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# Preface

This work would be nowhere near as polished or complete without the effort of Prof. Dr. Marloes Maathuis to ensure I was performing analysis with a clear direction and purpose. I would like to thank her for finding time in her busy schedule to allow for weekly meetings. The group meetings organized by her Ph.D. student Marco Eigenmann were also critical in the development of more nuanced analysis and intuitive visualizations. I thank Marco Eigenmann for organizing them, and Jinzhou Li, Armin Fingerle, Sanzio Monti, and Qikun Xiang for attending my presentations and listening attentively. A special thanks is extended to Cédric Bleutler and Leonard Henckel, both of whom were especially engaged and participated in lengthy discussions both during and outside of the group meetings.

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# Abstract

Short summary of my thesis.

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# Notation and Terms

In order to facilitate clarity despite brevity, a list of terms used in this paper is presented here.

**Prosecution/State** The legal representation which argues for conviction

**Defence** The legal representation which argues against conviction

**Court** Reference to the judge, prosecution, and defence

**Venire** The population sample from which a jury is selected (according to [Mirriam-Webster \(2019a\)](#) derived from the latin *venire facias*: “may you cause to come”)

**Jury** The final group of (usually) twelve chosen venire members which judge the guilt or innocence of the accused/defendant

**Accused/Defendant** The individual on trial for a crime

**Voir dire** From old French “to speak the truth” (see [Mirriam-Webster \(2019b\)](#)), this is the questioning process used by the court to assess the suitability of a venire member to sit on the jury

**Struck** In the context of a venire member being rejected from the jury, struck indicates removal by peremptory challenge or challenge with cause

**Litigants** The accuser and the accused



# Chapter 1

## Introduction

The Gerald Stanley murder trial was noteworthy for all of the wrong reasons. The first reason was the crime itself. The rural region around Biggar, Saskatchewan ([Quenneville \(2018\)](#)) is not known for crime, indeed, the crime statistics collected by Statistics Canada suggest it is one of the safest in the province ([Statistics Canada \(2018\)](#)). Any murder at all would be worthy of attention and subject to plenty of drama. But beyond the damage this trial has done to the community, this trial is noteworthy because it led to a significant re-examination of the legal jurisprudence surrounding the jury selection process culminating in the proposition of Bill C-75 by the Canadian government in March of 2018 ([42nd Parliament of Canada \(2018a\)](#)), less than two months after the trial’s verdict ([Quenneville and Warick \(2018\)](#)).

Bill C-75, in part, aims to ameliorate one of the critical points of contention about the Gerald Stanley case: the use of peremptory challenges in jury selection. The outsized impact of the case was due, in large part, to its racial aspect. Gerald Stanley, a white man, was accused of second degree murder in the killing of Colten Boushie, a First Nations man. Given Canada’s troubled history with First Nations groups, this alone would have been enough to make the trial a flash point for race issues, but that was not the worst aspect of the trial. Rather, it was the alleged use of peremptory challenges to strike five potential jurors who “appeared” to be First Nations, resulting in an all-white jury, that proved to be the most controversial and influential facet of the entire affair ([Harris \(2018\)](#), [MacLean \(2018\)](#)).

With Bill C-75 currently moving through the Canadian parliamentary system, having completed its second reading in June 2018 ([42nd Parliament of Canada \(2018b\)](#)), a close re-examination of the practice of peremptory challenge is warranted. A great deal of ink has already been spilled on both sides of the debate (see [Hasan \(2018\)](#), [Zinchuk \(2018\)](#), and [Roach \(2018\)](#)), but startlingly little of this discussion has been based on any hard evidence on the impact of peremptory challenge in jury selection. This paper aims to provide analysis and evidence to illuminate the topic further by analyzing three separate peremptory challenge data sets collected in the United States, namely [Wright, Chavis, and Parks \(2018\)](#), [Grosso and O’Brien \(2012\)](#), and [Baldus, Woodworth, Zuckerman, and Weiner \(2001\)](#). While this data cannot tell us if challenges were racially motivated in the Stanley trial, stepping back from this fraught legal episode to take a wider view of the practice of peremptory challenge provides a more sober place to start the discussion of its place in modern jury trials.

This paper will proceed in five parts. Chapter 2 provides a brief history of the practice of peremptory challenges in jury trials, in particular explaining their original motivation, past implementations, and how they have developed in the United States, the United Kingdom, and Canada. Chapter 3 proceeds to discuss the three data sets obtained, explaining the sources and collection methods before detailing the cleaning and preprocessing. Chapter 4 then provides the details and results of the analysis performed on the different data sets. It begins discussing the Jury Sunshine data set, which was used as a 'test' set of sorts, where analysis could be flexibly performed before the final analysis methods were turned to the other two data sets. The results of this analysis are compared to previous works in Chapter ???. Finally, the results and findings are summarized in ??, and recommendations based on the observations obtained here are provided.

## Chapter 2

# Peremptory Challenges

Although the focus of this text is the legal practice of peremptory challenges, these are a specific practice which may not be known in detail to the reader, a brief exploration of their history, motivation, and current use is presented here. It is not meant to be exhaustive, but rather to provide context and references for an interested and motivated reader to learn more. Indeed, many details have been omitted from the summary of the history in particular.

### 2.1 Jury Selection Procedures

Before reviewing the history, it is best to give some context and an explanation for readers unfamiliar with the jury system and general courtroom procedures. The general steps shared by jury trials are outlined below. More detail and a discussion of the diversity of jury selection procedures can be found in [Ford \(2010\)](#), [Hans and Vidmar \(1986\)](#), and [Van Dyke \(1977\)](#).

- i.) Eligible individuals are selected at random from the population (using a list known as the *jury roll*) of the region surrounding the location of the crime, the sampled individuals are called the *venire*
- ii.) The venire is presented to the court, either as a group or sequentially (borrowing the names of [Ford \(2010\)](#): the “struck-jury” system and the “sequential-selection” system, respectively)
- iii.) The presented venire member(s) are questioned in a process called *voir dire*, which can result in three possible outcomes for each venire member:
  - (a) The venire member is removed with cause, the cause provided by either the prosecutor or defence lawyer and admitted by the judge
  - (b) The venire member is removed by a peremptory challenge by the prosecutor or defence lawyer, where no reason need be provided to the court
  - (c) The venire member is accepted into the jury, and so becomes a juror
- iv.) Steps i-iii are repeated until the desired number of jurors has been found

The details of each of these steps varies by region. Jury rolls can be collected from many different sources. In the United States, they are typically selected using lists of registered voters (see [Van Dyke \(1977\)](#) chapter two), but in Canada the practice varies province by province. Ontario uses a combination of municipal voter lists and First Nations band lists (see [Ministry of the Attorney General of Ontario \(2018\)](#)), while in Saskatchewan - the province of the Gerald Stanley trial - the jury roll is created from the data in the central government health insurance agency in accordance with [Government of Saskatchewan \(1998\)](#).

While two presentation methods are observed in step ii, [Ford \(2010\)](#) and [Van Dyke \(1977\)](#) both note that the predominant method in the United States and Canada is the sequential-selection system. This is perhaps due to the relative efficiency of the method, as it is clear that in the sequential system voir dire need not be performed on the entire venire, only a subset. Contrast this with the struck-jury system, where the entire venire must be reviewed in every trial.

Finally, the scope of voir dire is radically different in the United States and much of the British Commonwealth. [Van Dyke \(1977\)](#) notes that Canada and the United Kingdom do not allow questions in areas of “non-specific” bias, or bias which is not directly related to the case before the court. That is to say, while it would be perfectly valid to ask a venire member for a murder case about their work history in the United States, such a question would only be allowed in Canada or the United Kingdom if occupation was specifically related to the murder case. [Hans and Vidmar \(1986\)](#) suggest that this difference is due to a difference in philosophy. To borrow a quote from page 63 of [Hans and Vidmar \(1986\)](#):

In Canada, for example, the courts have said that we must start with an initial presumption that “a juror will perform his duties in accordance with his oath”

This opinion places a greater responsibility on the jurors themselves to overcome their biases and accept arguments in spite of them. The American opinion that certain prejudice cannot be overcome by jurors stands in stark contrast.

## 2.2 The Role of the Jury

The central function of a jury in a jury trial system is to judge the innocence or guilt of an accused in light of evidence. This has varied drastically in form throughout history. Consider that in the distant past, [von Moschzisker \(1921\)](#) and [Hoffman \(1997\)](#) report that the central function of the jury was to collect evidence, essentially assuming the role commonly performed today by police detectives. Such a role justified the practice of selecting the most “trustworthy” individuals of some reknown.

This is contrasted by the modern jury, which performs no collection of evidence, and is meant to be composed of a panel of peers or “equals” of the accused sampled at random from the population, an idea which did not develop until 19th century Britain (see page 28 of [Hans and Vidmar \(1986\)](#)) and was not applied using random sampling until some time later (see [Hoffman \(1997\)](#) and page 29 of [Hans and Vidmar \(1986\)](#)). The modern jury is meant to apply the law, as told to them by the judge<sup>1</sup>, to the case at hand. Evidence for guilt is then presented to the jury by the prosecutor, while evidence meant to exonerate is presented by the defence.



The jury listens to the evidence, considers the law as presented by the judge, and must (typically) reach a unanimous decision of guilt or acquittal. Such a decision cannot be overturned by the judge of the court, and the judge must then determine sentencing based on the decision of the jury and the letter of the law<sup>1</sup>. It should be clear that the jury therefore has tremendous power in the legal system. The philosophical and ethical justification for such power is well explained by [Woolley \(2018\)](#), and best summarized by a quote from [Supreme Court of Canada \(1991\)](#):

The jury, through its collective decision making, is an excellent fact finder; due to its representative character, it acts as the conscience of the community; the jury can act as the final bulwark against oppressive laws or their enforcement; it provides a means whereby the public increases its knowledge of the criminal justice system and it increases, through the involvement of the public, societal trust in the system as a whole.

While such enthusiastic support for juries has not been expressed by all countries which practice them, the justification is entirely consistent with the histories and discussions presented by [Hoffman \(1997\)](#), [von Moschzisker \(1921\)](#), [Hans and Vidmar \(1986\)](#), [Van Dyke \(1977\)](#), and others.

## 2.3 Modern Peremptory Challenge Controversy

If the general utility and importance of the jury is clear, the same cannot be said for peremptory challenges. The privileged removal of a venire member - to be replaced by a new randomly selected venire member - by either the prosecution or defence without justification has seen allegations of abuse.

In the United States, repeated allegations of racial discrimination have led to significant changes in their allowed use, through cases such as [Supreme Court of the United States \(1965\)](#) and [Supreme Court of the United States \(1986\)](#). The first of these cases, *Swain v. Alabama*, established in 1965 that the systematic removal of venire members of a particular race could be unconstitutional discrimination under the Fourteenth Amendment, but argued that a “*prima facie*” (or “based on first impression”) argument of discrimination was not adequate to prove this. This placed a significant burden on the side taking issue with a challenge to demonstrate discrimination in the use of peremptory challenges.

However, this ruling was overturned only 21 years later in the 1986 case *Batson v. Kentucky*, which allowed the party objecting to a challenge to use a *prima facie* argument which must be countered by a race-neutral reason that satisfies the judge. If no such reason can be supplied, the challenge would not be allowed. This created a new challenge to use against peremptory challenge to keep a venire member: the so-called “Batson Challenge”. While the effectiveness of this system of additional challenges is questionable both practically and in abstract (see [Page \(2005\)](#) and [Morehead \(1994\)](#)), and a particularly strong response in [Hoffman \(1997\)](#), it has only been extended to allow Batson challenges for gender and other characteristics of venire members.

In Canada, there have also been racial controversies. A report by a government inquiry in the province of Manitoba in 1991 (see [Roach \(2018\)](#)) was already reporting on possible

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<sup>1</sup>[Hans and Vidmar \(1986\)](#) note that this system actually varies throughout the US, though the jury and judge powers described here are consistent across Canada.

racial bias against First Nations venire members. More damning still was the [Iacobucci \(2013\)](#) Report on First Nations representation in juries proposed an explicit restriction to the practice when it recommended:

...an amendment to the Criminal Code that would prevent the use of peremptory challenges to discriminate against First Nations people serving on juries.

Despite these recommendations and allegations, there had not been a significant political effort to reform the peremptory challenge system until the Gerald Stanley trial culminated in the tabling of Bill C75 [42nd Parliament of Canada \(2018b\)](#). As it currently stands, the bill has not been approved by the Government of Canada, but seems likely to become law in the near future, which would abolish the peremptory challenge in Canada.

