exercised separately, and the people shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(b) If the offense charged is punishable with a maximum term of imprisonment of 90 days or less, the defendant is entitled to six and the state to six peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to four additional challenges which may be exercised separately, and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(c) In civil cases, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side shall be entitled to eight peremptory challenges. If there are several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, the court shall grant such additional peremptory challenges to a side as the interests of justice may require; provided that the peremptory challenges of one side shall not exceed the aggregate number of peremptory challenges of all other sides. If any party on a side does not use his or her full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

(d) Peremptory challenges shall be taken or passed by the sides alternately, commencing with the plaintiff or people; and each party shall be entitled to have the panel full before exercising any peremptory challenge. When each side passes consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

(e) If all the parties on both sides pass consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge. **Leg.H.** 1988 ch. 1245 §2, 1989 ch. 1416.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§232. Acknowledgement and Agreement Concerning Perjury.

(a) Prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury acknowledgement and agreement shall be obtained from the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution."

(b) As soon as the selection of the trial jury is completed, the following acknowledgment and agreement shall be obtained from the trial jurors, which shall be acknowledged by the statement "I do":

"Do you and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court." **Leg.H.** 1988 ch. 1245 §2, 1989 ch. 1416.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§233. Discharge of Juror; Substitution of Alternative Jurors.

If, before the jury has returned its verdict to the court, a juror becomes sick or, upon other good cause shown to the court, is found to be unable to perform his or her duty, the court may order the juror to be discharged. If any alternate jurors have been selected as provided by law, one of them shall then be designated by the court to take the place of the juror so discharged. If after all alternate jurors have been made regular jurors or if there is no alternate juror, a juror becomes sick or otherwise unable to perform the juror's duty and has been discharged by the court as provided in this section, the jury shall be discharged and a new jury then or afterwards impaneled, and the cause may again be tried. Alternatively, with the consent of all parties, the trial may proceed with only the remaining jurors, or another juror may be sworn and the trial begin anew. **Leg.H.** 1988 ch. 1245 §2.

§234. Alternate Jurors—Selection and Role.

Whenever, in the opinion of a judge of superior, municipal, or justice court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but

shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff, marshal, or constable during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff, marshal, or constable who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil case the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled. **Leg.H.** 1988 ch. 1245 §2.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§235. Jury of Inquest—Selection, Compensation, and Obligation.

At the request of the sheriff, concern, or other ministerial officer, the jury commissioner shall provide such prospective jurors as may be required to form a jury of inquest. Prospective jurors so provided shall be selected, obligated, and compensated in the same manner as other jurors selected under the provisions of this chapter. **Leg.H.** 1988 ch. 1245 §2.

§236. Function of Jury of Inquest.

When six or more prospective jurors of inquest attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means the person came to his or her death, to inquire into the circumstances attending the death, and to render a true verdict thereon, according to the evidence offered them or arising from the inspection of the body. **Leg.H.** 1988 ch. 1245 §2.

CHAPTER 2
COURT COMMISSIONERS AND STENOGRAPHERS

§258. Enacted 1872. Repealed 1953 ch. 206.

§259. Powers.

Subject to the supervision of the court every court commissioner shall have power to do all of the following:

[1] **(a)** Hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

[2] **(b)** Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

[3] **(c)** Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

[4] **(d)** Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

[5] **(e)** Act aas temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of [6] **an appearing** party [7]. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

[8] **(f)** Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary alimony, costs and attorneys' fees, and issues of fact in contempt proceedings in divorce, maintenance, and annulment of marriage cases.

[9] **(g)** Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of [10] **subdivision (e)**.

[11] **(h)** Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This [12] **subdivision** does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

[13] **(i)** Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the Commissioner resides.

[14] **(j)** Authenticate with the official seal the commissioner's official acts. **Leg.H.** 1872, 1878 p.

VOIR DIRE
GENERAL QUESTIONS

BY

ELLIOTT E. ALHADEFF
DEPUTY DISTRICT ATTORNEY
LOS ANGELES COUNTY

JUNE 18, 1988

1. Credibility:

1. Liars ordinarily have a reason to lie. (M._____, ordinarily, do you believe that normal persons need a reason to lie? That if there is no apparent reason for a person to be lying, then it is reasonable to believe that they will tell the truth?

2. If the People present a witness and there is no evidence that the witness is lying, will that suggest to you that the witness is telling the truth? Will you consider that in evaluating that witness's credibility?

3. (Ask a question involving...) The function of a juror is to determine who is telling the truth and who is not and the juror must be willing to perform that function and feel comfortable in making these kind of decisions irrespective of the consequences.

