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.)

Stage 3
Comparative Juror Analysis

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

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

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)

Stage 3
Credibility Determination

People v. Arellano, supra:

- Prosecutor excused black juror, claiming she had worked for a "liberal political organization" because she had worked as a field representative for the Department of Commerce.
- She had the same job for 22 years, which meant she worked throughout presidential administrations and congressional majorities from both political parties.
- Nothing in record that she was affiliated with a particular political party.
- When court and defense counsel express confusion over this response, DA then mentioned her prior experience with the police and jury service on a "police brutality" case:
- Trial court summarily denied defendant's *Batson/Wheeler* objection and simply said that the prosecutor had "provided a race-neutral explanation. Defense has not proved any purposeful racial discrimination.

Stage 3
Credibility Determination

People v. Arellano, supra (Continued)

Appellate court **reversed**:

- "Although we generally 'accord great deference to the trial court's ruling that a particular reason is genuine,' we do so only when the trial court has made a sincere and reasoned attempt to evaluate each stated reason as applied to each challenged juror. When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings. But when the prosecutor's stated reasons are either unsupported by the record, inherently implausible, or both, more is required of the trial court than a global finding that the reasons appear sufficient.
  - (*People v. Arellano, supra*, 245 Cal.App.4th at pp. 1165-1166, citing *People v. Silva, supra*, 25 Cal.4th at pp. 385-386.)

The Remedy

- Default remedy is quash whole *venire* and start over
- Alternative remedy is reseat 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