In doing so Canada would join the United Kingdom. Significant controversy around the use peremptory challenges there already led to the abolition of the practice by parliament in the Criminal Justice Act of 1988. The specific controversy was the result of the Cyprus spy case in the late 1970s, which led to a “sustained campaign in Parliament and in the press alleging that defence counsel were systematically abusing it” (see [Hoffman \(1997\)](#))<sup>2</sup>.

## 2.4 The Role of the Peremptory Challenge

Despite these legal changes, recommendations, and a great deal of articles providing analysis against the practice (see, for example, [Hoffman \(1997\)](#)), the topic remains controversial. The modern motivation and justification for the practice in spite of all of the controversy is perhaps best described by Justice Byron R. White in [Supreme Court of the United States \(1965\)](#):

The function of the challenge is not only to eliminate extremes of partiality on both sides, but to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise. In this way, the peremptory satisfies the rule that, “to perform its high function in the best way, justice must satisfy the appearance of justice.”

Such a justification harks back to the now famous words of Lord Chief Justice Hewart in *R v. Sussex Justices* in 1924: “Justice should not only be done, but should manifestly and undoubtedly be seen to be done” (as reported in [Richardson Oakes and Davies \(2016\)](#)). While these words originally only referred to the pecuniary interest of court staff involved in the case, they have since come to express the idealized expectation that both the defence and prosecution find the judge and jury acceptable, as explored by [Richardson Oakes and Davies \(2016\)](#)<sup>3</sup>.

This defence suggests two modern justifications for the peremptory challenge. The first is that of removing venire members with “extreme” bias, and the second is the creation

<sup>2</sup>It should be noted that this did not abolish the use of “standing-aside” by the Crown, although the practice has been heavily curtailed to only national security trials with strict guidelines to its use, which are outlined by [Attorney General’s Office of the United Kingdom \(2012\)](#).

<sup>3</sup>Such grand generalizations and myth-making can also be seen in the common belief that the right to a trial by jury was originally established in the Magna Carta, an idea which is not supported by the relevant historical evidence (see [Hoffman \(1997\)](#) and [Van Dyke \(1977\)](#) for a detailed discussion and more accurate history).

of a jury which is composed of jurors mutually acceptable to both the defense and the prosecution. Those who defended the practice of peremptory challenges in Canada after the Gerald Stanley trial, including [Hasan \(2018\)](#) and [Macnab \(2018\)](#), seem to use this defence or some variant of it to argue in favour of keeping the practice. However philosophically appealing these two claims are, in light of all of the controversy surrounding the peremptory challenge, perhaps a critical and empirical examination of these assertions is warranted.

## 2.5 History

Such an analysis might appropriately begin with a historical explanation of the peremptory challenge. Roughly, the presentation of the history of jury trials here follows the comprehensive and exhaustively referenced description provided by [Hoffman \(1997\)](#). Two of the references [Hoffman](#) uses extensively, [Hans and Vidmar \(1986\)](#) and [Van Dyke \(1977\)](#), provided useful context while specific details provided by [von Moschzisker \(1921\)](#), [Forsyth \(1994\)](#), [Brown, McGuire, and Winters \(1978\)](#), and [Brown \(2000\)](#) helped to create a clearer picture of particular periods of jury history. Information regarding the history of the Canadian system was provided by [Brown \(2000\)](#) and [Petersen \(1993\)](#). For an excellent exploration of the nineteenth century, a formative time for the development of challenge law, see [Brown \(2000\)](#).

It must be noted that certain important trials in the development of the peremptory challenge system have been excluded from the summary provided here. This was done deliberately, as the history presented here is only meant to present the practice of peremptory challenges throughout history in broad terms. All of the sources listed above are much more thorough, by merit of their singular focus on the analysis of the practice from a legal and historical perspective, while this work devotes more to empirical and statistical analysis.

### 2.5.1 Pre-English History

Although precise timelines are hard to establish, there is evidence that jury trials have occurred in some form or another since antiquity. The concept, that of judgement by a group of peers, is so ancient that it is prevalent not only in historical records, but in myth. As [Hoffman \(1997\)](#) indicates, both Norse and Greek mythology feature groups of individuals assessing the guilt or collecting evidence about the actions of a peer.

Outside of the realm of myth, [Hoffman \(1997\)](#) reports on evidence of the use of juries in Ancient Egypt, Mycenae, Druid England, Greece, Rome, Viking Scandinavia, the Holy Roman Empire, and Saracen Jerusalem. It should be noted that in none of these areas was the jury trial the primary form of conflict resolution practiced. Nonetheless, it is clear the jury trial has a broad and long history of use.

Something similar to the modern peremptory challenge does not appear until Rome, however. The Roman *Judices* were groups of senators selected to judge the guilt of the accused in a legal case. [Hoffman \(1997\)](#) presents evidence of the selection of 81 Senators to sit on one of these *Judices*, after which the litigants were permitted to remove fifteen of these

Senators each. This egalitarian reduction of the jury size seems analogous to the modern peremptory challenge system in placing the power of removal with the litigant and suggesting no justification is necessary for their removal.

### 2.5.2 In English Law (1066–1988)

Peremptory challenge did not reach its modern form, as outlined above, until it was established in the English legal system. It should be noted that despite some previous debate on the topic, the most modern historical evidence suggests that the basis of the English practice was not related to the system used in the selection of *Judices* in Rome. The English system appears to be its own beast entirely.

The dominant historical interpretation is presented by [von Moschzisker \(1921\)](#) and [Hoffman \(1997\)](#): that the jury system was introduced to England during the Norman conquest of 1066 by William the Conqueror. The practice, however, was not made official until the Assize of Clarendon in 1166 by Henry II, and it was not until the outlaw of trials by ordeal (the most common method of trial at that time) in 1215, that peremptory challenges began to appear in England in the late thirteenth century. The challenges were officially recognized in 1305 when Parliament outlawed their use by the Crown, only to replace them with an analogous system of so-called “standing-aside”<sup>4</sup>.

It should be noted here that although the challenges issued between the Assize of Clarendon and this 1305 act are called “peremptory,” they may not have served the same purpose, nor the same justification, as the modern challenges. Indeed, as [Hoffman \(1997\)](#) argues convincingly, these challenges may have been closer to modern challenges with cause. The argument hinges on the paradigm of royal infallibility and absolutism which was present in the late medieval period when the peremptory challenge first appeared (see [Burgess \(1992\)](#)).

Under royal absolutism and infallibility the argument for peremptory challenges is quite simple. If the king cannot be wrong in his judgement and he has some reason to feel that a venire member cannot serve on the jury, then he need not say why he thinks that is so, as his judgement is correct in any case. Indeed, asking for an explanation would be disrespectful and providing one undignified. The Crown prosecutors, as representatives of the king, would be similarly shielded from criticism.

Additionally, this is supported by the abolition of their royal use in 1305, the language of which suggests that peremptory challenges were originally the privilege of the Crown (see [Hoffman \(1997\)](#) and [Van Dyke \(1977\)](#)), with none being granted to the defence. As royal infallibility grew out of favour, peremptory challenges seem to have been granted to the defence, rather than being removed entirely.

Whatever the logic of the expansion of these challenges to the defence, their legal limits are recorded more precisely<sup>5</sup>. From a maximum of 35 challenges allowed at their peak in the fourteenth century, the number of challenges allowed only decreased over time until their abolition in 1988 (discussed in [2.4](#)).

<sup>4</sup>For a detailed explanation of this system see [Hoffman \(1997\)](#) and [Brown \(2000\)](#)

<sup>5</sup>see [Brown \(2000\)](#) for a detailed examination of the case law developing around challenges in the nineteenth century

### 2.5.3 In American Law (ca. 1700–1986)

von Moschzisker (1921), Hoffman (1997), and Van Dyke (1977) all agree that the early English colonists that came to North America accepted the jury system with peremptory challenges as common law well before the establishment of the United States of America. Hans and Vidmar (1986) note, however, that the difficulty of ocean travel and the overall indifference of appointed Crown representatives in the colonies led to an increased importance of the jury trial and the role of challenges to these early colonists as a way to exercise some degree of community control in the face of laws drafted in a distant country and implemented by unsympathetic authorities<sup>6</sup>.

It is somewhat interesting then, that the United States constitution makes no mention of the practice of peremptory challenges. The Sixth and Seventh Amendments specify a great deal of the jury system, including the right to public defense and an impartial jury drawn from the district of the crime, but make no mention of a right to the exercise of peremptory challenges, or any challenges whatsoever (see [Constitution of the United States \(1788\)](#)).

As Hans and Vidmar (1986) report on page 37, an original draft of the Sixth Amendment expressly included challenges for cause, but the debate around their inclusion resulted in the removal of their mention. They continue to say that at the time, even some proponents of the challenge considered the reference unnecessary, as the practice was implied by the text which remained, referring to a trial by an “impartial” jury. Another result of these debates was the adoption of the extensive voir dire process which allows questions of general bias (page 37-38 of Hans and Vidmar (1986), though Brown (2000) notes that 1807 Burr trial was also highly significant in the development of general voir dire in the United States).

Critically, there appears to have been no discussion around the inclusion of peremptory challenges (see Hans and Vidmar (1986) and Hoffman (1997)). Despite the clear importance of the jury trial to the drafters of these amendments, it would seem the peremptory challenge was not considered to have anywhere near the same significance as judgement by an impartial jury of local peers<sup>7</sup>.

Regardless of this, as Brown (2000) notes, the importance and use of challenges increased in the United States in the nineteenth century following American independence due to a desire to prevent the tyranny of the state. This desire also led to the adoption of a limited number peremptory challenges for the prosecution, rather than the possibly unlimited stand-asides that were allowed under British law to prosecutors (see Van Dyke (1977), page 150).

While the specific numbers of peremptory challenges allowed to both sides and the required motivation of challenges for cause have varied over time (see Hoffman (1997) and Brown (2000)), they have remained a feature of the American legal system, and numerous

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<sup>6</sup>For more detail on this development among the early colonists, it is instructive to read about the Zenger trial of 1734 (described from pages 33-35 of Hans and Vidmar (1986)). Not only does this trial say a great deal about the attitudes of the colonists at the time, but it also presents the idea of a jury assessing guilt and “wrongness” using their own conscience rather than just settling fact, the precept of the modern jury trial in Canada (see Woolley (2018)) is based on this very idea

<sup>7</sup>Indeed, as *Batson v. Kentucky* and *Swain v. Alabama* have both shown ([Supreme Court of the United States \(1986\)](#) and [Supreme Court of the United States \(1965\)](#)), the modern interpretation of “impartial” may preclude the use of peremptory challenges altogether

Supreme court cases (detailed by [Hoffman \(1997\)](#)) have merely served to make the use of challenges more specific and codified. It was not until *Batson v. Kentucky* in 1986 that this system of challenges was drastically changed with the introduction of Batson challenges which would nullify peremptory ones.

#### 2.5.4 In Canadian Law (ca 1800–2018)

Canadian law, inspired by a close relationship to both the British Crown and the United States, seems to have adopted elements of both legal systems in its development of peremptory challenges in the nineteenth century. As discussed by [Brown \(2000\)](#), Canada adopted the American practice of replacing prosecutorial stand-asides in favour of the more egalitarian granting of limited peremptory challenges to both sides. Despite this, the Canadian voir dire process remains limited and much more similar to the British one, as does the system of challenges for cause (see page 48 of [Hans and Vidmar \(1986\)](#)).

One perfect demonstration of this departure is the Canadian constitution. As in the United States, the Canadian constitution fails to mention challenges. The British North America Act of 1867 (see [Constitution of Canada \(1982\)](#)), which established Canada's independence from England, makes no mention of legal rights of the accused, indicating a deference to legal precedent as in England. It is not until the Charter of Rights and Freedoms in 1982<sup>8</sup> that such rights were guaranteed in a founding document. Notably, its language is considerably more vague than the United States Sixth and Seventh Amendments, guaranteeing only “the benefit of trial by jury” (see [Constitution of Canada \(1982\)](#)).

This “eclectic” incorporation of both American and English case law, to borrow the term used by [Brown \(2000\)](#), led to a system somewhere between the English and American systems, but decidedly closer in operation to the English system. It should be noted, however, that as Canada grew more populous in the twentieth century and developed a greater legal precedent and more experienced judges of its own, this reliance upon its former colonial master and its more powerful southern neighbour seems to have diminished in importance. Viewing Supreme court rulings from recent decades reveals a great deal of reference to Canadian legal precedent rather than to the precedent of the other two countries.

## 2.6 Summary

The peremptory challenge has existed in some form since at least the fourteenth century. After its inception in England, it spread with English conquest and colonization, with new colonies and local governments accepting the practice based primarily on the adoption of English legal precedent. Despite its abandonment by the English in 1988, it has remained highly prominent in the United States, accompanied by a voir dire process far more thorough and invasive than that performed in the English or Canadian jury selection process.

