the opponent of the strike.'" [1687] "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous," [1688] but, on more than one occasion, the Supreme Court has reversed trial courts' findings of no discriminatory intent.[1689] The Court has also extended *Batson* to apply to racially discriminatory use of peremptory challenges by private litigants in civil litigation,[1690] and by a defendant in a criminal case,[1691] the principal issue in these cases being the presence of state action, not the invalidity of purposeful racial discrimination.

Discrimination in the selection of grand jury foremen presents a closer question, the answer to which depends in part on the responsibilities of a foreman in the particular system challenged. Thus, the Court "assumed without deciding" that discrimination in selection of foremen for state grand juries would violate equal protection in a system in which the judge selected a foreman to serve as a thirteenth voting juror, and that foreman exercised significant pow-

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[1687] Rice v. Collins, 546 U.S. at 338 (citations omitted). "[O]nce it is shown that a discriminatory intent was a substantial or motivating factor in an action taken by a state actor, the burden shifts to the party defending the action to show that this factor was not determinative. We have not previously applied this rule in a *Batson* case, and we need not decide here whether that standard governs in this context. . . . [Nevertheless,] a peremptory strike shown to have been motivated in substantial part by a discriminatory intent could not be sustained based on any lesser showing by the prosecution." Snyder v. Louisiana, 128 S. Ct. 1203, 1212 (2008) (citation omitted).

To rule on a *Batson* objection based on a prospective juror's demeanor during *voir dire*, it is not necessary that the ruling judge have observed the juror personally. That a judge who observed a prospective juror should take those observations into account, among other things, does not mean that a demeanor-based explanation for a strike must be rejected if the judge did not observe or cannot recall the juror's demeanor. Thaler v. Haynes, 559 U.S. ___, No. 09–273, slip op. (2010).

[1688] Federal courts are especially deferential to state court decisions on discriminatory intent when conducting federal *habeas* review. Felkner v. Jackson, 562 U.S. ___, No. 10–797, slip op. at 4 (2011) (per curiam) (citation omitted)..

[1689] Snyder v. Louisiana, 128 S. Ct. 1203, 1207 (2008) (Supreme Court found prosecution's race-neutral explanation for its peremptory challenge of a black juror to be implausible, and found explanation's "implausibility . . . reinforced by prosecution's acceptance of white jurors" whom prosecution could have challenged for the same reason that it claimed to have challenged the black juror, id. at 1211). In Miller-El v. Dretke, 545 U.S. 231 (2005), the Court found discrimination in the use of peremptory strikes based on numerous factors, including the high ratio of minorities struck from the venire panel (of 20 blacks, nine were excused for cause and ten were peremptorily struck). Other factors the Court considered were the fact that the race-neutral reasons given for the peremptory strikes of black panelists "appeared equally on point as to some white jurors who served," id. at 241; the prosecution used "jury shuffling" (rearranging the order of panel members to be seated and questioned) twice when blacks were at the front of the line; the prosecutor asked different questions of black and white panel members; and there was evidence of a long-standing policy of excluding blacks from juries.

[1690] Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991).

[1691] Georgia v. McCollum, 505 U.S. 42 (1992).