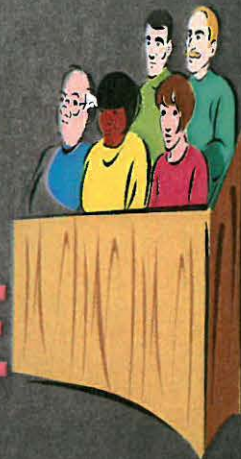



VOIR DIRE



ORANGE COUNTY DISTRICT
ATTORNEY

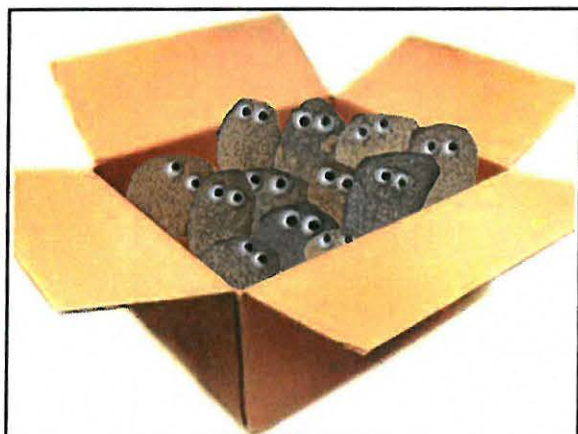
Attorney Training- April 2012

Heather Brown
Senior Deputy District Attorney

VOIR DIRE 

ORANGE COUNTY DISTRICT ATTORNEY
Attorney Training- April 2012

Heather Brown
Senior Deputy District Attorney



**THIS IS THEE MOST
IMPORTANT PART OF TRIAL**

Don't let anyone tell you otherwise..
You can have all the facts in the world,
but if you've got a whacko on there it
doesn't mean a thing..

**PURPOSE OF JURY
SELECTION**

WIN EM OVER TO YOU & YOUR CASE!
PREPARE THEM FOR WEAKNESSES
WEED OUT THE WHACKOS

WIN THEM OVER!

THIS IS YOUR OPPORTUNITY TO
SHINE!!!! SOMETIMES ON YOUR
GAME.. SOMETIMES NOT...

USE PENCIL!!!!

BEST ADVICE I CAN GIVE YOU

**YOU'VE GOT A FEW
MINUTES TO:**

1. COMMAND THE COURTROOM
2. GET THEM TALKING
3. GET THEM TO LIKE YOU
4. GET THEM TO LIKE YOUR CASE
5. (and want to convict!!!)

**WALK TO THE DOOR WITH
YOUR HANDS FULL...**

DROP SOMETHING! SEE WHO
PICKS IT UP... WHO OPENS DOOR
FOR YOU...

BE YOURSELF!!!!

IF YOU'RE FUNNY... BE FUNNY
IF YOU'RE SMART.... BE SMART
IF YOU'RE A BORING DORK...

WHERE DO YOU START?

Hammer out a clever question that can lead you
into your questioning that you can use in all cases
** never the same jurors twice**
No one will know you used the same schtick in
the last trial!!!

HAVE YOUR OPENING LINE..

WHEN YOU STAND UP... YOU
SHOULD HAVE YOUR OPENING
ZINGER.... SO THEY'LL LISTEN TO
YOU..... THIS IS WHERE YOU WIN
THEM OVER...

IF YOU DON'T HAVE A ZINGER.....

GO AND POACH ONE!!!!

**DO NOT ASK GROUP
QUESTIONS AND EXPECT TO
GET PEOPLE TALKING**

ASK INDIVIDUAL QUESTIONS....
NOT YES OR NO Q'S.....
HEAR THEM SPEAK!!!!!!

**EVERYONE LOVES TO TALK
ABOUT THEMSELVES.....**


GET THEM TALKING!! I ALWAYS HAVE
JURORS SAY "WHY DID YOU PICK ME?
WHY DIDN'T DEFENSE ASK ME ANY
QUESTIONS?" ETC.
** they rarely even mention the evidence**

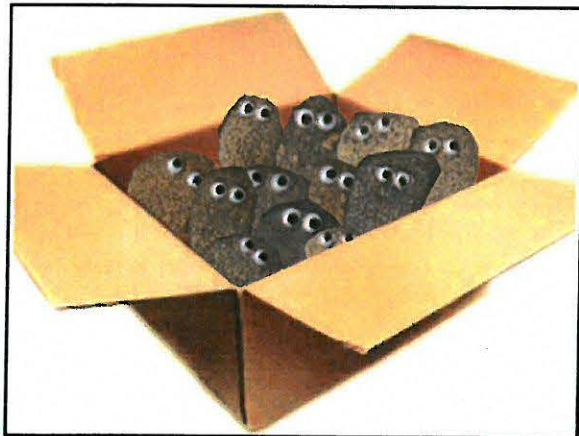
USE HYPOS!!!!!!