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<sup>8</sup>This was the year of patriation of the Canadian constitution. As independence was granted by the British Parliament, the British North America Act outlining Canada's laws was a British law and changing it was the prerogative of the British Parliament rather than the Canadian one. It was not until the Constitution Act of 1982 that the Canadian constitution became a Canadian law. For a more detailed history see [Sheppard \(2018\)](#)

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Though the practice has historical longevity, it is not guaranteed by the constitutions of Canada or the United States, and has been a practice of considerable legal debate and significant change throughout its history. In England this culminated in the Cyprus sky trial, in the United States in *Batson v. Kentucky* and *Swain v. Alabama*, and in Canada in *R. v. Stanley*: the Gerald Stanley murder trial. As a consequence, the broad agreement of the importance and propriety of a jury has conferred little consensus on the place peremptory challenges in the selection of juries.





## Chapter 3

# Data

Without data, performing an analysis that incorporated more than the history and legal argumentation presented in Chapter 2 is impossible. This proved problematic. While the motivation of this text was a Canadian case, no comprehensive Canadian data sets which examined jury selection in Canada could be found. The increased prominence of the jury selection process in the United States garnered a more fruitful search.

The author is heavily indebted to [Wright et al.](#); [Grosso and O'Brien](#); and [Baldus et al.](#). These authors shared their data freely with the author, providing him with a wealth of data to analyse empirically. As a consequence of the multiple separate data sets, however, care must be taken to describe each of the data sets separately in order to capture adequately the different methodologies and sources they represent. Critically, it should be noted that each of these papers represents effort on the part of the authors. As [Wright et al. \(2018\)](#) notes:

limited public access to court data reinforces the single-case focus of the legal doctrines related to jury selection. Poor access to records is the single largest reason why jury selection cannot break out of the litigato's framework to become a normal topic for political debate

Currently, the collection of jury data is difficult, as many courtrooms have not digitized past records and concerns over privacy limit the release of those records, which are stored as paper documents in the case file (see ?). This limits the ability of an individual to ask for summaries across numerous trials or to view the jury selection process on a scale beyond the basis of one case. Thus, to gather aggregate data the authors of these papers necessarily used different collection techniques dictated by the scope of collection desired and the procedures of the court systems from which data was collected.

### 3.1 Jury Sunshine Project

#### 3.1.1 Methodology

The Jury Sunshine Project ([Wright et al. \(2018\)](#)), so named as it was carried out in order to shed light on the jury selection process, is the most extensive data set which was provided to the author. It endeavoured to collect jury data for all felony trial cases in

North Carolina in the year 2011, which ultimately resulted in a data set that detailed the simple demographic characteristics and trial information of 29,624 individuals summoned for jury duty in 1,306 trials. Note that not all entries were complete.

Due to the scope of the project, there are a number of problems which had to be solved by the authors. The first of these was simply identifying which court cases went to trial in 2011, in order to direct resources effectively. This was accomplished by downloading publicly available case data from the North Carolina Administrative Office of the Courts (NCAOC)<sup>1</sup> and determining the case numbers and counties of cases which went to trial. Wright et al. state that this likely missed some cases which went to trial, but that they were confident that a “strong majority” of trials was collected, which did not systematically differ from those excluded.

This list was then used to perform a pilot study to refine recording practices before undertaking a more general survey where “law students, law librarians, and undergraduate students” (called *collectors* for convenience) visited court clerk offices to collect the relevant case data, including the presiding judge, prosecutor, defence lawyer, defendant, venire members, charges, verdict, and sentence. The case files also included data about whether a venire member was removed by cause or peremptorily, and the party which challenged in the peremptory case. Using public voter databases, bar admission records, and judge appointment records, these collectors were able to determine demographic (race, gender, and date of birth) and political affiliation data for the venire members, lawyers, defendants, and judges. This data set was stored in a relational database provided to the author by Dr. Ronald Wright.

The analysis of the data provided in Wright et al. (2018) was limited to aggregate summaries of the trends at the venire member level. That is to say, they examined the strike trends for both the defence and the prosecution, conditioning on some additional variables. There was also spatial analysis performed, where different urban counties were directly compared. These analyses were not statistical in nature, and were displayed using contingency tables. Regardless the stark differences between prosecution and defence with regards to race were a key finding when the aggregate data was analyzed.

### 3.1.2 Cleaning

#### Flattening the Data

For greater expediency of analysis, the relational database of the Jury Sunshine Data was first flattened. The relational database was read into Microsoft Excel and the `readxl` package (Wickham and Bryan (2018)) was used to read the excel file into the programming language R. A wrapper for the `merge` function was developed which provided simple output detailing failed matches in an outer join in order to ensure that the flattening of the data into a matrix did not miss important data due to partial incompleteness. The code for this wrapper can be seen in A.2.

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<sup>1</sup>The link provided in the Jury Sunshine Paper to the specific source ([http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARports\\_fy16-17.asp](http://www.nccourts.org/Citizens/SRPlanning/Statistics/CARports_fy16-17.asp)) does not appear to be working as of January 2019, however the NCAOC seems to provide an API functionality at <https://data.nccourts.gov/api/v1/console/datasets/1.0/search/>

This wrapper revealed only a small number of irregularities in the data, which are detailed in [A.3](#):

- i.) Twenty-nine charges missing trial information such as the presiding judge (all of trials with IDs of the form 710-0XX)
- ii.) Twenty-six prosecutors not associated with any trials and missing demographic data
- iii.) One trial missing charge information

Ultimately, the jurors for trial ID 710-01, the trial missing a charge from above, were included in the data as their records were complete otherwise. The prosecutors and charges which could not be joined were excluded from any future analysis, as they could have easily been included by collectors by accident. Due to the small relative size of these inconsistencies relative to the size of the data set, they did not cause concern.

### Uninformative Columns

Of course there were other irregularities in the data than the obvious ones that arose in the flattening process. There were a handful of likely sources for these errors. The first of these is the anonymization of the data for public use. The private data includes a wealth of privileged data such as juror name and address, and these were removed in the data given to the author.

As a consequence of this anonymization as well as the inclusion of rarely used columns such as those for additional notes, some columns of the data contained only NA values. Most baffling of these was the `BirthDate` variable in the `Jurors` table, as there was no clear reason for this data to be missing. Thankfully, none of the missing columns were relevant to the joins performed in flattening, and they would have been only secondary in data analysis. As a consequence, these uninformative columns were simply removed from the data.

### Coding Inconsistencies

Related to this problem was the issue of inconsistently coded variable levels. An example of these inconsistencies would be levels recorded as both lower and upper case letters, or the presence of “?” instead of “U” for unknown values. It is very likely this inconsistency was a direct result of the data collection method which used many data collectors working independently in different places at different times. Thankfully, [Wright et al.](#) provided the codebook used by data collectors, which served as the authoritative reference for the admissible factor levels of demographic variables. Solving this problem was as simple as setting all demographic variable levels to be uppercase and replacing obviously mis-specified levels.

One specific inconsistency which should be noted is that of the outcome, which had a handful of entries recorded as “HC”, an inadmissible level not defined by the codebook. It is quite possible that this level represented a typo, as the “H” and “G” keys are adjacent on the American QWERTY keyboard layout, and “GC” was the code for ‘guilty as charged’, but out of a desire to be conservative with the data the occurrence of this outcome was replaced with U instead. Additionally, the inadmissible level “G” was replaced by GC.

## Swaps

A more difficult problem of level misspecification was the presence of what appeared to be columns with swapped values, frequently occurring with the gender column (the admissible levels of which are “M”, “F”, and “U”) and the political affiliation column (the admissible levels of which are “D”, “R”, “I”, or “U”). The aforementioned “swaps” appeared as records in which, for example, the gender was recorded as “R” and political affiliation as “M”. More complicated swaps of three columns also occurred. To address this problem, the `IdentifySwap` function was written (see line 108 in [A.2](#)).

The `IdentifySwap` function accepts two arguments: a data frame with named columns and a named list of vectors of the acceptable levels for some of the column names. It then performs vectorized checks of the specified column names and presents any rows which may have swaps or errors interactively to the user, along with a suggested reorder to “un-swap” the row. The user can press enter to accept the suggested reordering, enter some other reordering, or enter 0 to indicate that the row was not a true swap, but simply an error. The un-swapped entries are then returned to the data, and the rows with errors have the erroneous values replaced by “U”, the universal code for “Unknown” within all data variables<sup>2</sup>.

The source of these swaps is also most likely the data collection method. The codebook provided specifically notes that the data collection was meant to record the race (R), gender (G), and political affiliation (P) data in the form RGP, but it is not inconceivable that it would occasionally have been recorded or entered in some other ordering in the tedium of data entry. In any case, this problem affected only 431 records of the nearly 30,000, suggesting that the recorded error rate was not unacceptably large.

## Charge Classification

Perhaps the least regular data in this data set was that of the charge text. Due to the lack of any codebook guidance about the standard way of recording a charge in a trial, identical charges were recorded in numerous ways. The first method used to combat this was removing non-alphanumeric characters, extra spaces, and converting all charges to lower case. This still left a considerable variation, however. Consider the charge of breaking and entering, for example,

This tree is visualized in ?? in [A.1](#)

## Variable Level Renaming

The final step of the data cleaning process was to convert the uninformative codes used to indicate variable values to more intuitive and clear names (for example to convert “I” in the political affiliation variable to “Ind”, a clearer indication of independent). Certain variables which were already clear, such as gender (codes “M”, “F”, “U”), were not renamed due to the clarity of the one letter representations.

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<sup>2</sup>One notable exception to this insertion of “Unknown” was the case of the judge Arnold O Jones II, whose gender was not recorded in the data, but who was identifiable as a man using a quick Google search of his unique name

### 3.1.3 Variable Synthesis

In order to expand the possible analysis and visualization potential, a number of variables were synthesized from the Jury Sunshine data set. They are detailed below.

**Race Match** A logical variable which is true for a venire member if they are the same race as the defendant, and false otherwise. This variable was motivated in particular by the Gerald Stanley trial, in which the implicit contention of those who have taken issue with peremptory challenge is that the First Nations venire members were removed by the defence as their race did not match that of Stanley in the racially charged trial.

**Guilty** A logical indicator indicating whether the trial outcome was guilty or not.

## 3.2 Stubborn Legacy Data

### 3.2.1 Methodology

[Grosso and O'Brien \(2012\)](#) also provided data to the author, albeit a more limited set. This study, also based in North Carolina, focused on the trials of inmates on death row as of July 1, 2010, yielding a total of 173 cases. In each proceeding, the study examined only those venire members not excluded for cause, and critically the analysis of the study focused only on prosecutorial peremptory challenges. Besides collecting demographic data as in the Jury Sunshine Case, this study also collected attitudinal data for the venire members.

Staff attorneys from the Michigan State University College of Law were responsible for the data collection in this study. The work was performed similarly to the Jury Sunshine Data, using case files to collect information about the court proceedings such as the peremptory challenges used, presiding judge, prosecutor, and defence lawyer. Detailed verdict and charge information was not collected, as the preselection criteria of death row inmates made the verdict clear, and the death penalty can only be applied for certain crimes.

To collect demographic and attitudinal data, the juror questionnaire sheets were consulted<sup>3</sup>. These sheets are typically used as a component of voir dire, in order to make the process more efficient and determine venire members categorically ineligible for jury duty. As a result, they inquire about opinions on the death penalty, for example, as well as demographic questions. As not all jury questionnaires were available, additional information was collected from jury roll lists to determine the races of the final jury members. It should be noted that this collection was done blind and to high standards of proof, and a reliability study carried out in [Grosso and O'Brien \(2012\)](#) indicated that under this system the race coding was 97.9% accurate when the standards were met. Those for whom the standards were not met were marked as “Unknown.”

The analysis performed in this paper was more statistical than in the Jury Sunshine Data. Contingency tables generated using the data were tested using Chi-squared independence

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<sup>3</sup>As [Grosso and O'Brien \(2012\)](#) observe, self-identified race may be the most accurate source of racial group identification

tests, and a simple logistic regression model was created to predict prosecutorial strikes. One minor criticism which could be made of their methodology is the lack of a consistent level to their tests. It seems that rather than class these tests as significant or not, these tests were simply performed to report the p-values they returned. Additionally, there are possible multiple testing issues as the study seems to indicate multiple tests were performed on each table, with the specific test used to generate the reported p-values not clearly indicated.

