**PROCEDURE FOR A “BATSON CHALLENGE”**

There are 3 steps to a “Batson” challenge (a challenge to the exercise of one party’s peremptory strikes, based on race, sex, age, etc.). It is important to make a clear record as to each step (make a BIG deal on the record that “we are now doing Step 1….).

1. The party making the challenge has to make a prima facie case that the strikes were exercised in a discriminatory manor.

* *Rarely find that there is no prima facie case*.

1. The party exercising the strikes is only then to offer their “race-neutral” (or gender neutral, etc.) reasons for the strike.

* *Listen only for the “neutrality” of the strike, not whether related to the case, other jurors, etc., at this point. The party can almost always come up with something to say here. It doesn’t even have to be plausible at this point.*
* *So, this step is usually satisfied also.*

1. It is then the burden of the person making the challenge to persuade you that the strike WAS racially (gender specific, age specific, etc.) motivated.

* *This is when the argument about whether the person is similarly situated to another juror of a different race (gender, age, etc.) who was not struck.*
* *This is when the argument can be made that the race-neutral (gender neutral, etc.) reason offered is so implausible as to give rise to an inference of racial motivation.*
* *The LESS YOU SAY here the better!*
* *Do NOT make a “finding” of whether someone else who was not struck is similarly situated.*
* *DO state that “based on the totality of the circumstances”, you will allow or disallow the strike*.

What to do if you DO disallow a strike?

* *Seat an alternate, if you can.*
* *If you cannot seat an alternate, ask if the parties will agree to go with the fewer number of jurors remaining.*
* *If you cannot work it out this way, you may have to bring a new panel up and start jury selection over.*
* *Do not forget to ask both parties if there is any objection to the jury (or “is this jury acceptable”) when you get the new jury in place.*