It's the most effective way of
demonstrating legal concepts AND it
gets people talking... and thinking..

**IF THEY ANSWER YOU...
LISTEN TO WHAT THEY ARE
SAYING...**
ASK A FOLLOW UP QUESTION!

**INTRODUCE JURY TO
UNFAMILIAR LEGAL
CONCEPTS**
"WHEN WE THINK OF CHILD
MOLEST... WE THINK OF ____
ACTUALLY LEWD ACT ON
MINOR.."





**YOU HAVE READ YOUR
CASE OVER AND OVER...**

They hear it once with the evidence,
and in piecemeal bits and pieces....
What seems obvious to us- isn't
obvious to them!!!

**THE LAW SEEMS OBVIOUS
TO US!!!**

But it's not to them!!!!



**ALWAYS TALK ABOUT
CIRCUMSTANTIAL EVIDENCE**

ALWAYS!!!! ALWAYS!!!!
ALWAYS!!!!

**THIS IS THE SINGLE MOST
IMPORTANT THING YOU CAN
TALK ABOUT!!!!!!!**

Every piece of evidence/ every case/
every everything comes down to this
one legal concept

**EVERY SINGLE PIECE OF
EVIDENCE HAS CIRC EV
LINKED TO IT!!!**

NATURE OF WITS RELATIONSHIP
BIAS, MOTIVE TO LIE
WEARING GLASSES, FEAR, DRUNK

**CIRCUMSTANTIAL
EVIDENCE...**

HYPO: BANK ROBBERY
COOKIES, RAINING, ETC...

SPECIFIC INTENT??

USING CIRCUMSTANTIAL
EVIDENCE... USE A HYPO!!!
MAN IN NORDSTROM...

**THIS IS ALSO A WAY OF
WEEDING OUT THE
WHACKOS!!!**

ASK THEM POINT BLANK IN YOUR
HYPO: CAN YOU DETERMINE WHAT'S IN
THEIR MIND?? IE. DRIVING DOWN
STREET, BLINKER (DON'T HAVE TO YELL
OUT WINDOW)

**WOULDN'T YOU AGREE #7
THE ONLY WAY TO
DETERMINE WHAT'S IN
SOMEONE'S MIND, IS
CIRCUMSTANTIAL EVIDENCE?**

MAN SAYS HIS WIFE ACCIDENTALLY
FELL OVERBOARD... YET SHE'S GOT
CEMENT BLOCKS AROUND HER
ANKLES, TRACES OF SEDATIVE IN
HER DRINK, AND GUESS WHO
BOUGHT CEMENT FROM HOME
DEPOT A WEEK PRIOR?

TV SHOWS?

CSI?? Law and Order, Perry Mason, Dexter,
Crimetime, Diagnosis Murder, Blind Justice,
FBI Untold Stories, etc..
659 TOTAL ACCORDING TO WIKIPEDIA

ADDRESS IT!!!!!!

MOCK THE SHOWS!
JUST REAL PEOPLE IN REAL LIFE..
MAKE A JOKE OUT OF IT. "THEY DON'T SHOW
YOU THIS PART ON LAW AND ORDER DO THEY?"
USE A HINTO

**BUT, USE THOSE SHOWS
TO YOUR ADVANTAGE...**

JURORS WANT LAW AND ORDER.
THEY WANT TO DELVE INTO THE
MIND OF THE PERPETRATOR...

**BRING THE IDEA OF
CIRCUMSTANTIAL EVIDENCE
BACK AROUND IN CLOSING
ARGUMENT**

Reasonable vs. Unreasonable
2 rx = tie goes to runner
Unrx = MUST ADOPT RX
INTERPRETATION

**"DON'T TOUCH ME LIKE
LALO DOES.."**

YOU WOULD HAVE TO BELIEVE:

LIST EVERY MOVE THE PERSON WOULD HAVE TO MAKE FOR THEM TO BELIEVE THE WITNESS IS LYING. (IF INCONSISTENCIES, THIS IS PERFECT!) THEY MASTERMINDED THEIR STORY- YET THEY THREW IN SOME INCONSISTENCIES TO BE REALLY CONVINCING...