### 3.2.2 Cleaning

## 3.3 Philadelphia Data

### 3.3.1 Methodology

Baldus et al. (2001) presents a similar data set collected using similar means. Court files such as the juror questionnaire, voter registration, and census data were all used to complete juror demographic information for 317 venires consisting of 14,532 venire members in Philadelphia capital murder cases between 1981 and 1997<sup>4</sup>. It should be noted that this data included only those jurors kept or peremptorily struck, venire members struck for cause were not included in the data. The procedure used to determine race using the census and voter registration polls was quite complicated, but was rigorously performed using accepted census methods to a standard of 98% reliability<sup>5</sup>.

In their incredibly thorough analysis of the data, there were findings consistent with both the Jury Sunshine and Stubborn Legacy data. The defence and prosecution seem to follow mirrored patterns of racial preference in the use of peremptory challenges, even when controlling for other possible confounding effects.

### 3.3.2 Cleaning

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<sup>4</sup>This study took into account the sampling error by reweighting venires based on the year of the trial and the defendant race, as court records showed that the sample coverage varied over these factors

<sup>5</sup>Additionally, imputation was only performed in a small minority of cases

## Chapter 4

# Analysis

With this data cleaned and processed, questions can now be posed and addressed through analysis. A few obvious questions come to mind, considering the previous work done on this subject. The first is whether the results found by previous analyses which did not use statistics are statistically significant. Additionally, we may wonder whether the most common arguments posed in favour of peremptory challenge are satisfied in this data.

### 4.1 Case Level Summary

While [Wright et al. \(2018\)](#) reported a great deal of aggregate statistics about the venire members themselves, one piece of investigation which was lacking was an analysis which aggregated and viewed the trends for the cases, rather than simply for individual venire members. As we cannot know why a potential venire member is struck individually, and viewing their aggregate statistics tells us nothing about how different strikes relate to each other, it is possible we are viewing some effect which is not a result of persistent bias across trials, but is rather the result of some other effect.

By aggregating the venire members by trial and viewing the demographic trends in strikes and behaviour at this level, we gain a more detailed insight into the impact of challenges at a more relevant scale. Additionally, such aggregation allows for the synthesis of certain measures, such as a distributional difference via the Kullback-Leibler divergence ([Kullback and Leibler \(1951\)](#)), which would otherwise not be well defined. This particular perspective of the data has also not been explored by any other studies known to the author.

### 4.2 Modelling

In order to create a single model to test the statistical significance of the differences observed for strike rates by race, defendant race, and party doing the striking, a saturated poisson regression model was fit to the data. Letting  $i$  denote the level of the venire member race,  $j$  the defendant race, and  $k$  the disposition, the numbers of observed venire members in each  $ijk$  combination,  $y_{ijk}$  were modelled as Poisson-distributed random variables with expectation  $\lambda_{ijk}$ . A saturated model was then fit to the data, that is a model described by the equation:

$$\log E[y_{ijk}] = \mathbf{x}_{ijk}\beta = \beta_o + \beta_R x_{i..} + \beta_D x_{.j.} + \beta_S x_{..k} + \beta_{R:D} x_{i..} x_{.j.} + \beta_{R:S} x_{i..} x_{..k} + \beta_{D:S} x_{.j.} x_{..k} + \beta_{R:D:S} x_{i..} x_{.j.} x_{..k} \quad (4.2.0.1)$$

Where  $x_{i..}$  indicates the race level of the  $ijk$  cell, and  $x_{.j.}, x_{..k}$  are defined analogously for the defendant race and disposition. The interaction terms then serve to answer questions about the racial pattern of strikes which is utilized by each party given the defendant race. Most interesting to this investigation is the third order interaction term. This term indicates a significant difference in racial strike patterns given the party striking and the defendant race. In other words, this term accounts for different patterns for the different parties which are not independent of the defendant race.

When this term is tested using a nested model without the third order interaction, the third order interaction is found to be significant. This suggests that not only do the patterns present in the different parties vary, but they vary differently for different defendant races. This dependence can be viewed using a novel graphic presented in Figure 4.1.

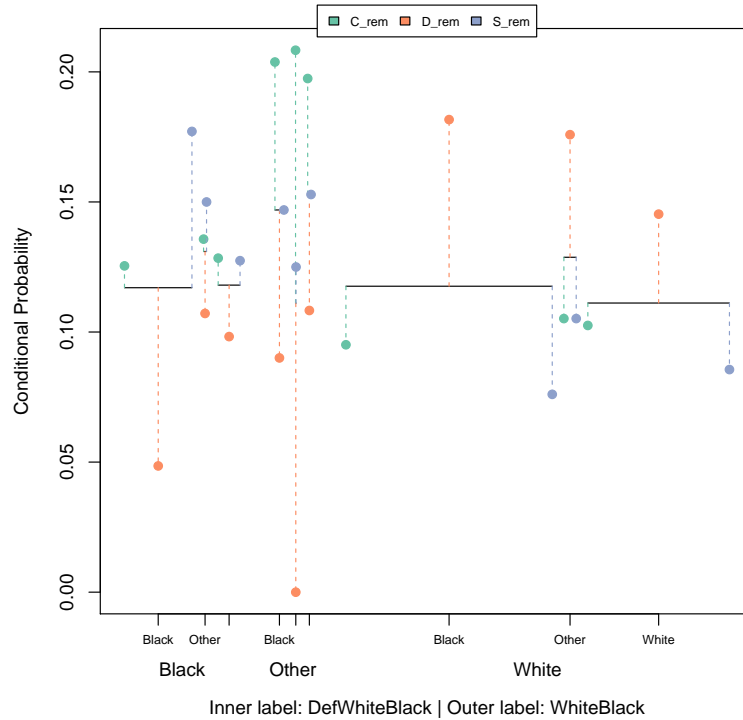


Figure 4.1: Parallel coordinate plot of racial strike tendencies

The conditional probability of a particular disposition given the racial combination of venire person and defendant is displayed on the y-axis, that is the count of individuals for a particular race, defendant race, and disposition combination divided by the number of individuals with the racial combination across all dispositions. The x-axis then displays the combinations, grouped by the venire member race to show the dominant pattern in the data.



The black line running across the plot is the mean, or expected, rejection probability that all parties would have if they acted identically. That is, the relative level of this line provides the relative strike rate on aggregate for a particular racial combination. The bars extending from this line at each point go from this line to the corresponding value of the party represented by the bar. Finally, the horizontal lines provide approximate confidence intervals for each combination<sup>1</sup>.

The dominant pattern to these strikes is a tendency of the defense to preferentially reject white venire members and keep black venire members, and of the prosecution to do the opposite. It was already noted in the literature [Wright et al. \(2018\)](#), but the addition of defendant race allows us to make a stronger statement, as this pattern remains across defendant races. It also adds nuance, however, as the race of the defendant has a clear impact on the lengths of the bars for both the defense and prosecution. The prosecution seems to favour a jury which does not match the race of the defendant, while the defense seems to favour a jury which does.

While this second tendency seems to have no justification beyond race, the dominant tendency may have other justification than simply skin colour. As was noted by “Ideological Imbalance and Peremptory Challenge”, black individuals are more consistently aligned with the democratic party, and as a consequence a lawyer which suspects this political bias will impact the trial outcome would preferentially strike or keep black jurors in order to keep as many left wing individuals as possible. In this data, this political imbalance is incredibly prevalent, as can be seen in [Figure 4.2](#) [Add the plot of this effect here, elaborate on this pattern more based on the plot.](#)

Perhaps more interestingly, the prosecution and judge seem to match in their tendency from the mean at every combination. This suggests that both challenges with cause and the prosecution tend to have the same effect on the jury composition, though the magnitudes can differ greatly for these two strikes. An immediate explanation to this is offered by [Hans and Vidmar \(1986\)](#), who outline, on pages 69-70, the skill and tact required to effectively propose challenges with cause. In order to determine an individual’s bias, it is frequently the case that a direct question will fail to garner an honest response due to social pressures. As a consequence, the questions asked of venire members must be carefully presented.

Using this as a motivation, an obvious possible explanation for the challenges with cause is that the prosecution is simply more experienced on average than the defence. To determine the veracity of this claim, the year licensed for each lawyer was subtracted from the outcome date of each trial. The resulting distribution of years of experience was then plotted in back-to-back histograms as shown in [Figure 4.3](#).

Clearly, this hypothesis is false. It seems the typical defence lawyer is more experienced than the typical prosecutor, not less. Indeed, the prosecutors seem to be much more likely to be inexperienced than the defence lawyers.

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<sup>1</sup>Generated assuming a binomial distribution of struck (by any party) against kept, as when this data is modelled with a poisson distribution, the distribution of sub-processes given the overall count will be binomially distributed

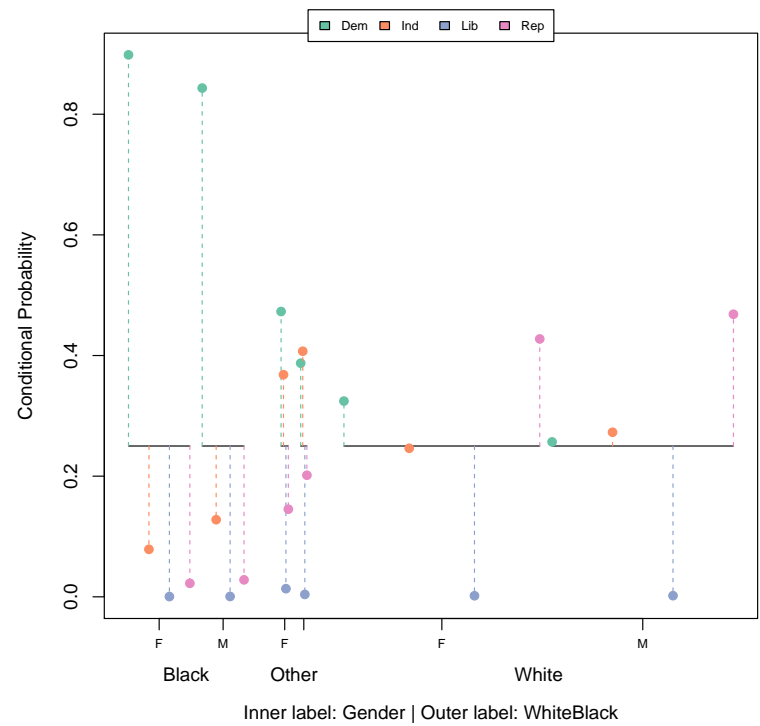


Figure 4.2: Conditional probabilities of political affiliation by race and gender

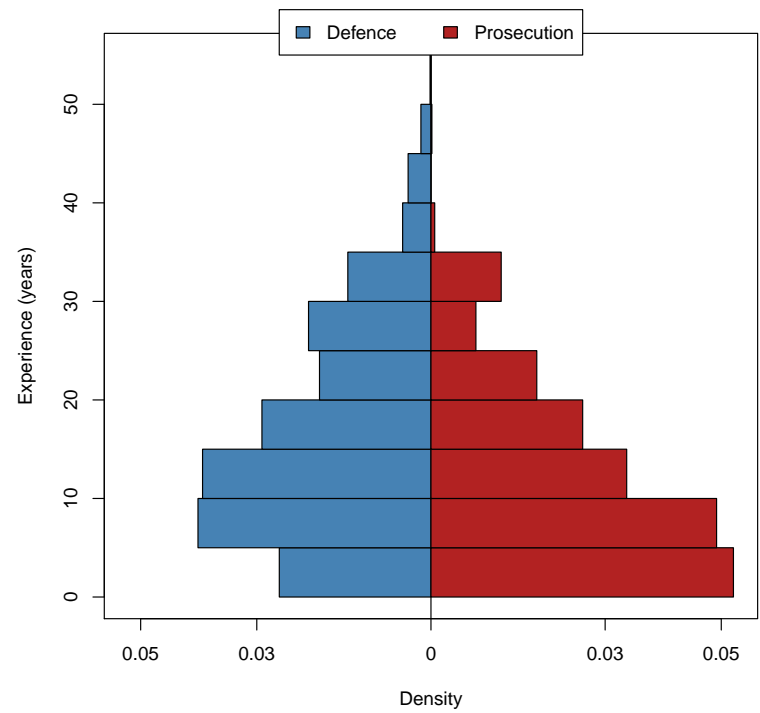


Figure 4.3: Distributions of lawyer experience for prosecutors and defence attorneys

## Chapter 5

# Summary

Summarize the presented work. Why is it useful to the research field or institute?

### 5.1 Future Work

Possible ways to extend the work.



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# Appendix A

## Complementary information

Additional material. For example long mathematical derivations could be given in the appendix. Or you could include part of your code that is needed in printed form. You can add several Appendices to your thesis (as you can include several chapters in the main part of your work).

