Stage 2

Your Non-Discriminatory Reasons

- Can be "trivial if genuine and neutral." (*People v. Lenix* (2008) 44 Cal.4th 602, 613)

[redacted]

- "A prospective juror may be excused based upon bare looks and gestures, hunches, and even arbitrary reasons." (*People v. Allen* (2004) 115 Cal. App. 4th 542, 547.)

- Can be "based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons" (*People v. Lenix*, *supra*, 44 Cal.4th 602, 613)

[redacted]

Stage 2

Your Non-Discriminatory Reasons

Demeanor

- "She was 'passive' in the way she answered questions leading him to believe she might reach a decision that was not well thought out." (*People v. Howard* (1992) 1 Cal.4th 1132, 1208.)
- "Her facial expressions and the manner in which she responded 'communicated a difficulty in being able to mentally grasp the process of a criminal trial involving the death penalty.'" (*Ibid.*)
- Juror's body language seemed angry and hostile. (*People v. Turner* (1994) 8 Cal. 4th 137.)
- "She had a very defensive body position when the prosecutor questioned her and would not look at him when introduced. Her pulse seemed to race when the death penalty was mentioned. . . . She was very nervous about the death penalty and kept her hand over her mouth when talking about it. . . She did not relate to the prosecutor and seemed not to trust him." (*People v. Johnson* (1989) 47 Cal.3d 1194, 1218, overruled on other grounds by *People v. Gutierrez* (2017) 2 Cal.5th 1150, 1174 [appellate court review must include comparative juror analysis].)

Stage 2
Your Non-Discriminatory Reasons

Occupation

- Juror's occupation (*People v. Arellano* (2016) 245 Cal. App. 4th 1139, 1165
  - Teachers (*People v. Barber* (1988) 200 Cal.App.3d 378, 394.)
  - DPSS/Caregivers (*People v. Perez, supra*, 48 Cal.App.4th at p. 1315
  - *Health Care/ Social Services* (*People v. Trevino, supra*, 55 Cal.App.4th at p. 411.)
  - Unemployed (*People v. Hamilton* (2009) 45 Cal.4th 863, 904-905)
- Juror's spouse's occupation (People v. Arellano, 245 Cal. App. 4th 1139, 1165)
  - Or Ex-Spouse's Occupation (*People v. Johnson, supra*, 47 Cal.3d at p. 1218.)

Stage 2
Your Non-Discriminatory Reasons

Attire/Appearance

- "She was very young and 'came into court wearing a T-shirt and somewhat sloppily attired.' Prosecutor explained that he generally preferred to have "older, more conservative people" on the jury.... Likewise, a slovenly appearance can reveal characteristics that are legitimately undesirable to the prosecution." (*People v. Lomax* (2010) 49 Cal.4th 530, 575.)
- Juror "stood out from all the other jurors because '[s]he dressed in a way which is extraordinary for somebody of her age. She's 33 years old but she dressed like a 15-year-old, with baggy clothes ... very unkempt and slovenly looking person.'" (*People v. Hamilton*, *supra*.)
- "'[S]he was 'grossly overweight, appeared unclean and wore an excess of cheap jewelry,' factors he believed might prevent effective interaction with other jurors." (*People v. Howard* (1992) 1 Cal.4th 1132, 1208.)
- Metal-studded, leather motorcycle garb (*People v. Walker* (1988) 47 Cal.3d 605, 625.)

Stage 2
Your Non-Discriminatory Reasons

Negative experience with LE

- Prospective juror's negative experience with law enforcement. (*People v. Turner* (1994) 8 Cal.4th 137, 171; *People v. Walker* (1988) 47 Cal. 3d 605.)
- Relatives or family members in prison (*People v. Roldan* (2005) 35 Cal.4th 646, 703, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *People v. Morris* (2003) 107 Cal.App.4th 402, 409; *People v. Arellano, supra*.)
- Arrest/conviction of juror's family member (*People v. Turner, supra*.)

Stage 2

Your Non-Discriminatory Reasons

[redacted]

- "[H]er very response to your answers," her "dress" and "how she took her seat" too vague. (*People v. Allen* (2004) 115 Cal.App.4th 542)

[redacted]

Stage 2
Your Non-Discriminatory Reasons

- When give your reasons, judge will be (should be) evaluating your demeanor and credibility (Stage 3)

- You can make an *honest* mistake
  - *Aleman v. Uribe* (2013) 723 F.3d 976 – prosecutor honestly thought excused juror had made a statement that was actually made by a different juror. No Batson error. Batson prohibits *purposeful* discrimination, not honest mistakes.

Stage 2
Comparative Juror Analysis
People v. Cisneros

People v. Cisneros (2015) 234 Cal.App.4th 111: DA's reason was I want the next juror in line.

- Court of Appeal found this is the same as giving *no reason at all*.

- Anytime you strike a juror, it necessarily means that you prefer the next prospective juror to the one being struck. There are 12 jurors available to reach that next prospective juror. You must explain why you chose to strike that particular juror in order to reach the next prospective juror.

Stage 3
Was Strike Purposefully Discriminatory?

- Court evaluates evidence and determines if defendant has met burden to prove purposeful discrimination

- Look totality of the evidence (direct and circumstantial)

Stage 3

- Are the given reasons genuine or is the given reason a pretext for discrimination

- "The focus at this point is on the subjective *genuineness* of the race-neutral reasons given for the peremptory challenge, *not* on the objective *reasonableness* of those reasons." (*People v. Trinh* (2014) 59 Cal.4th 216, 241.)