2. Testimony of a single witness.

1. Instruction: The testimony of a single witness is sufficient to prove any fact if you believe the witness.

2. If a witness testifies about a particular element of this offense, and you believe the witness so that you are convinced of the proof of that element beyond a reasonable doubt, would you require any further evidence of that element? Would you require that the people parade a line of witness or present a series of documents to corroborate that testimony even though you were already convinced beyond a reasonable doubt that it was proved by the testimony of that witness?

3. Do you understand that the same rule applies if the witness testifies and is able to convince you of all the

elements of the offense beyond a reasonable doubt, that no further evidence need be presented? Do you understand that principle? Do you agree with it? Will you apply it as instructed by the court?

3. Testimony of a police officer.

1. Do you think police officers are paid to lie?

2. Do you think police officers will suffer serious sanctions if they lie?...even if the case results in a conviction?

3. Do you think police officers will suffer any sanctions if they tell the truth and it results in an acquittal?

4. Do you think that a police officer can be mistaken without intentionally lying?

5. If you disagree with the investigation of the case by the police, but you are convinced that the defendant is guilty beyound a reasonable doubt, would you acquit the defendant just to teach the police a lesson?

6. Instructions:

1. Would you follow the instructions even if they conflict with your own personal ideas?

2. You understand that the jury room is not a place to legislate. The law has already been determined and both counsel expect that you will apply the law as the judge gives it to you? Now suppose there is an instruction that you strongly disagree with. Could you set aside your own personal feelings and nevertheless apply the law as the judge instructs, reserving your objections for another time to be conveyed to your legislator or other appropriate forum?

3. Can you understand how wrong it would be for both the defense and the people to expect that you will apply the law and find that someone is unwilling to do so? It would mean that despite our efforts to obtain a fair trial based on the law, that could not happen and this whole trial turned out to be a sham? It would be so important for us to discover if any of you have any serious objection to setting aside your personal feelings in applying the law at this stage rather than to subject you to the strain of defending

your personal convictions that may run against the court's instructions.

7. Evidence:

1. You must decide from the evidence presented in court.

2. Do not consider items not introduced into evidence. E.g. M._____, If a juror tries to say that he or she has visited the scene of the incident and that it is different than that testified to, what would be your response?

Do you understand that it would be improper to consider something like that?

Since the statement hasn't been subjected to the rules of evidence, and neither the defense nor I have had an opportunity to ask questions, or cross-examine the juror, and the juror has not been placed under oath, can you see why it is not right to consider such a statement?

(Other examples may be personal relations with individuals or police, expertise with a particular subject.

3. This does not mean that you should be restricted in using your common sense in evaluating the evidence and arriving at all the reasonable inferences and rejecting those inferences that you find are unreasonable.

8. Circumstantial (Indirect) Evidence.

1. The law does not favor one over the other

2. Demonstrate direct and circumstantial.

a. Use of pen in pocket with the inference that it could be stuck with bubble gum.

b. Use of little boy who gets caught with cookie crumbs on his mouth. (Inference that someone flew in the window and put the crumbs on the boy's mouth)

c. Robber who is found with the wallet in his pocket belonging to the victim of a purse snatch. (Somebody put the wallet in his pocket and ran away.)

d. Man who goes to his car and puts keys in the ignition and starts the car and drives away. Inference is

that he intended to drive the car, instead of being forced to do so by believing he was commanded by a martian from outer space.

e. Footprints in the snow. Inference is that a person walked in the area vis. the snow fell coincidently in the pattern of footprints.

f. Lipstick on the collar; inference is that there was an amorous encounter rather than his secretary used his collar as a napkin at lunch that day.

3. Indicate all the alternatives are "possible" but one is reasonable. They must be prepared to select the reasonable and reject the unreasonable even though the unreasonable alternative may be possible.

4. The use of circumstantial evidence requires the application of common sense.

9. Reasonable doubt.

1. Jurors must determine facts.

2. The facts are determined from the evidence, and evidence may be truthful, or untruthful, reasonable or not reasonable, possible or impossible, and so on.

3. Do you expect that in a trial there will be such evidence, i.e., truthful, untruthfull, reasonable or unreasonable, possible and impossible?

4. The determination of facts often means that you must evaluate the truth of evidence that is in conflict. I.e., which version is truthful, reasonable, possible, etc.

5. Resolving conflicts may mean that as between two conflicting versions in the evidence, one pointing to guilt and the other pointing to innocense, you are convinced beyond a reasonable doubt as to that version that points to guilt, notwithstanding the existence of the version that points to innocense. Can you understand that the mere existence of a conflict of the testimony does not mean the existence of reasonable doubt?

Or, do you believe that the mere existence of a conflict of the evidence necessarily means the existence of reasonable doubt?

6. Do you understand that if a mere conflict in the

evidence meant reasonable doubt then in every case a defendant said he was not guilty he would be entitled to an acquittal even if you did not believe him? Can you understand it is important that you evaluate all the evidence and reject that evidence which may be in conflict that you do not believe is trustworthy?