### A.1 Including R code with verbatim

A simple (rather too simple, see ??) way to include code or *R* output is to use `verbatim`. It just prints the text however it is (including all spaces, “strange” symbols,...) in a slightly different font.

```
## loading packages
library(RBGL)
library(Rgraphviz)
library(boot)
```

```
## global variables
X_MAX <- 150
```

```
    This allows me to put as many s p a c e s as I want.
I can also use \ and ' and & and all the rest that is usually only
accepted in the math mode.
```

```
I can also make as
                many
            line
        breaks as
I want... and
                where I want.
```

## A.2 Data Processing Code

However, it is much nicer to use the *listings* package to include R code in your report. It allows you to number the lines, color the comments differently than the code, and so on.

```

1 #####
2
3 ## THESIS DATA PROCESSING SCRIPT
4 ## Christopher Salahub
5 ## Sept 26, 2018
6
7 #####
8
9 ## PACKAGES #####
10 library(readxl)
11 library(tm)
12 library(stringr)
13
14
15 ## CONSTANTS #####
16
17 ## start by defining file locations
18 ThesisDir ← "c:/Users/Chris/Documents/ETH Zurich/Thesis/Data"
19 SunshineFile ← paste0(ThesisDir, "/JurySunshineExcel.xlsx")
20 SunshineSheets ← excel_sheets(SunshineFile)
21
22 NorthCarFile ← paste0(ThesisDir,
23                       "/Jury Study Data and Materials/NC Jury Selection Study
24                       Database6 Dec 2011.csv")
25
26 PhillyFile ← paste0(ThesisDir,
27                     "/Voir Dire Data & Codebook/capital_venires.csv")
28
29 ## next the factor level codes as given in the codebook and regularized here
30 ## regularization: - political affiliation "N" replaced with "I" for all entries
31 LevRace ← sort(c("A", "B", "H", "N", "O", "U", "W"))
32 LevGen ← sort(c("F", "M", "U"))
33 LevPol ← sort(c("D", "L", "R", "I", "U"))
34
35 ## create a charge tree with regex nodes to identify and clean charge text
36 chargeTree ← list("rape" = list("statutory", "first|1", "second|2"), "sex(?=.*
37 offense)" = list("first|1", "second|2"),
38                  "sex(?=.*offend)" = list("regis", "addr"), "murder" = list("
39 first|1" = list("att"), "second|2" = list("att")),
40                  "arson", "firearm" = list("pos", "disch"), "stole" = list("pos
41 "),
42                  "mari" = list("pos", "sell|sale", "man", "pwimsd"), "coca" =
43 list("pos", "sell|sale", "man", "pwimsd"),
44                  "cs" = list("pos", "sell|sale", "man", "pwimsd"), "hero" =
45 list("pos", "sell|sale", "man", "pwimsd"),
46                  "meth" = list("pos", "sell|sale", "man", "pwimsd"),
47                  "oxycod" = list("pos", "sell|sale", "man", "pwimsd"), "mass" =
48 list("pos"), "break" = list("enter"),
49                  "assa" = list("serious bodily", "female", "strangul", "deadly"
50 , "official"),
51                  "larceny" = list("motor", "felon", "merchant"), "false" = list
52 ("pretense"),
53                  "driving" = list("impaired"), "kidnap" = list("first|1", "
54 second|2"),
55                  "robb" = list("dang"), "burg" = list("first|1", "second|2"), "
56 indec" = list("liber"),
57                  "embezz", "manslaughter" = list("inv"), "flee" = list("arrest")
58 ,
59                  "abuse|cruelty" = list("child", "anim"), "identity" = list("
60 theft"))
61
62 ## create a list of variables which can sensibly be summarized by trial
63 TrialVars ← c("TrialNumberID", "DateOutcome", "JudgeID", "DefAttyType", "

```

```

VictimName",
51   "VictimRace", "VictimGender", "CrimeLocation", "PropertyType",
52   "ZipCode.Trials", "StateTotalRemoved", "DefenseTotalRemoved",
53   "CourtTotalRemoved", "JDistrict", "JName", "JRace", "JGender",
54   "JPoliticalAff", "JVoterRegYr", "JYrApptd", "JResCity", "JResZip",
55   "ChargeTxt", "Outcome", "Sentence.FullSunshine", "DefendantID.
      FullSunshine",
56   "DefendantID.DefendantToTrial", "DefRace", "DefGender", "DefDOB",
      "DefAttyID",
57   "DefAttyName", "DCRace", "DCGender", "DCPoliticalAff", "
      DCYrRegVote",
58   "DCYrLicensed", "DCResideCity", "DCResideZip", "ProsecutorID", "
      ProsName",
59   "ProsRace", "ProsGender", "ProsPoliticalAff", "PYrRegVote", "
      PYrLicensed",
60   "PResideCity", "PResideZip", "Guilty", "CrimeType", "DefWhiteBlack
      ")
61
62
63 ## FUNCTIONS #####
64
65 ## Loading and cleaning #####
66 ## create a descriptive merge function for cleaning (essentially a 'merge'
      wrapper)
67 CleaningMerge ← function(x, y, ...) {
68   ## start by creating the merge
69   ## first match arguments
70   MatchCall ← match.call(merge)
71   MatchCall[[1]] ← quote(merge)
72   ## get input names and ensure proper name structure
73   xname ← MatchCall$x
74   if (!is.symbol(xname)) xname ← as.symbol(paste0(xname[[2]], xname[[3]]))
75   yname ← MatchCall$y
76   if (!is.symbol(yname)) yname ← as.symbol(paste0(yname[[2]], yname[[3]]))
77   ## use this to extract suffixes and fix MatchCall
78   MatchCall$suffixes ← paste0(".", c(xname, yname))
79   MatchCall$x ← xname
80   MatchCall$y ← yname
81   ## specify that the match should be an outer join
82   MatchCall$all ← TRUE
83   ## and use this to make a clean local assignment to modify
84   assign(as.character(xname), cbind(x, Diag.x = 1), envir = environment())
85   assign(as.character(yname), cbind(y, Diag.y = 1), envir = environment())
86   ## now evaluate the call
87   Merged ← eval(MatchCall, envir = environment())
88   ## next perform some checks
89   xExpInds ← is.na(Merged$Diag.x)
90   yExpInds ← is.na(Merged$Diag.y)
91   ## remove the diagnostic columns
92   Merged$Diag.x ← NULL; Merged$Diag.y ← NULL
93   ## summarize the diagnostic checks
94   X_nexp ← sum(xExpInds)
95   Y_nexp ← sum(yExpInds)
96   X_missing ← Merged[xExpInds,]
97   Y_missing ← Merged[yExpInds,]
98   ## print the diagnostics
99   cat("Joined ", paste(xname, yname, sep = " and "), " with ",
100     X_nexp, " and ", Y_nexp, " failed matches respectively \n", sep = "")
101   ## return the results, preferentially keeping the data which is present in x
      but missing from y
102   if (X_nexp == 0 & Y_nexp == 0) {
103     Merged
104   } else list(Merge = Merged[!xExpInds,], Xfails = X_missing, Yfails = Y_
      missing)
105 }
106
107 ## a function to identify and perform swaps with user input
108 SimpleSwapper ← function(data, CorrectLevs, auto = FALSE) {
109   ## first match the data to the columns of interest
110   colInds ← match(names(CorrectLevs), names(data))

```

```

111  ## extract the levels of the columns of interest to check if there are any
      potential swaps
112  swapCheck ← all(sapply(1:length(colInds),
113                    function(ind) identical(sort(levels(as.factor(data[,
      colInds[ind]]))),
114                    sort(CorrectLevs[[ind]])))
115
116  ## if no swaps are present end this check
117  if (swapCheck) {
118    cat("No errors found, exiting.")
119    return(data)
120  }
121  ## if errors are found, further investigate them
122  ## identify potential rows
123  ## first those which have elements out of place
124  SwapPoss ← sapply(1:length(colInds),
125                    function(ind) !(data[,colInds[ind]] %in% CorrectLevs[[ind]]))
126
127  ## now rows containing unknown entries
128  Unknown ← sapply(1:length(colInds),
129                  function(ind) data[,colInds[ind]] == "U")
130
131  ## identify potential swaps by row
132  Swaps ← apply(SwapPoss, 1, function(row) sum(row) > 1)
133  ## identify the potential errors
134  PotErr ← apply(SwapPoss, 1, function(row) sum(row) == 1)
135  ## use the unknowns to account for some errors
136  UnkInd ← apply(Unknown, 1, any)
137  FalErr ← PotErr & UnkInd
138  ## identify the indices to investigate
139  SwapInds ← which(Swaps|FalErr)
140  ErrInds ← which(PotErr & !UnkInd)
141  ## communicate to the user and ask for input
142  cat("There are ", sum(Swaps|FalErr), " swaps to check\n", sep = "")
143  cat("Additionally, it seems there are ", sum(PotErr & !UnkInd), " errors in
      entries\n", sep = "")
144
145  ## unless automated
146  if (auto) ErrorReturn ← TRUE else ErrorReturn ← as.logical(readline("Return
      the errors? (T/F): "))
147
148  ## now, if there are possible swaps investigate them
149  if (sum(Swaps|FalErr) != 0) {
150    ## create a temporary storage structure
151    tempRows ← data[SwapInds, colInds]
152    tempRows ← as.data.frame(lapply(tempRows, function(var) levels(var)[as.
      numeric(var)]),
153                            stringsAsFactors = FALSE)
154
155    ## loop through and populate this
156    for (ii in 1:nrow(tempRows)) {
157      ## inspect the row
158      print(tempRows[ii,])
159      ## suggest corrections, first generate matches
160      candComb ← lapply(tempRows[ii,],
161                        function(el) which(sapply(CorrectLevs,
162                                                  function(levs) el %in%
163                                                    levs)))
164
165      reps ← unlist(lapply(candComb, length))
166      ## now generate all swap combinations
167      candComb[[1]] ← rep(candComb[[1]], each = max(reps[-1]))
168      candComb ← as.data.frame(candComb, row.names = NULL)
169      ## identify rows which contain all indices, in other words those
      valid as swaps
170      compRows ← apply(candComb, 1, function(row) all(1:length(CorrectLevs)
171        %in% row))
172      goodComb ← candComb[compRows,]
173      ## clean them up and print them
174      colnames(goodComb) ← NULL
175      rownames(goodComb) ← NULL
176      cat("Potential combinations:\n")
177      print(t(apply(goodComb, 1, order)))
178      ## take user input or automatically determine value
179      if (auto) {
180        if (!any(compRows)) acceptedComb ← 0 else acceptedComb ← 1

```

```

172     } else acceptedComb ← as.numeric(readline("Enter a combination choice
      (0 for error, <enter> to accept first): "))
173     ## handle special cases, 0 if a true error has been identified
174     if (identical(acceptedComb,0)) { ## 0 if a true error has been
      identified
175         ErrInds ← c(ErrInds, SwapInds[ii])
176         cat("True error identified, adding ", SwapInds[ii], " to error
          list\n", sep = "")
177     } else { ## the case where a swap has been correctly identified and
      selected, or enter has been pressed
178         ## if enter has been pressed accept the first row
179         if (is.na(acceptedComb)) acceptedComb ← 1
180         ## print recombined row
181         newRows ← tempRows[ii,order(as.matrix(goodComb[acceptedComb,]))]
182         colnames(newRows) ← NULL
183         rownames(newRows) ← NULL
184         cat("Corrected row:")
185         print(newRows)
186         cat("-----\n")
187         ## correct entry
188         tempRows[ii,] ← newRows
189     }
190 }
191 ## fill the data
192 ## first prevent factor level errors
193 data[,colInds] ← lapply(colInds, function(ind) levels(data[,ind])[as.
      numeric(data[,ind])])
194 ## now swap the data
195 data[SwapInds,colInds] ← lapply(1:length(colInds), function(ind) tempRows
      [,ind])
196 ## reconvert back to factors
197 data[,colInds] ← lapply(colInds, function(ind) as.factor(data[,ind]))
198 }
199 ## in either case return the data and errors as specified
200 if (ErrorReturn) {
201     return(list(Data = data, Errors = ErrInds))
202 } else {
203     return(data)
204 }
205 }
206
207 ## now create a function to address the errors possibly identified in the above
      function automatically
208 SwapErrorFix ← function(errorData, CorrectLevs) {
209     ## check if we are in the case without errors
210     if (!identical(names(errorData), c("Data", "Errors"))) {
211         cat("No errors\n")
212         return(errorData)
213     } else {
214         ## extract the data and data in error
215         fulldata ← errorData$Data
216         ## get the relevant columns
217         colInds ← match(names(CorrectLevs), names(fulldata))
218         ## go through the specified variables and remove errors
219         fixed ← lapply(1:length(colInds),
220             function(ind) {
221                 var ← fulldata[,colInds[ind]]
222                 var ← levels(var)[as.numeric(var)]
223                 inds ← !(var %in% CorrectLevs[[ind]])
224                 cat(names(CorrectLevs)[ind], ": ", sum(inds),
225                     " errors\n", sep = "")
226                 var[inds] ← "U"
227                 as.factor(var)
228             })
229         ## insert these fixed values
230         fulldata[, colInds] ← fixed
231         ## return this
232         fulldata
233     }
234 }