TALK ABOUT THE WEAKNESSES!

- Defendant is good-looking; looks innocent, although she's not.
- Recanting victims (DV) (address in voir dire)
- Unsavory witnesses (address in voir dire)
- Unsympathetic victim (address in voir dire)
- Incomplete investigation (voir dire)
- "Technical" violations of the law (should be dealt with in Voir Dire)

SWEATER VESTS....

DEFENSE LOVES THEM!!! ASK THEM "IF HE'S DRESSED IN A SWEATER VEST EVERY SINGLE DAY... ARE YOU AUTOMATICALLY GOING TO FIND HIM NOT GUILTY... BECAUSE HE LOOKS ALL NICE HERE IN COURT???"

**IF YOU KNOW A DEFENSE
ATTNY HAS CERTAIN TRICKS
OF THE TRADE...**

EXPPOSE THEM IN YOUR JURY
SELECTION !..... LET THE JURY
KNOW IT'S COMING....

BRADY INFORMATION!!

WHAT IS IT?
YOU HAVE A STATUTORY AND
CONSTITUTIONAL DUTY TO
DISCLOSE IT TO DEFENSE.

PC 1054.1

- ☐ The prosecuting attorney SHALL disclose to the def or his attny all of the following
- ☐ a. If in the possession of the prosecuting attny
OR
- ☐ b. if the prosecuting attny knows it to be in the possession of investigating agencies:
- ☐ ANY EXCULPATORY EVIDENCE

BRADY V. MARYLAND
(1963) 373 U.S. 83

- ❑ The U.S. Supreme Court ruled that constitutional requirements of due process mandate an affirmative duty on the part of the prosecutor to disclose to the defendant evidence that is both favorable and material to the defendant's guilt and punishment
- ❑ **** MUST DISCLOSE WHETHER DEF REQUESTS IT OR NOT!**
- ❑ **** Brady evidence either directly impacts the issue of guilt or innocence or undermines the credibility of a prosecution witness**

Brady Evidence

- ❑ Prior instances of untruthfulness are Brady
- ❑ "all historical events bearing on a witnesses' propensity to be truthful or untruthful" is Brady evidence. (People v. Kasim (1997) 56 Cal.App.4th 1360, 1383.)
- ❑ Criminal conduct that constitutes moral turpitude is a Brady violation. Moral turp is a readiness to do evil. Or a "general tendency to do evil" may, but not necessarily involve dishonesty." (People v. Castro, supra 38 Cal.3d 301, 315)

BRADY DISCLOSURE DOES NOT REQUIRE PROOF BRD

PROSECUTORS SHOULD ERR ON THE SIDE OF DISCLOSURE
(U.S. v. Agurs (1976) 427 U.S. 97, 108)

WHAT DO YOU DO WITH AFTER YOU TURN IT OVER?

LITIGATE WHETHER IT COMES IN!
(IT MAY NOT... COULD BE TOO
OLD, IRRELEVANT, ETC.)

ADDRESS IT IN JURY SELECTION!!!!

JURY SHOULD NOT BE SURPRISED
BY ANYTHING IN TRIAL
QUESTION THEM ABOUT IT!!!

SPECIFIC WEAKNESSES

- Unsavory witnesses.
 - Co-defendants, wits with raps
 - Corroborating Evidence
- Your jury selection should address every single weakness in your case... and bring it back home in opening and closing argument... "Remember we talked about this in jury selection... And you agreed to follow the law"
- HAMMER this in closing argument



"THERE ARE NO ANGELS IN HELL"

Homeless
Prostitute
All afforded protection under law

SPECIFIC WEAKNESSES

- Unsympathetic Victim
 - Voir Dire is very important- point out concept of society as the victim
 - Use voir dire to prepare them for it and let them know you can prove your case anyway!!!



SPECIFIC WEAKNESSES

- Incomplete Investigation
 - Address issue in Voir Dire: ask potential jurors if they would vote NOI GUILTY solely because the investigation wasn't as thorough as "CSI."
 - Agree the length of time it took to get this case to trial shouldn't determine guilt or innocence... Certainly whether witnesses memories fade, etc. can be considered...

NO VICTIM?

WHO CARES? EVERY HOMICIDE
CASE IS PROVED WITHOUT THE
VICTIM TESTIFYING...

