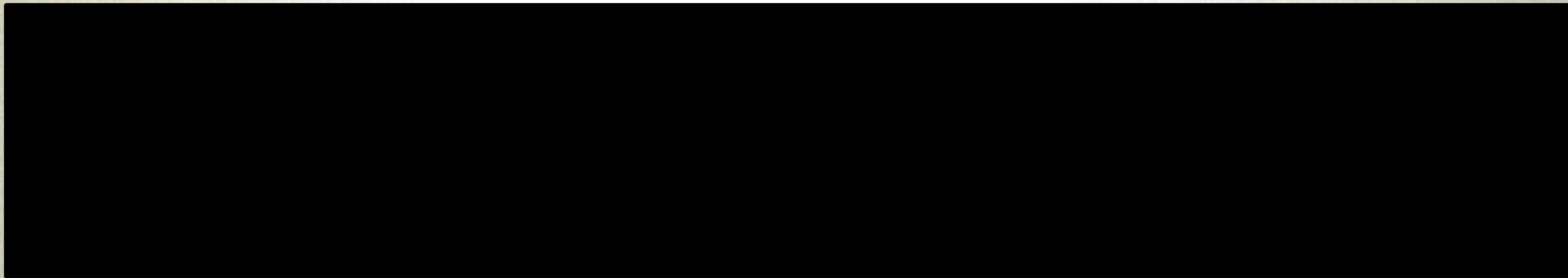


## Stage 3

### Comparative Juror Analysis

- Comparative juror analysis – compare the excused juror(s) with the jurors accepted by the DA
  - Circumstantial evidence of intent

- 
- *Miller-El v. Dretke* (2005) 545 U.S. 231

## Stage 3

### Comparative Juror Analysis

- Even if not raised in trial court, will conduct it on appeal [REDACTED]

– (*People v. Lenix* (2008) 44 Cal.4th 602)



# Stage 3

## Credibility Determination

Court is to consider:

- demeanor
- inherent reasonableness or improbability of proffered explanations
- plausible basis in accepted trial strategy
- the court's own observation of the relevant jurors' voir dire
- court's own experience as a trial lawyer and judge in the community
- **the common practices of the prosecutor's office and the individual prosecutor himself**

*(People v. Mai (2013) 57 Cal.4th 986)*

# The Remedy

- Default remedy is quash whole venire and start over
- Alternative remedy is reseal the improperly excused juror

Prevailing party gets to pick, but forfeited if he fails to request a particular remedy. (*People v. Mata* (2013) 57 Cal.4th 178)

# The Remedy

- *People v. Willis* (2002) 27 Cal.4th 811 – Def Atty tried to dismiss venire, then exercised peremptories against all white jurors. People did not want to give him the remedy he wanted so agreed to monetary sanctions.
- CSC approved of alternative remedies because had consent of the prevailing party.
- Courts have discretion to fashion appropriate alternative remedies, but prevailing party always has the choice

# Appellate Review

- **The law**

- “Great deference” to trial court
- “Presume that a prosecutor uses peremptory challenges in a constitutional manner”

*(People v. Montes (2014) 58 Cal.4th 809, 847)*