```

```

235
236 ## write a wrapper to perform this swapping and error correction in one call
237 SwapandError <- function(data, CorrectLevs) {
238   swapped <- SimpleSwapper(data = data, CorrectLevs = CorrectLevs, auto = TRUE)
239   fixed <- SwapErrorFix(errorData = swapped, CorrectLevs = CorrectLevs)
240   fixed
241 }
242
243 ## Variable Synthesis #####
244 ## Kullback-Leibler divergence function
245 kldiv <- function(samp, dist) {
246   ## convert to matrices
247   mat1 <- as.matrix(samp)
248   mat2 <- as.matrix(dist)
249   ## make into proper distributions
250   mat1 <- mat1/rowSums(mat1)
251   mat2 <- mat2/rowSums(mat2)
252   ## take the log ratio
253   logratio <- log(mat1/mat2)
254   ## multiply by correct matrix
255   vals <- mat1*logratio
256   ## take the row sums
257   rowSums(vals, na.rm = TRUE)
258 }
259
260 ## make a text-mining regularization function
261 StringReg <- function(strs) {
262   ## first set everything to lowercase
263   strs <- tolower(strs)
264   ## replace specific patterns (noticed during early tests)
265   strs <- str_replace_all(strs, "b/e|break/enter|b&e|break or enter|b or e|b &/
    or e|b & e", "breaking and entering")
266   strs <- str_replace_all(strs, "controlled substance", "cs")
267   strs <- str_replace_all(strs, "dwi", "driving while impaired")
268   strs <- str_replace_all(strs, "rwdw", "robbery with a deadly weapon")
269   strs <- str_replace_all(strs, "pwisd|pwmsd|pwmsd|pwitd|pwid|pwmsd|pwosd", "
    pwmsd")
270   strs <- str_replace_all(strs, "robbery|rob ", "robbery")
271   strs <- str_replace_all(strs, "bulgary", "burglary")
272   strs <- str_replace_all(strs, "awdw", "assault with a deadly weapon")
273   strs <- str_replace_all(strs, "(?<=[\\sa-z])[0-9]{2,}", "")
274   strs <- str_replace_all(strs, "att ", "attempted ")
275   strs <- str_replace_all(strs, "assult", "assault")
276   strs <- str_replace_all(strs, "marj", "marijuana")
277   ## replace punctuation
278   strs <- gsub("[^[:alnum:][:space:]]'", "", strs)
279   ## return these
280   strs
281 }
282
283 ## create a function to process such a tree structure given a list of strings
284 stringTree <- function(strs, regexTree, inds = 1:length(strs), includeOther = TRUE)
  {
285   ## identify the sublists, and divide the data
286   sublists <- sapply(regexTree, is.list)
287   ## iterate over unnamed items (leaf nodes)
288   listdiv <- lapply(regexTree[!sublists], function(el) inds[grepl(el, strs, perl
    = TRUE)])
289   names(listdiv) <- unlist(regexTree[!sublists])
290   ## check if there are any sublists
291   if (!any(sublists)) {
292     if (includeOther) listdiv <- c(listdiv, other = list(inds[!(inds %in%
      unlist(listdiv))]))
293     ## in the case of none, treat the object as a list to iterate through
294     listdiv
295   } else {
296     ## otherwise recurse over the branches
297     finlist <- c(listdiv, lapply(names(regexTree)[sublists],
      function(name) stringTree(strs[grepl(name,
        strs, perl = TRUE)]),

```

```

299                                     regexTree[[name]],
300                                     inds[grepl(name,
301                                     str, perl =
302                                     TRUE)],
303                                     includeOther)))
304                                     names(finlist)[(length(listdiv) + 1):length(finlist)] ← names(regexTree)[
305                                     sublists]
306                                     c(finlist, other = list(inds[!(inds %in% unlist(finlist))]))
307                                     }
308                                     }
309                                     ## create a tree depth helper function
310                                     maxdepth ← function(tree, counter = 1) {
311                                     max(sapply(tree, function(br) if (!is.list(br)) counter else maxdepth(br,
312                                     counter + 1)))
313                                     }
314                                     ## create a function to aggregate a tree as specified above at the desired depth
315                                     treeAgg ← function(tree, level = 1) {
316                                     ## first check the max depth of the tree
317                                     treedepth ← maxdepth(tree)
318                                     ## compare this to requested aggregation level
319                                     stopifnot(level <= treedepth)
320                                     ## aggregate at desired level with a helper function
321                                     agg ← function(tr, depth = 1) {
322                                     if (depth == level) lapply(tr, function(el) setNames(unlist(el), NULL))
323                                     else lapply(tr, function(br) agg(dr, depth + 1))
324                                     }
325                                     agg(tree)
326                                     }
327                                     ## create a crime class aggregation function
328                                     CrimeClassify ← function(tree, regChar) {
329                                     crimes ← list()
330                                     crimes$Sex ← unique(c(unlist(tree[c("rape", "sex(?=.*offense)", "sex(?=.*
331                                     offend)", "indec")]),
332                                     tree$other[grepl("sex", regChar[tree$other])]))
333                                     crimes$Theft ← unique(unlist(tree[c("stole", "embez", "break", "larceny", "
334                                     robb", "burg", "identity")]))
335                                     crimes$Murder ← unique(unlist(tree[c("murder", "manslaughter")]))
336                                     crimes$Drug ← unique(c(unlist(tree[c("mari", "coca", "cs", "hero", "meth", "
337                                     oxycod")]),
338                                     tree$other[grepl("para|drug|substance|pwmsd",
339                                     regChar[tree$other])]))
340                                     crimes$Violent ← unique(unlist(tree[c("arson", "assa", "abuse|cruelty")]))
341                                     crimes$Driving ← unique(c(unlist(tree[c("driving")]),
342                                     tree$other[grepl("hit(?=.*run)|speeding", regChar[
343                                     tree$other], perl = TRUE)]))
344                                     crimes
345                                     }
346                                     ## in order to make the process of pre-processing the data and adding desired
347                                     columns, place the pre-processing into a
348                                     ## flexible function and add operations as desired
349                                     SynCols ← function(data) {
350                                     ## too busy, synthesize some variables to clearly indicate the results of
351                                     defense and prosecution selection
352                                     data$VisibleMinor ← data$Race != "White"
353                                     data$PerempStruck ← grepl("S_rem|D_rem", data$Disposition)
354                                     data$DefStruck ← data$Disposition == "D_rem"
355                                     data$ProStruck ← data$Disposition == "S_rem"
356                                     data$CauseRemoved ← data$Disposition == "C_rem"
357                                     ## lets look at which race struck each juror
358                                     data$StruckBy ← as.factor(sapply(1:nrow(data),
359                                     function(ind) {
360                                     dis ← as.character(data$
361                                     Disposition[ind])
362                                     if (dis == "S_rem") {
363                                     as.character(data$ProsRace
364                                     [ind])

```

```

355                                     } else if (dis == "D_rem") {
356                                         as.character(data$DCRace[
357                                             ind])
358                                     } else "Not Struck"
359                                 )))
360     ## create a white black other indicator
361     data$WhiteBlack ← FactorReduce(data$Race, tokeep = c("Black", "White", "U"))
362     data$DefWhiteBlack ← FactorReduce(data$DefRace, tokeep = c("Black", "White",
363         "U"))
364     data$VicWhiteBlack ← FactorReduce(data$VictimRace, tokeep = c("Black", "White",
365         "U"))
366     ## return the data with synthesized columns
367     data
368 }
369
370 ## write functions to process the sentences
371 SentenceProcess ← function(sentencing) {
372     sents ← tolower(sentencing)
373     ## identify sentences in months, years, and days
374     monthsent ← str_extract(sents, "[0-9\\-]+\\s*(?=m)")
375     daysent ← str_extract(sents, "[0-9\\-]+\\s*(?=d)")
376     yearsent ← str_extract(sents, "[0-9\\-]+\\s*(?=y)")
377     ## extract life without parole
378     lwp ← str_extract(sents, "parol[e]*")
379     ## and with parole
380     life ← str_extract(sents, "life")
381     life[!is.na(lwp)] ← NA
382     ## get restitutions
383     resti ← str_extract(sents, "[0-9,]+\\s*(?=restitu)|\\$[0-9,]+")
384     ## get supervised probation
385     supprob ← str_extract(sents, "sup.*pro")
386 }
387
388 ## Summary Functions #####
389 ## make a function to summarize trial jury data
390 JurySummarize ← function(Varnames = c("Disposition", "Race", "Gender", "
391     PoliticalAffiliation")) {
392     ## check if a juror summary object exists already
393     if (!("sun.juror" %in% ls(.GlobalEnv))) {
394         ## first group the data for easy access
395         Juries ← aggregate(sun.swap[, Varnames],
396             by = list(TrialNumberID = sun.swap$TrialNumberID,
397                 JurorNumber = sun.swap$JurorNumber),
398             unique)
399     } else Juries ← sun.juror
400     ## in either case, perform aggregation by trial instance
401     Juries ← aggregate(Juries[, Varnames],
402         by = list(TrialNumberID = Juries$TrialNumberID),
403         function(var) var)
404     ## clean up the names
405     names(Juries)[grepl("Polit", names(Juries))] ← "PolAff"
406     Varnames[4] ← "PolAff"
407     ## now summarize relevant features
408     Summary ← apply(Juries[, Varnames], 1,
409         function(row) {
410             ## get final jury indices
411             disps ← unlist(row$Disposition)
412             foreman ← grepl("Foreman", disps)
413             finJur ← grepl("Foreman|Kept", disps)
414             defStruck ← grepl("D_rem", disps)
415             proStruck ← grepl("S_rem", disps)
416             ## process all variables
417             newrow ← sapply(row,
418                 function(el) {
419                     c(Jury = table(unlist(el)[finJur]),
420                         Venire = table(unlist(el)),
421                         DefRem = table(unlist(el)[
422                             defStruck]),
423                         ProRem = table(unlist(el)[
424                             proStruck]))

```



```

418         })
419         newrow$Disposition ← NULL
420         newrow ← c(unlist(newrow), ForeRace = row$Race[foreman],
421                   ForeGender = row$Gender[foreman], ForePol =
422                     row$PolAff[foreman])
423         if (sum(foreman) > 1) {
424             names(newrow)[names(newrow) == "ForeRace1"] ← "
425               ForeRace"
426             names(newrow)[names(newrow) == "ForeGender1"] ← "
427               ForeGender"
428             names(newrow)[names(newrow) == "ForePol1"] ← "
429               ForePol"
430         }
431         newrow
432     })
433     ## perform some clean up
434     longest ← sapply(Summary, length)
435     longest ← which(longest == max(longest))[1]
436     longNames ← names(Summary[[longest]])
437     Summary ← lapply(names(Summary[[longest]]),
438                     function(name) unname(sapply(Summary,
439                                                   function(el) el[name])))
440     names(Summary) ← longNames
441     Summary ← lapply(longNames,
442                     function(nm) {
443                         if (grepl("ForeGender", nm)) {
444                             Summary[[nm]] ← factor(Summary[[nm]], levels = 1:3,
445                                                     labels = LevGen)
446                         } else if (grepl("ForePol", nm)) {
447                             Summary[[nm]] ← factor(Summary[[nm]], levels = 1:5,
448                                                     labels = LevPol)
449                         } else if (grepl("ForeRace", nm)) {
450                             Summary[[nm]] ← factor(Summary[[nm]], levels = 1:7,
451                                                     labels = LevRace)
452                         } else Summary[[nm]]
453                     })
454     names(Summary) ← longNames
455     ## return these
456     list(Juries = Juries, Summaries = as.data.frame(Summary))
457 }
458
459 ## a generic simplification method to summarize a vector
460 Simplifier ← function(col, ...) {
461     UseMethod("Simplifier")
462 }
463
464 ## code up methods for the types to be seen
465 Simplifier.default ← function(col, collapse = "") paste0(col, collapse = collapse
466 )
467 Simplifier.numeric ← function(col, na.rm = TRUE, trim = 0, ...) mean.default(col,
468   trim = trim, na.rm = na.rm)
469 Simplifier.factor ← function(col, collapse = "", ...) paste0(sort(as.character(
470   levels(col)[as.numeric(col)])),
471   collapse = collapse
472 )
473 Simplifier.character ← function(col, collapse = "", ...) paste0(sort(col),
474   collapse = collapse)
475
476 ## create a grouping wrapper which does unique aggregation of a data set
477 UniqueAgg ← function(data, by, ...) {
478     ## convert data to a data frame for regularity
479     if (!is.data.frame(data)) data ← as.data.frame(data)
480     ## identify the grouping column by in the data
481     by.groups ← names(data) == by
482     ## provide nice error handling
483     stopifnot(sum(by.groups) > 0)
484     ## first identify which rows are already unique
485     groups ← as.numeric(as.factor(unlist(data[by.groups])))
486     unqRows ← sapply(groups, function(el) sum(groups == el) == 1)
487     ## consider grouping only the other rows using the unique function

