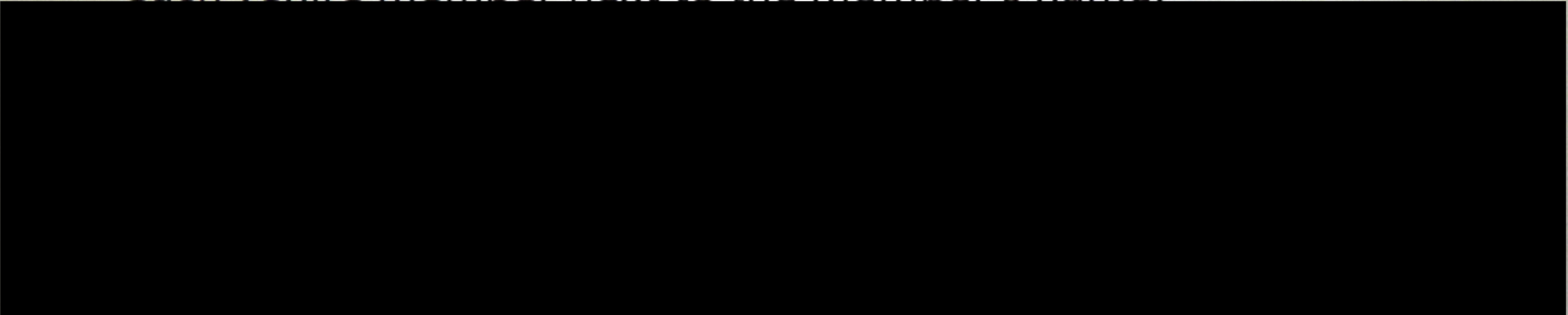


Stage 1

Should Your Notes Document Race?

- *Miller-El v. Dretke* (2005) 545 U.S. 231: In a case tried pre-Batson, USSC found notes documenting race are evidence of discrimination.
 - *People v. Lenix* (2008) 44 Cal.4th 602, 671, fn. 12: “We emphasize, however, that post *Batson*, recording the race of each juror is an important tool to be used by the court and counsel in mounting, refuting or analyzing a *Batson* challenge.”
 - *Green v. Lamarque* (9th Cir. 2008) 532 F.3d 1028: “[T]he prosecutor had noted the race of each venire member he struck from the jury pool; when the trial judge asked him who he struck and why, the prosecutor was able to read off a list, and he had noted the race of each venire member next to the member’s name.”
- 

Stage 2

The Non-Discriminatory Reasons

- You give non-discriminatory reasons for exercising the strike(s)
 - Actual reasons
 - No longer objective, this is subjective

“We emphasize that the prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause”

➤ (*Batson v. Kentucky, supra*, 476 U.S. at p. 97.)

- “The party seeking to justify a suspect excusal need only offer a genuine, reasonably specific, race or group-neutral explanation related to the particular case being tried.”

➤ (*People v. Arias* (1996) 13 Cal.4th 92, 136.)

Stage 2

The Non-Discriminatory Reasons

- Justify each individual juror challenged during the Wheeler/Batson motion
 - On appeal, failure to provide adequate reasons even for one of a cognizable group requires reversal. (*People v. Silva* (2001) 25 Cal. 4th 345.)

Stage 2

The Non-Discriminatory Reasons

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

- “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)

Stage 2

The 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

The 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

The 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

The 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*.)