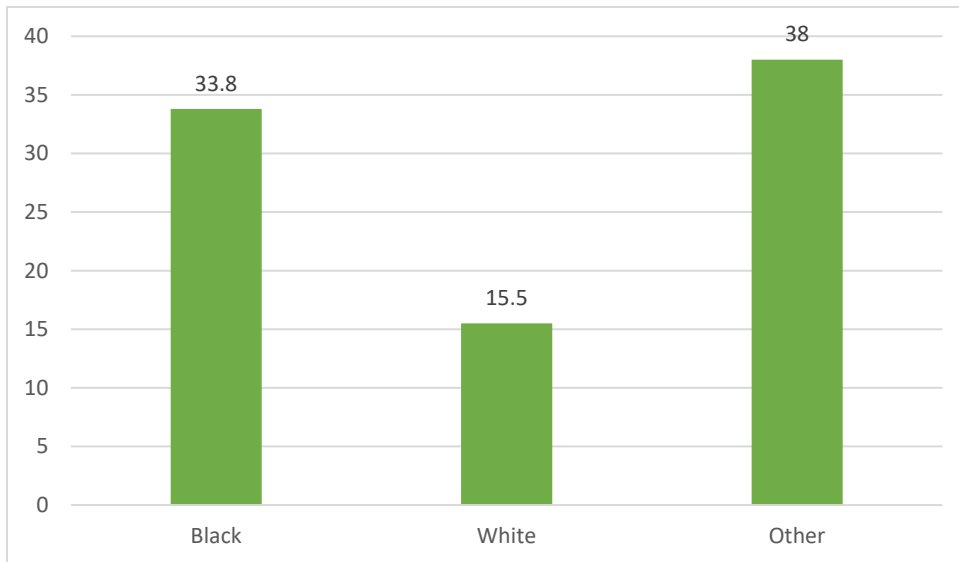
Figure 2. By Race, Percentage Removed by Death Disqualification (Expansive)

Table 2 and Figure 2 demonstrate that laws allowing for-cause removal on the basis of opposition to the death penalty is a systematic barrier to the participation of people of color on capital juries. Worthy of note in the present examination, all but one of the 12 defendants in this sample were Black.

As previously described, Table 2 employs an expansive definition of DD and ADP (called DD+ and ADP+, respectively) that both include some individuals who expressed conflicts of interest unrelated to capital punishment that may have led to for-cause challenges even if there had been no issue with their death-penalty sentiments. For a more conservative analysis, both categories were recoded with these individuals removed and placed into the FC category.

Table 3 contains the results of these more restricted versions of DD and ADP. Once again, the model chi-square was statistically significant ($\chi^2 = 61.379$, df = 12, p < .001) indicating the presence of systematic between-race differences that cannot be attributed to chance. Restricting DD and ADP removals in this manner produced no substantive changes in the interpretation of the model. Sizeable racial differences remained for people removed due to strong opposition to capital punishment, with Black individuals removed at more than double the rate of White individuals and those of other races removed even more often.

Table 3 also demonstrates that Black venire persons and other people of color on venires are less likely than White individuals to end up seated as jurors. Only 19% of Black and a mere 16% of other prospective jurors of color ultimately serve as jurors or alternates, while nearly one-quarter of White venire persons are seated.

Table 3. Outcomes by Race, Restricted (Row Percentages)

				Outcome				Total (Row)
Race	**DD**	**DP**	**PP**	**FC**	**ADP**	**OE**	**JA**	
Black	27.1	3.4	16.4	21.7	4.3	8.2	18.8	n = 207
	(56)	(7)	(34)	(45)	(9)	(17)	(39)	
White	12.8	20.3	12.6	17.4	5.7	7.8	23.3	n = 523
	(67)	(106)	(66)	(91)	(30)	(41)	(122)	
Other	32.4	9.9	11.3	18.3	5.6	7.0	15.5	n = 71
	(23)	(7)	(8)	(13)	(4)	(5)	(11)	
Total	18.2%	15.0%	13.5%	18.6%	5.4%	7.9%	21.5%	
(Column)	n = 146	n = 120	n = 108	n = 149	n = 43	n = 63	n = 172	N = 801

Two main conclusions flow from these analyses. First, as previously noted, death disqualification is a significant barrier to jury service for racial minorities. The requirement that someone hold religious or moral values that do not conflict with capital punishment keeps sizeable proportions of citizens of color off capital juries. Second, people of color in venires are less likely overall to ultimately be selected as jurors. Due to the cumulative effects of death disqualification, for-cause removals, and prosecutor peremptory strikes, Black, Hispanic, Asian, and other people of color are systematically removed from venires.