```

```

476   endata <- data[unqRows,]
477   unqdata <- aggregate(data[!unqRows, !by.groups], by = list(data[!unqRows, by.
      groups]), unique)
478   ## reorder to make sure everything is compatible
479   names(unqdata)[1] <- by
480   unqdata <- unqdata[,match(names(endata), names(unqdata))]
481   ## now use the Simplifier helper defined above to process these results
482   procddata <- lapply(unqdata, function(col) supply(col, Simplifier, ...))
483   ## append everything together
484   endata <- lapply(1:length(endata),
485     function(n) c(if (is.factor(endata[[n]])) as.character(
      endata[[n]]) else endata[[n]],
486     procddata[[n]]))
487   names(endata) <- names(data)
488   ## convert to a data frame
489   as.data.frame(endata)
490 }
491
492 ## a simple helper to convert multiple factor levels into a single 'other' level
493 FactorReduce <- function(vals, tokeep) {
494   chars <- as.character(vals)
495   ## simply replace elements
496   chars[!grepl(paste0(tokeep, collapse = "|"), chars)] <- "Other"
497   chars
498 }
499
500 ## write a function to re-level factor variables to make mosaic plots cleaner
501 MatRelevel <- function(data) {
502   temp <- lapply(data, function(el) if (is.factor(el)) as.factor(levels(el)[as.
      numeric(el)]) else el)
503   temp <- as.data.frame(temp)
504   names(temp) <- names(data)
505   temp
506 }
507
508 ## another simple processing function to correct NA's given some other identifier
  and data set
509 FillNAs <- function(dataNAs, filldata, identifier) {
510   ## extract the relevant column indices in a flexible way
511   if (is.null(colnames(filldata))) {
512     relcol <- grepl(identifier, names(filldata))
513   } else relcol <- grepl(identifier, colnames(filldata))
514   ## first identify the relevant rows in the data NAs
515   relRows <- is.na(dataNAs)
516   ## take the relevant rows of the filldata
517   filldata <- matrix(unlist(filldata[relcol]), ncol = sum(relcol))
518   rowfiller <- rowSums(filldata[relRows,])
519   ## return the filled data
520   dataNAs[relRows] <- rowfiller
521   dataNAs
522 }
523
524 ## write a wrapper to estimate the values of total removed jurors
525 RemovedJurorEstimates <- function(tofill, data, ident, plot = TRUE) {
526   temp <- FillNAs(tofill, filldata = data, identifier = ident)
527   temp2 <- rowSums(data[,grepl(ident, names(data))])
528   ## let's see how accurate this is if plotting is desired
529   if (plot) {
530     plot(temp, temp2, xlab = "Observed and Filled", ylab = "Juror Sums")
531     abline(0,1)
532   }
533   cat(" = : ", sum(temp == temp2)/length(temp2), "\n", "< : ", sum(temp2 < temp)
      /length(temp2), "\n", sep = "")
534   ## replace the filled values less than the estimated, for consistency
535   temp[temp < temp2] <- temp2[temp < temp2]
536   temp
537 }
538
539
540 ## LOADING AND PROCESSING DATA #####

```

```

541
542 ## load the data
543 SunshineData ← lapply(SunshineSheets, function(nm) as.data.frame(read_excel(
    SunshineFile, sheet = nm)))
544 names(SunshineData) ← SunshineSheets
545 NorthCarData ← read.csv(NorthCarFile)
546 PhillyData ← read.csv(PhillyFile)
547
548 ## clean non-informative columns
549 CleanSunshine ← lapply(SunshineData, function(dat) dat[, !apply(dat, 2, function(
    col) all(is.na(col))))]
550
551 ## the Sunshine data needs to be restructured into one table, rather than a
relational database structure
552 ## see the IDMatch function, this was created specifically to perform ID-based
table joins
553 ## the most appropriate global target is the juror table, start by matching this
to the trial
554 FullSunshine ← with(CleanSunshine, CleaningMerge(Jurors, Trials, by = "
    TrialNumberID"))
555 ## remove extra ID column, fix a misleading name
556 FullSunshine$CountyName ← FullSunshine$CountyID
557 FullSunshine$CountyID ← NULL
558 ## clean up two additional columns which had inconsistencies
559 FullSunshine$Disposition ← toupper(FullSunshine$Disposition)
560 FullSunshine$Race[FullSunshine$Race == "?"] ← "U"
561 ## before appending everything to this table, perform some other joins
562 TrialsToCharge ← with(CleanSunshine, CleaningMerge(Charges, Junction, by = "
    ACISID", all = TRUE))
563 DefendantToTrial ← with(CleanSunshine, CleaningMerge(Defendants, DefendantTrial,
    by = "DefendantID", all = TRUE))
564 AttorneyToTrial ← with(CleanSunshine, CleaningMerge(Attorney, AttorneyTrial, by =
    "DefAttyID", all = TRUE))
565 ProsecutorToTrial ← with(CleanSunshine, CleaningMerge(Prosecutor, ProsecutorTrial
    , by = "ProsecutorID", all = TRUE))
566 ## merge issues:
567 ## - trials to charge: one charge is missing a trial ID, hopefully not
important
568 ## - prosecutors to trials: 26 prosecutors without trials, however all entries
were entirely uninformative
569 ## given the above outputs, rename the failed clean merges to make the next
section cleaner
570 TrialsToCharge ← TrialsToCharge$Merge
571 ProsecutorToTrial ← ProsecutorToTrial$Merge
572
573 ## now perform some additional merges to create one sheet/data.frame
574 ## add the judge descriptions (no issues)
575 FullSunshine ← CleaningMerge(FullSunshine, CleanSunshine$Judges, by = "JudgeID",
    all = TRUE)
576 ## the charges
577 FullSunshine ← CleaningMerge(FullSunshine, TrialsToCharge, by = "TrialNumberID",
    all = TRUE)
578 ## this leads to 22 jurors in trials without charges and 29 charges without
trials, inspecting these:
579 ## - the jurors without charges are all related to a trial with ID number
"710-01", thankfully the other data
580 ## for this case is complete, and so it may still be useful for viewing
jury behaviour
581 ## - the charges without trials are all of the form "710-0xx", suggesting the
omission of entire trials of some
582 ## relation, hopefully these were not too similar, or this exclusion can be
explained later
583 FullSunshine ← FullSunshine$Merge
584 ## the defendants
585 FullSunshine ← CleaningMerge(FullSunshine, DefendantToTrial, by = "TrialNumberID"
    , all = TRUE)
586 ## the attorneys
587 FullSunshine ← CleaningMerge(FullSunshine, AttorneyToTrial, by = "TrialNumberID",
    all = TRUE)
588 ## the prosecutors

```

```

589 FullSunshine ← CleaningMerge(FullSunshine, ProsecutorToTrial, by = "TrialNumberID
    ", all = TRUE)
590 ## 26 jurors appear to be lacking a prosecutor, these appear to be the
    uninformative prosecutors from earlier, included
591 ## due to the preferential inclusion of the missing values in the first of the
    merged matrices
592 FullSunshine ← FullSunshine$Merge
593
594 ## perform some cleanup
595 ## start with some specific factor replacements
596 ## replace the "N" with "I", as these factor levels are interchangeable in the
    codebook and prevent confusion with race
597 FullSunshine[,grepl("Pol", names(FullSunshine))] ← lapply(FullSunshine[,grepl("
    Pol", names(FullSunshine))],
598
599                                     function(var) {
600                                         var ← toupper(var)
601                                         var[var == "N"] ←
602                                             "I"
603                                     })
604 ## next save most variables as factors
605 FullSunshine ← lapply(FullSunshine,
606                       function(el) if (is.character(el)) as.factor(el) else el)
607 ## correct some overzealous assignment from above
608 FullSunshine[grepl("Notes", names(FullSunshine))] ← lapply(FullSunshine[grepl("
    Notes", names(FullSunshine))],
609
610                                     as.character)
611 ## perform factor regularization according to the factor levels provided in the
    codebook
612 FullSunshine ← sapply(FullSunshine,
613                       function(el) {
614                           if (!is.factor(el)) {
615                               el[el == 999] ← NA
616                               el
617                           } else {
618                               el ← as.character(el)
619                               el ← toupper(el)
620                               el[is.na(el)] ← "U"
621                               as.factor(el)
622                           }
623                       }, simplify = FALSE)
624 FullSunshine ← as.data.frame(FullSunshine)
625 ## remove some unnecessary columns
626 FullSunshine$ID ← NULL
627 FullSunshine$TrialIDAuto ← NULL
628 ## combine the name columns to produce more useful columns
629 FullSunshine$JName ← paste(FullSunshine$JFirstName, FullSunshine$JLastName)
630 FullSunshine$JName[FullSunshine$JName == "U U"] ← "U"
631 FullSunshine$DefAttyName ← paste(FullSunshine$DCFirstName, FullSunshine$
    DCLastName)
632 FullSunshine$DefAttyName[FullSunshine$DefAttyName == "U U"] ← "U"
633 FullSunshine$ProsName ← paste(FullSunshine$ProsecutorFirstName, FullSunshine$
    ProsecutorLastName)
634 FullSunshine$ProsName[FullSunshine$ProsName == "U U"] ← "U"
635
636 ## Checkpoint 1: the clean data has been processed, none of the swaps, synthesis,
    or expansion has taken place
637 ## save this
638 if (!("FullSunshine.csv" %in% list.files())) write.csv(FullSunshine, "
    FullSunshine.csv", row.names = FALSE)
639 ## load if the desire is to start at checkpoint 1
640 if (!("FullSunshine" %in% ls())) FullSunshine ← read.csv("FullSunshine.csv")
641
642 ## Note: the below swap functions have been set to auto as the function's
    performance in these cases has already
643 ## been assessed, and so the swaps have already been inspected, it is critical
    for new data that "auto" be switched
644 ## off to take full advantage of this functionality, and so the wrapper "
    SwapandError" should not be used
645 ## in the juror data