EXPERT WITNESSES

ADDRESS IT!!!
WILL YOU AUTOMATICALLY BELIEVE AN
EXPERT JUST BECAUSE HE IS AN EXPERT...
GARBAGE IN, GARBAGE OUT... OPINION IS
ONLY AS GOOD AS THE FACTS IT IS BASED ON..

NATURE OF YOUR CASE

IF IT'S A SEX CASE, 647 & 220, ETC. BE SURE TO
ASK THEM ABOUT 1190
(B/C NATURE OF CHARGES... WILL YOU HOLD
ME TO A HIGH LEVEL OF PROOF???)
NEED DNA? NEED CORROBORATION?

MENTAL DEFENSES

YOU BETTER ADDRESS IT IN JURY
SELECTION, OPENING STATEMENT AND
CLOSING.. (TELL THEM I HAVE NO IDEA
WHAT THE DEFENSE IN THIS CASE IS GOING
TO BE... BUT IF MENTAL DEFENSE KEEP AN
OPEN MIND....)

IF YOU HAVE GOOD EVIDENCE...

MAKE THEM THINK YOU ONLY HAVE
ONE WITNESS!!!
ONE WITNESS IF YOU BELIEVE...(1190)
CAN YOU CONVICT?

YOU CAN LET THEM KNOW YOU DON'T WANT ANY DUMMIES ON YOUR JURY

YOU WANT JURORS WHO CAN
CALL A SPADE A SPADE...
KICK ALL THE OTHERS.. THE ONES
YOU KEEP WILL BE FLATTERED!!!

**DON'T BE AFRAID TO ASK
THEM POINT BLANK...**

"ARE YOU GULLIBLE?" EASILY
FOOLED OR MANIPULATED???
1,2,3 EXAMPLE...

**HAVE YOU EVER BEEN TO
JAPAN???**

**RESPOND TO DEFENSE
INQUIRIES**

BE CREATIVE... PBJ EXAMPLE..
"PBJ BANDIT" - LAW SAYS
CONSIDER IT.. YOU'LL CONSIDER
IT RIGHT???

**PRESUMPTION OF
INNOCENCE...**

NOT EVIDENCE OF HIS
INNOCENCE... JUST TELLING YOU
IT'S MY BURDEN..

1'S, 2'S AND 3'S

CAN'T HAVE ALL 1'S
THEY LOVE TO BE FUNNY WITH
THIS ONE..

**WEEDING OUT THE
WHACKOS**

ETHICALLY!

HOW DO YOU KNOW THEY ARE WHACKOS??

- 1. WATCH THEM!
- 2. LOOK AT WHAT THEY ARE WEARING, READING, CARRYING, DOING, SAYING
- 3. DO THEY CHALLENGE YOU?
- 4. WATCH THEIR DEemeanOR WITH DEFENSE ATTNY
- 5. THEIR DEemeanOR WITH YOU! CROSSED ARMS, WON'T SMILE
- 6. TAKE NOTES OF ALL OF IT - ON THE STICKY!!!!

TRY AND WALK BY THEM IN HALLWAY WITH ARMS FULL

SEE WHO OPENS THE DOOR
DROP SOMETHING- SEE WHO PICKS IT UP...

DO NOT DO THE FOLLOWING!



**DON'T KICK PEOPLE OFF
YOUR JURY JUST BECAUSE...**

THEY ARE IN A SPECIFIC GROUP OR
CLASS OF PEOPLE..
BUT..... KNOW YOUR CASE AND WHAT
LIFE EXPERIENCE THOSE PEOPLE MAY
HAVE FOR YOUR FACTS...

People v. Wheeler

(1978) 22 Cal.3d 258

"The use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under article I, section 16, of the California Constitution"

Batson v. Kentucky

(1986) 476 U.S. 79

"The Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant."



BEWARE OF:

- ❑ ANYONE DISINTERESTED
- ❑ ANYONE TOO INTERESTED
- ❑ ANYONE WHO LEANS FORWARD AND LOVINGLY LOOKS AT THE DEFENSE ATTNY
- ❑ ANYONE WHO'S FAMILY MEMBER IS IN CUSTODY FOR A SIMILAR CRIME
- ❑ ANYONE WHO'S ANYONE HAS BEEN WRONGFULLY ACCUSED OF A CRIME
- ❑ LOOKS SLOVENLY AND NOT RESPECTFUL OF COURT..