Another way to examine death disqualification is by excluding from the analysis the venire persons who were removed for cause (unrelated to death-penalty attitudes) and for hardship or other reasons. This was the approach taken by Grosso and O'Brien in their analysis of racially discrepant outcomes in capital jury selection.[2] In Table 4, the FC and OE categories have been omitted. This permits a look at how death disqualification affects the jurors who are ready, willing, and able to serve but for death qualification. Again, the percentages are calculated across the rows for a *within-race* examination of what happens to people within each racial category.

Table 4. Outcomes by Race, FC and OE Removals Excluded (Row Percentages)

			Outcome			Total (Row)
Race	**DD**	**PP**	**DP**	**ADP**	**JA**	
Black	38.6	24.3	4.8	6.2	26.9	n = 145
	(56)	(34)	(7)	(9)	(39)	
White	17.1	16.9	27.1	7.7	31.2	n = 391
	(67)	(66)	(106)	(30)	(122)	
Other	43.4	15.1	13.2	7.5	20.8	n = 53
	(23)	(8)	(7)	(4)	(11)	
Total	24.8%	18.3%	20.4%	7.3%	29.2%	
(Column)	n = 146	n = 108	n = 120	n = 43	n = 172	N = 589

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[2] Grosso, C. M. & O'Brien, B. (2011). A stubborn legacy: The overwhelming importance of race in jury selection in 173 post-*Batson* North Carolina capital trials. *Iowa Law Review, 97,* 1531 – 1559.

The analysis revealed statistically significant differences ($\chi^2 = 61.313$, df $= 8$, $p < .001$) and the racial discrepancies in death disqualification are even sharper with the otherwise-disqualified people removed. Approximately 39% of Black venire persons who are ready, willing, and able to serve are banned from doing so by the death-disqualification rule. A full 43% of people of other races (Hispanic, Asian, and so forth) are barred from service by the rule. This sits in contrast to only 17% of White venire persons for whom death-penalty opposition poses a barrier to jury service.

Prosecutorial use of peremptory strikes to remove people of color from venires is a perennial topic of debate. As such, in the present analysis, a category was created that combines death disqualification with prosecutorial peremptories to examine the combined impact of these two sources of exclusion on Black individuals and other people of color. A summary table was created to feature three main findings from the death-disqualif.ication analysis. Table 5 shows these summaries. No statistical analysis is run for this table because it is a summary of three separate sets of numbers and percentages.

Table 5. Death Disqualification by Race as a Function of Total Sample, Otherwise Eligible, and Death Disqualification Combined with Prosecutorial Peremptory as a Function of Otherwise Eligible

	Outcome		
Race	**DD/Total**	**DD/Eligible**	**DD & PP/ Eligible**
Black	27.1	38.6	62.1
	(56)	(56)	(90)
White	12.8	17.1	34.0
	(67)	(67)	(133)
Other	32.4	43.4	58.5
	(23)	(23)	(31)
Total (Column)	18.2%	24.8%	43.1%
	n = 146	n = 146	n = 254

The column in Table 5 labeled "DD/Total" is the percentage of death-penalty removals as a function of the entire sample size (N = 801). The "DD/Eligible" column shows DD removals as percentages of potential jurors otherwise able to serve (N = 589). In the "DD &PP/Eligible" column, death disqualifications are combined with prosecutor peremptories and the denominator is the number eligible to serve (N = 589). These three ways of examining the removal of people of color from jury venires highlight the ways Black Americans and other Americans of color are systematically barred from jury service.

The analyses up to now have focused on race alone, but gender may also be an important factor in the voir dire process. Research indicates that women support the death penalty less than men

do.[3] The following section brings gender into consideration to determine whether the racial differences seen thus far in this report are also gendered.

Death Disqualification Removals by Race and Gender

This section examines the intersection of race and gender in outcome type. Due to the small number of other-race individuals in this sample, these analyses are limited to Black and White venire members. The restricted versions of the DD and ADP variables are used, as well. This makes for a conservative estimate of the impacts of anti-death penalty attitudes on people's removals – if anything, these results *underestimate* the effects of death disqualification on racial disparities. Table 6 shows the results for Black and White prospective jurors broken down by gender.