```

```

644 sun.swapJuror ← SwapandError(FullSunshine, CorrectLevs = list(Race = LevRace,
645                                                                Gender = LevGen,
646                                                                PoliticalAffiliation
                                                                = LevPol))
647 ## in the judge data
648 sun.swap ← SimpleSwapper(sun.swapJuror, CorrectLevs = list(JRace = LevRace,
649                                                                JGender =
                                                                LevGen,
650                                                                JPoliticalAff
                                                                = LevPol
                                                                ))
651 ## viewing the error report of these data, they are all related to one judge,
        Arnold O Jones II, who is verified
652 ## as a male after a quick Google search
653 unique(sun.swap$Data[sun.swap$Errors, c("JFirstName", "JLastName")])
654 sun.swapJudge ← sun.swap$Data
655 sun.swapJudge$JGender[sun.swap$Errors] ← "M"
656 sun.swapJudge$JGender ← as.factor(levels(sun.swapJudge$JGender)[as.numeric(sun.
        swapJudge$JGender)])
657 ## in the prosecutor data
658 sun.swap ← SimpleSwapper(sun.swapJudge, CorrectLevs = list(ProsRace = LevRace,
659                                                                ProsGender =
                                                                LevGen,
660                                                                ProsPoliticalAff
                                                                = LevPol
                                                                ))
661 ## that found no errors
662 ## a quick check of the levels of the defendant data finds only one error
663 levels(sun.swap$DefGender)
664 levels(sun.swap$DefRace)
665 sun.swap ← SwapandError(sun.swap, CorrectLevs = list(DefRace = LevRace,
666                                                                DefGender = LevGen
                                                                ))
667 ## next the attorney data
668 sun.swap ← SwapandError(sun.swap, CorrectLevs = list(DCRace = LevRace,
669                                                                DCGender = LevGen,
670                                                                DCPoliticalAff =
                                                                LevPol))
671 ## finally the victim data
672 sun.swap ← SwapandError(sun.swap, CorrectLevs = list(VictimRace = LevRace,
673                                                                VictimGender =
                                                                LevGen))
674 ## this leaves the data error-free (in at least the race/gender/politics columns)
675
676 ## fix the outcome data, which had some improper levels
677 sun.swap$Outcome[sun.swap$Outcome == "HC"] ← "U"
678 sun.swap$Outcome[sun.swap$Outcome == "G"] ← "GC"
679 sun.swap$Outcome ← as.factor(levels(sun.swap$Outcome)[as.numeric(sun.swap$Outcome
        )])
680
681 ## lets make the levels more clear for some of the data (race, politics,
        disposition)
682 ## start with the disposition
683 levels(sun.swap$Disposition) ← c("C_rem", "D_rem", "Foreman", "Kept", "U_rem",
684                                "S_rem", "Unknown")
685 ## next the political affiliation
686 sun.swap ← lapply(sun.swap, function(el) {
687   if (is.factor(el) & identical(levels(el), LevPol)) {
688     levels(el) ← c("Dem", "Ind", "Lib", "Rep", "U")
689     el
690   } else el})
691 levels(sun.swap$JPoliticalAff) ← c("Dem", "Ind", "Rep", "U")
692 ## now the race
693 sun.swap ← lapply(sun.swap, function(el) {
694   if (is.factor(el) & identical(levels(el), LevRace)) {
695     levels(el) ← c("Asian", "Black", "Hisp", "NatAm", "Other",
696                   "U", "White")
697     el
698   } else el})
699 levels(sun.swap$VictimRace) ← c("Asian", "Black", "Hisp", "NatAm",

```

```

700         "U", "White")
701 levels(sun.swap$JRace) ← c("Black", "Hisp", "NatAm", "U", "White")
702 levels(sun.swap$DCRace) ← c("Asian", "Black", "NatAm", "Other",
703         "U", "White")
704 ## now the outcome/verdict
705 levels(sun.swap$Outcome) ← c("Acquittal", "Guilty as Charged",
706         "Guilty of Lesser", "Incomplete", "Mistrial",
707         "U")
708 ## the defense attorney type
709 levels(sun.swap$DefAttyType) ← c("App Priv", "Public", "Private",
710         "Ret Priv", "U", "Waived")
711
712 ## add a guilt indicator
713 sun.swap$Guilty ← grepl("Guilty", sun.swap$Outcome)
714
715 ## add a simple indicator of defendant race matching juror race if they are both
       known
716 sun.swap$RaceMatch ← sun.swap$Race == sun.swap$DefRace
717 sun.swap$RaceMatch[sun.swap$Race == "U" | sun.swap$DefRace == "U"] ← NA
718
719 ## now perform tree classification of crimes
720 ## first cast sun.swap as a data frame
721 sun.swap ← as.data.frame(sun.swap)
722 ## regularize the charges
723 chargFact ← as.factor(sun.swap$ChargeTxt)
724 regCharg ← StringReg(levels(chargFact))[as.numeric(chargFact)]
725 ## classify these into a charge tree and aggregate this at the coarsest level
726 aggCharg ← treeAgg(stringTree(regCharg, chargeTree))
727 ## these can be further classified into crime classes
728 crimes.trial ← CrimeClassify(aggCharg, regCharg)
729 ## convert these classes into a factor for the data, start with a generic "other"
       vector
730 sun.swap$CrimeType ← rep("Other", nrow(sun.swap))
731 ## now populate it
732 for (nm in sort(names(crimes.trial))) sun.swap$CrimeType[crimes.trial[[nm]]] ← nm
733 sun.swap$CrimeType ← as.factor(sun.swap$CrimeType)
734
735 ## synthesize additional columns
736 sun.swap ← SynCols(sun.swap)
737
738 ## now organize this on the juror scale
739 sun.juror ← UniqueAgg(sun.swap, by = "JurorNumber", collapse = ",")
740
741 ## Checkpoint 2: the swapped data has been processed and summarized to be on the
       scale of individual jurors
742 ## save the swapped data
743 write.csv(sun.swap, "FullSunshine_Swapped.csv", row.names = FALSE)
744 ## and the juror summarized data
745 saveRDS(sun.juror, "JurorAggregated.Rds")
746
747 ## summarize by trial, get the unique trials
748 Trials ← unique(sun.swap$TrialNumberID)
749 ## extract information about these trials, note that grouping occurs on the trial
       ID, defendant ID, and charge ID levels,
750 ## as the trials frequency involve multiple charges and defendants, which makes
       them less clean
751 sun.trial ← aggregate(sun.swap[, TrialVars],
752         by = list(sun.swap$TrialNumberID, sun.swap$DefendantID
753         .DefendantToTrial,
754         sun.swap$ID.Charges),
755         unique)
756 sun.trial$Group.1 ← NULL
757 sun.trial$Group.2 ← NULL
758 sun.trial$Group.3 ← NULL
759
760 ## summarize the juries by trial as well
761 sun.jursum ← JurySummarize()
762
763 ## merge the summaries to the trial sunshine data
764 sun.trialsum ← merge(cbind(TrialNumberID = sun.jursum$Juries$TrialNumberID, sun.

```

```

jursum$Summaries),
764     sun.trial, all = TRUE)
765
766 ## notice that the total removed variables are incomplete, try to correct this
767 where possible using the jury
768 ## summarized data above
768 sun.trialsum$DefRemEst ← RemovedJurorEstimates(sun.trialsum$DefenseTotalRemoved,
       data = sun.trialsum,
769                                           ident = "Gender.DefRem", plot =
                                           FALSE)
770 ## perform this same procedure for the prosecution removals
771 sun.trialsum$ProRemEst ← RemovedJurorEstimates(sun.trialsum$StateTotalRemoved,
       data = sun.trialsum,
772                                           ident = "Gender.ProRem", plot =
                                           FALSE)
773 ## synthesize some other variables, simple race indicators
774 sun.trialsum$DefWhiteBlack ← as.factor(FactorReduce(sun.trialsum$DefRace, tokeep
       = c("Black", "White", "U")))
775 sun.trialsum$DefWhiteOther ← as.factor(FactorReduce(sun.trialsum$DefWhiteBlack,
       tokeep = c("White", "U")))
776 ## the Kullback-Leibler divergence
777 sun.trialsum$KLdiv ← kldiv(sun.trialsum[,grepl("Jury", names(sun.trialsum))],
778                           sun.trialsum[,grepl("Venire", names(sun.trialsum))])
779
780 ## Checkpoint 3: the data has been set to the trial level and summarized
781 ## save this
782 saveRDS(sun.trialsum, "TrialAggregated.Rds")
783 saveRDS(sun.jursum, "AllJuries.Rds")

```

## A.3 Jury Sunshine Irregularities

Table A.1: Jury sunshine data irregularities noted in data flattening

|                                  |  |
|----------------------------------|--|
| Charges without trial (ACISID)   | 08CRS50940, 08CRS52888, 09CRS000305, 09CRS1106, 09CRS50752, 10CR52031, 10CRS051975, 10CRS1215, 10CRS397, 10CRS51388, 10CRS51610, 10CRS52410, 11CRS051642, 11CRS051795, 11CRS1577, 11CRS1745, 11CRS1783, 11CRS51204, 11CRS51895, 11CRS52470, 08CRS54836, 08CRS50113 |
| Prosecutors without trials (IDs) | 1-000, 11B-000, 12-000, 14-000, 15B-000, 16A-000, 16B-000, 17A-000, 17B-000, 19A-000, 19B-000, 20A-000, 20B-000, 21-000, 22A-000, 22B-000, 24-000, 25-000, 27A-000, 27B-000, 28-000, 29A-000, 29B-000, 30-000, 6-000, 9-000  |
| Trial missing charge (ID)        | 710-01   |

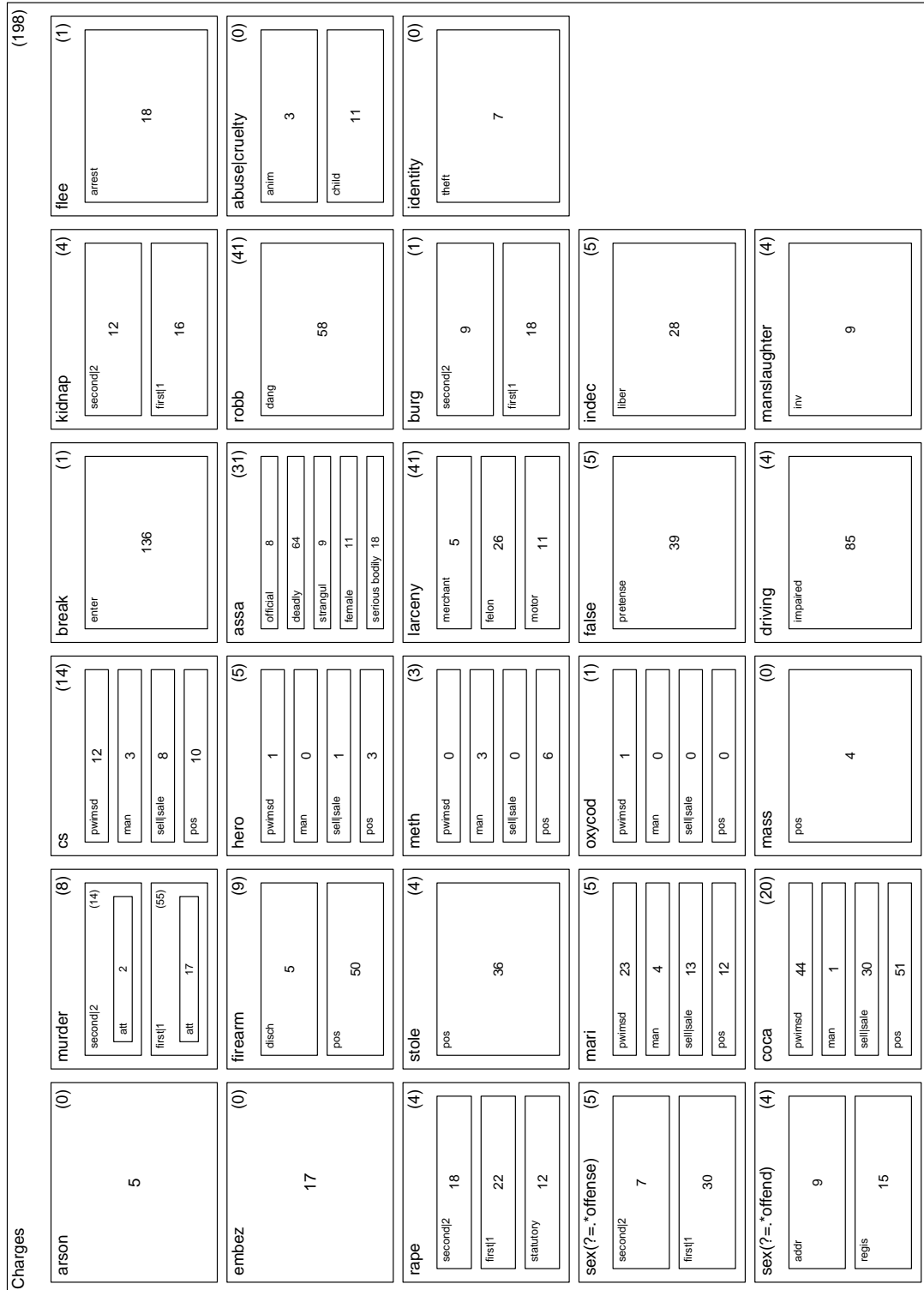


Figure A.1: The regular expression charge tree arranged by hierarchy with counts provided. The counts in brackets indicate the counts of charges which could not be classified to a lower level of the hierarchy



## A.4 Jury Sunshine Charge Classification

## A.5 Using Sweave to include R code (and more) in your report

The easiest (and most elegant) way to include R code and its output (and have all your figures up to date with your report) is to use Sweave. You can find an introduction Sweave in `/u/sfs/StatSoftDoc/Sweave/Sweave-tutorial.pdf`.



## Appendix B

# Yet another appendix....

### B.1 Description

**Something** details.

**Something else** other definition.

### B.2 Tables

Refer to Table [B.1](#) to see a left justified table with caption on top.

| Table B.1: Results. |              |
|---------------------|--------------|
| <b>Student</b>      | <b>Grade</b> |
| Marie               | 6            |
| Alain               | 5.5          |
| Josette             | 4.5          |
| Pierre              | 5            |



# Epilogue

A few final words.



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