Peremptory Challenge CCP §§ 225(b)(2) / 231

- ❑ Limited number
 - Generally 10 per side
 - Not automatic postponement is 90 days (e.g., PC § 415)
 - Not life or DP case
- ❑ Alternates
 - Same number as alternative juror called (CCP § 234)
- ❑ Multiple defendant cases
 - Defense gets 6, 10 or 20 challenges jointly (per above guidelines)
 - Each defendant gets 5 individual challenges
 - DA gets same amount as total defense challenges
 - E.g., 3 co-defendant case
 - Defense gets 20 challenges (10 x 5 x 2)
- ❑ Can be used for any reason
 - Can be based on instinct or gut feeling
- ❑ Well sort of... Can't be used for an unlawful purpose
 - May not exclude members of a cognizable group based on group bias

SEE HANDOUT

ALL THE LAW ON ONE SHEET!
COMPLIMENTS OF
ROBERT MESTMAN

Race Neutral Reasons

- ☐ Could be combination of factors
- ☐ Change in dynamics of jury
- ☐ Change in mix of jurors -
- ☐ Number of peremptory challenges remaining

Avoid Wheeler Objections

- ☐ Might look bad to jury
- ☐ Throws you off
- ☐ If sustained, you're in trouble
- ☐ If not sustained, need to worry about appeal
- ☐ May be reported to State Bar

Remedy on Appeal Limited Remand

- Appellate court returns case to trial court for DA to state justifications on the record
- Allows DA to explain justification(s) during appeal process
- Could be years later
- Take & preserve notes!



For Cause Challenge CCP § 225(b)(1)

- Unlimited number (each side)
- General disqualification
 - Lack of any qualification prescribed by law
 - Doesn't speak/understand English, convicted felon, non-resident, etc.
- Implied bias
 - Blood relation to any party, victim, witness, etc.
 - Involvement in prior case
 - Any interest in outcome
- Actual bias
 - State of mind preventing impartiality
 - Focus of voir dire questioning

"I CAN'T BE FAIR"

- Q * I HATE COPS. ALL COPS LIE... HAD BAD
- Q * MY DAUGHTER WAS RAPED, I SEE HIM*
- Q I HATE ALL CHILD MOLESTERS
- Q IF IT'S A GANG CASE, I CAN'T BE FAIR

WHAT DO YOU DO WITH THAT JUROR????

- Q IF YOU LIKE THEM - REHABILITATE THEM
- Q " M' AAM, YOU HAVEN'T HEARD ANY OF THE EVIDENCE... AND YOU HAVE NO IDEA WHAT HAPPENED... IF ALL MY WITS COME IN AND LIE..(NOT SUGGESTING THIS WILL HAPPEN) YOU'RE NOT GOING TO CONVICT HIM JUST BECAUSE YOU DON'T LIKE GANG MEMBERS?" YOU HAVE NO IDEA IF HE IS OR ISN'T... IF HE COMMITTED THIS CRIME..

DEFENSE WILL KICK THEM!

IF YOU DON'T LIKE THEM..

EITHER IGNORE THEM IF YOU
THINK THEY'LL TAINT YOUR JURY
POOL AND KICK THEM 1ST THING!!!

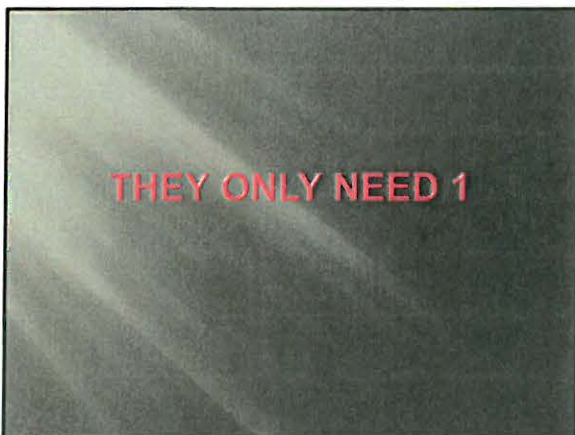
**OR IF TOTALLY
RIDICULOUS.... MAKE AN
EXAMPLE OUT OF THEM...**

SHOW THE JURY JUST HOW
RIDICULOUS THEY ARE..