Table 6. Outcomes by Race and Gender (Row Percentages)

	Outcome					Total (Row)
Race	**DD**	**PP**	**DP**	**ADP**	**JA**	
BW	42.5 (37)	24.1 (21)	3.4 (3)	8.0 (7)	21.8 (19)	n = 87
WW	18.3 (37)	18.8 (38)	23.3 (47)	3.5 (7)	36.1 (73)	n = 202
BM	32.8 (19)	22.4 (13)	6.9 (4)	3.4 (2)	34.5 (20)	n = 58
WM	15.9 (30)	14.8 (28)	31.2 (59)	12.2 (23)	25.9 (49)	n = 189
Total (Column)	22.9% (n = 123)	18.7% (n = 100)	21.1% (n = 113)	7.3% (n = 39)	30.0% (n = 161)	N = 536

Table 6 reveals stark disparities at the intersection of race and gender. The chi-square test was statistically significant (χ^2 = 71.736, df = 12, p < .001). Nearly 43% of Black women (BW) were removed due to death disqualification, as were a full one-third of Black men (BM). Less than one-fifth of White women (WW) and even fewer White men (WM) were DD removals. Black women's DD removal rate was more than double that for either of the White groups, and Black men's DD rate was double that for White men and nearly double that of White women.

Black women were also the group most likely to be subject to prosecutors' peremptory strikes. Black men trailed close behind. Nearly one-quarter of all Black individuals who were otherwise qualified to serve ended up being struck by prosecutors. Black women were the race-gender dyad least likely to be empaneled on juries. The DD removal procedures systematically bar Black citizens from serving on capital juries, and this barrier is particularly high for Black women.

Table 6 shows that prosecutor peremptory strikes also exclude a sizeable percentage of Black venire persons. To explore this finding further, Table 7 presents an analysis with DD and PP

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[3] For instance, see Cochran, J. K. & Sanders, B. A. (2009). The gender gap in death penalty support: An exploratory study. *Journal of Criminal Justice, 37,* 525 – 533.

exclusions combined. The chi-square statistic remains statistically significant (χ^2 = 67.014, df = 9, p < .001).

Table 7. Outcomes by Race and Gender, DD and PP Combined (Row Percentages)

	Outcome				Total (Row)
Race	**DD or PP**	**DP**	**ADP**	**JA**	
BW	66.7	3.4	8.0	21.8	n = 87
	(58)	(3)	(7)	(19)	
WW	37.1	23.3	3.5	36.1	n = 202
	(75)	(47)	(7)	(73)	
BM	55.2	6.9	3.4	34.5	n = 58
	(32)	(4)	(2)	(20)	
WM	30.7	31.2	12.2	25.9	n = 189
	(58)	(59)	(23)	(49)	
Total	41.6%	21.1%	7.3%	30.0%	N = 536
(Column)	(n = 223)	(n = 113)	(n = 39)	(n = 161)	

As can be seen in Table 7, two-thirds of otherwise-qualified Black women were excluded through the combination of death disqualification and prosecutorial peremptory strikes. More than half of Black men were also lost to this combination. Approximately one-third of White women and White men had this outcome. The numbers from this sample of death penalty cases paint a picture of cumulative disadvantage. The concept behind cumulative disadvantage is that racial disparities in the criminal-justice system are usually not produced by any one source that can be pinpointed as the sole cause. Instead, disparities build up across several decision points.[4] In the present study, racial disparities in jury selection appear to result from the accumulation of DD and PP removals.

The differences in percentages are all the more meaningful because there are fewer Black men and women in the venire to start with. While this may make sense as a function of the demographic makeup of Duval County, the low absolute numbers combined with the high percentage of removals targeting this group means that there are very few Black citizens left to sit on juries. Because there are relatively few Black individuals on the venire, all sources of attrition have a magnified impact on this group's ultimate representation on juries.

In addition to the actual administration of justice potentially being threatened, the exclusion of jurors of color through death qualification, particularly when cumulated with the prosecutors' use of peremptory strikes, harms the appearance of justice. This is especially true when defendants are Black or Brown. In the present study, 11 of the 12 defendants were Black.

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[4] Several studies have examined cumulative disadvantage in the justice system. One example is Kutateladze, B. L., Andiloro, N. R., Johnson, B. D., & Spohn, C. C. (2014). Cumulative disadvantage: Examining racial and ethnic disparity in prosecution and sentencing. *Criminology*, *52*(3), 514-551.

Public perceptions of fairness are based not solely upon outcomes but upon processes. People's willingness to accept outcomes depends in large part on whether they trust the integrity of the process leading to those outcomes. If potential jurors of color are routinely excluded in the manner set observed in this report, the public's trust in the justice system may falter.

Summary and Conclusion

This concludes my report. I hope these analyses are helpful to you and shed light on important aspects of capital jury selection. Let me know if I can be of service with additional analyses in the future if needed.