

3. Trial court must then decide whether the opponent of the strike has proved purposeful discrimination.

The Benchbook Committee suggests that judges:

- conduct the above inquiry on the record but outside of the jury's hearing, to avoid "tainting" the venire by discussions of race, gender, or other characteristics of potential jurors; and
- use a method of jury selection which requires litigants to exercise challenges at sidebar or otherwise outside of the jurors' hearing and in which no venire members are dismissed until all of the challenges have been exercised. See *Jury Selection Procedures in United States District Courts*, *infra*.

In this way, jurors are never aware of *Batson* discussions or arguments about challenges, and therefore can draw no adverse inferences by being temporarily dismissed from the venire and then recalled.

Other FJC sources

Manual for Litigation Management and Cost and Delay Reduction 41-42 (1992)

Manual for Complex Litigation, Third 146-49 (1995)

For a summary of procedures that courts developed for criminal cases in the first two years after *Batson*, see Bench Comment, 1988, Nos. 3 & 4

For a discussion of voir dire practices in light of *Batson*, see Chambers to Chambers, Vol. 5, No. 2 (1987)