**"I WOULD NEVER BE A
DISTRICT ATTORNEY"**

"touche"









Wheeler / Batson Guide

DDA Robert Mestman
Orange County District Attorney's Office
© 9/26/11

Seminal Cases

P v. Wheeler (1978) 22 C3 258; *Batson v. Kentucky* (1986) 476 US 79

3 Prong Test

1. Party objecting to challenge (defense) must make a prima facie case
 - Showing that the totality of facts gives rise to an inference of discriminatory purpose
2. If prima facie case shown, burden shifts and party (DA) must explain adequately the challenge
 - Offer permissible race-neutral justification
3. Court then makes decision
 - Whether party objecting (defense) has proved purposeful racial discrimination

(*Johnson v. California* (2005) 545 US 162, 168)

Burden of Proof

- Defense has ultimate burden of proof. (*Gonzalez v. Brown* (9th Cir. 2009) 585 F3 1202, 1207; *Purkett v. Elem* (1995) 514 US 765, 768)
- Defense must show purposeful discrimination by a preponderance of the evidence. (*P v. Hutchins* (2007) 147 CA4 992; *Paulino v. Harrison* (9th Cir. 2008) 542 F3 692, 703)
- Consider totality of circumstances. (*P v. Lenix* (2008) 44 C4 602, 626)
- Presumption that challenge is proper. (*P v. Neuman* (2009) 176 CA4 571)

Rebut Prima Facie Case (1st Prong)

- Whether members of group discriminated against were challenged by defense. (*People v. Wheeler* (1978) 22 C3 258, 283)
- Whether jury includes members of group discriminated against. (*P v. Ward* (2005) 36 C4 186, 203.)
- DA did not know juror was member of cognizable group. (*P v. Barber* (1988) 200 CA3 378, 389.)
- Admit mistake (if challenge was made in error). (*P v. Williams* (1997) 16 C4 153, 188-190)
- Justify prospective challenges before you even make them. (*US v. Contreras* (9th Cir. 1988) 83 F3 1103)

Justifications (2nd Prong)

- Justification need not support a challenge for cause. (*P v. Thomas* (2011) 51 C4 449, 474)
- "Trivial" reason (if genuine) will suffice. (*P v. Arias* (1996) 13 C4 92, 136)
- Reasons must be inherently plausible & supported by the record. (*P v. Silva* (2001) 25 C4 345, 386)
- Must state reasons for each challenge. (*P v. Cervantes* (1991) 223 CA3 323 ["I don't recall" fatal]; but see *Gonzalez v. Brown* (9th Cir. 2009) 585 F3 1202 [based on totality of circumstances, "I don't recall" not fatal])
- Could be combination of factors (change in dynamic of jury, change in mix of jurors, number of preemptory challenges left, etc.). (*P v. Johnson* (1989) 47 C3 1194, 1220-1221)
- Give your justifications even if prima facie showing is not made (necessary for appellate review).

Factors in Court's Analysis (3rd Prong)

- Statistical evidence (percentage of jurors excused, remaining, etc.).
- Comparative analysis (see box).
- Disparate questioning (court looks at differences in the way questions were phrased to different groups).
- Historical evidence of discrimination (by individual prosecutor and office). (*Miller-El v. Dretke* (2005) 545 US 231)

Comparative Analysis

- Side-by-side comparison of jurors who were struck vs. jurors serving.
- If DA's proffered reason for striking juror applies just as well to an otherwise-similar juror, that is evidence tending to prove purposeful discrimination. (*Miller-El v. Dretke* (2005) 545 US 231, 241)
- Comparative juror analysis is but one form of circumstantial evidence that is relevant, but not necessarily dispositive. (*P v. Lomax* (2010) 49 C4 530, 572)

Remedy

- Traditionally: mistrial → draw an entirely different jury panel and start selection anew.
- Other alternatives (need consent of aggrieved party): disallow discriminatory challenge and reseal wrongfully excluded juror; monetary fines; allow aggrieved party additional preemptory challenges. (*P v. Willis* (2002) 27 C4 811)

Cognizable Groups

- There must be an identifiable group distinguished on racial, religious, ethnic or similar grounds. (*P v. Wheeler* (1978) 22 C3 258, 276)
- Protected groups: "race, color, religion, sex, national origin, sexual orientation, or similar grounds." (CCP § 231.5)
- Defendant need not be member of excluded group. (*Wheeler @ 281*)

Race

- African-Americans (*P v. Wheeler* (1978) 22 C3 258)
- Hispanics (*P v. Perez* (1996) 48 CA4 1310; but see *P v. Gutierrez* (2002) 28 C4 1083, 1123 [Hispanic-surnamed jurors not necessarily Hispanic])
- Asian-Americans (*P v. Lopez* (1991) 3 CA4 Supp. 11)

Ethnicity

- Native Americans (*US v. Bauer* (9th Cir. 1996) 84 F3 1549)
- Irish/Italian-Americans (See 20 ALR 5th 398 at § 6)

National origin

- Spanish surnamed jurors (*P v. Trevino* (1985) 39 C3 667)

Religion

- Jews (*P v. Johnson* (1989) 47 C3 1194, 1217)
- But see *P v. Martin* (1998) 64 CA4 378 [permissible if a valid reason related to religion (e.g., Jehovah's Witness)]

Gender

- Women (*P v. Garcia* (2011) 52 C4 706; *P v. Crittenden* (1994) 9 C4 83, 115)

Sexual Orientation

- Gay & Lesbian (*P v. Garcia* (2000) 77 CA4 1269, 1272)

Disability

- *US v. Harris* (7th Cir. 1999) 197 F3 870 [but permissible if disability would affect jury service (e.g., medication that causes drowsiness would interfere)]

Non-Cognizable Groups (Examples)

- Poor people / low income (*P v. Johnson* (1989) 47 C3 1194, 1214)
- Less educated (*P v. Estrada* (1979) 93 CA3 76, 90-91)
- Blue collar workers (*P v. Estrada* (1979) 93 CA3 76, 92)
- Battered women (*P. Macioce* (1987) 197 CA3 262, 280)
- Young adults (*P v. Ayala* (2004) 24 C4 243, 277-278)
- Older adults (*P v. McCoy* (1995) 40 CA4 778, 783)
- Death penalty skeptics (*P v. Johnson* (1989) 47 C3 1194, 1222)
- Ex-felons (*P v. Karis* (1988) 46 C3 612, 631-633)
- Resident aliens (*P v. Karis* (1988) 46 C3 612, 631-633)
- Naturalized citizens (*P v. Gonzalez* (1989) 211 CA3 1186, 1202 [but can't be pretext for challenge based on race/national origin])
- Insufficient English spoken (*P v. Lesara* (1988) 206 CA3 1304, 1307)
- New community resident (*Adams v. Sup. Court* (1974) 12 C3 55, 60)
- Men who wear toupees (*P v. Motton* (1985) 39 C3 596, 606)
- Retired correctional officers (*P v. England* (2000) 83 CA4 772)
- Support jury nullification (*Merced v. McGrath* (9th Cir. 2005) 426 F3 1076)
- People of color (as a group) (*P v. Neuman* (2009) 176 CA4 571)
- Prior jury service (i.e., hung jury). (*P v. Garcia* (2011) 52 C4 706)

Requirements / Rules

- Wheeler/Batson objection may be raised by the defense or prosecution. (*P v. Wheeler* (1978) 22 C3 258, 280-283, fn.29)
- Must raise the issue in a timely fashion (i.e., before jury is sworn). (*P v. Perez* (1996) 48 CA4 1310, 1314)
- A single discriminatory exclusion will be a violation. (*P v. Fuentes* (1991) 54 C3 707, 716, fn.4)

Race-Neutral Justifications (Examples)

- | | | | |
|---|---|--|--|
| • Negative experience with law enforcement <ul style="list-style-type: none">• Relative in jail or prison• Refused employment by police• Divorce with police officer• Juror or friend/family arrested/prosecuted | • Prior Jury Experience <ul style="list-style-type: none">• Previously sat on hung jury• No prior jury experience | • Appearance / Demeanor <ul style="list-style-type: none">• Unconventional appearance• Long hair, facial hair• Blank look, weird• Too eager• Soft spoken, reluctant• Frowning, hostile looks• Defensive body language• Rolled eyes• Overweight | • Limited Life Experiences <ul style="list-style-type: none">• Young, Single• No children• Few ties to community |
| • Stupid <ul style="list-style-type: none">• Ability to comprehend / understand• Answered only 2 of 10 questions• Inattentive• Inconsistent answers | • Occupation <ul style="list-style-type: none">• Social worker• Teacher• Artist• Engineer• Postal Worker• Pastor | | • Relativity <ul style="list-style-type: none">• Next juror(s) looks better |
| | | | • Other <ul style="list-style-type: none">• Views on death penalty• Rely too heavily on expert opinion• Close-mindedness |