10. Single juror holdout.

1. If you are the only juror voting for a particular position, will you listen to the other jurors to see if you may be wrong?

2. Do you believe it is possible for you to be wrong in evaluating the evidence in this case? Is there anyone on this jury who has never been wrong before?

3. If you are convinced that you are wrong after listening to your fellow jurors, will you unhesitatingly reverse your position in order to avoid what may be an injustice?

4. At the same time, will you discuss your position with your fellow jurors and give them the benefit of your thinking as to the evidence in this case?

11. Use of common sense.

1. You understand that being in a courtroom is no reason to use your common sense any differently than you would use it in any other place?

2. If you happen to be outside the courtroom and you hear something unreasonable it should seem as unreasonable to you as if you were to hear it inside the courtroom, don't you agree?

12. Standards of conduct.

1. Will you hold the defendant to the same standards of conduct that you believe are applicable to any other citizen?

2. Do you think that the defendant is entitled to a fairer trial than are the People?

3. Will you apply the rules of evidence and the law as the judge instructs equally as to the evidence presented by the people as well as that presented by the defendant?

4. Imagine, if you will yourself being asked to perform the same crime that the defendant is being charged with. Can you imagine what your response would be? Do you think that the response by the defendant or any one else should be any different that yours?

12. Sentencing:

1. Do you understand that sentencing is not an issue the may enter into your deliberations?

2. Do you understand that sentencing is a matter that rests exclusively with the judge and other governmental agencies that can evaluate the appropriate sentence, if any, that the defendant may serve?

3. Do you believe you will have the ability only to determine whether the defendant is guilty of the charge? You understand that you must not consider the consequences. If the defendant is found to be guilty, then the court, together with other governmental agencies are charged with the responsibility to determine what, if any sentence should be administered. Do you believe this is proper?

14. Appearance, etc. of deft.

1. Do you think the defendant is entitled to any consideration of leniency because of his youthful appearance?

2. Do you think there is anything in the law that says that if the defendant is young looking or nice looking, or has nice hair or a friendly smile that he is less likely to be guilty?

3. Do you think there is anything in the law that says that if the defendant comes from a particular economic class, or area of our community or has achieved a certain level of education, or social status, or that he has failed to do so, that he is entitled to any greater or lesser consideration of leniency in the application of the law than anybody else? Will you apply the law equally as to this defendant irrespective of his race, national origin, religion, economic status, social or educational status?

15. Deft. testifying

1. I don't know whether the defendant will testify in this case. If he chooses not to testify, you understand that you must not consider that decision to have any effect in the determination of his guilt. On the other hand, if he does, do you believe that his testimony is entitled to be judged by a different standard giving him more credibility than the standard used for any other witness?

2. If the defendant chooses to testify, do you think that he is entitled to a presumption of credibility merely because he is a defendant?

3. Do you understand that the person that gets on the witness stand is considered a witness and is to be judged by the same standards of credibility as any other witness?

4. Remember the question I asked whether you believe a person ordinarily has a reason to lie if he is lying? Will you consider that in judging the credibility of all witnesses including the testimony of the defendant if he should testify?

16. Closing

1. Is there any reason that you can think of that would prevent you from giving both sides in this case a fair trial?

1. Popular observation of a juror:

2. What is the most important part of a trial?

As far as I am aware, no one has ever been able to determine what, if any part of a trial is most important in determining its outcome. Not if it is the opening statement, the voir dire, the direct, the cross, the summation, the facts, the preparation, the temperature of the courtroom at any particular moment, the dress of any of the attorneys, their personality, the conduct of the judge, or even the prejudice or bias of any particular or group of jurors. If you win, and are asked why, you may say it was obviously because of your sterling performance and uncompromising devotion to perfection in the exercise of all of your endeavors. A more truthfull and accurate response may be, "Hell, I don't know."

3. The importance of insuring a competent performance of voir dire.

So why try? Why make such a supreme effort in any part of the trial, such as voir dire, if nobody knows the affect it may have in the trial? I think a good enough answer is because it is fun. Trying cases, each aspect of the case, can be a very enjoyable experience and to the extent you can have fun during the process, usually because you feel that you can do it well, then that should be a sufficient reason to try to do a competent job.

Other possible answeres may be that:

(1) It is necessary to try to "educate" the jurors about important aspects of the case, e.g. felony murder rule, aiding and abetting, single witness testimony is sufficient, etc.

(2) To condition them about the unfavorable parts and to have them oriented to receive such aspects favorably to the prosecution, e.g. sleazy witnesses and informants, negligble amount of dope, child and elderly witnesses who have difficulty articulating, viable defenses, bad police work, etc.

(3) To point out obscure but significant legal points, e.g. entrapment, possession, attempts, etc.

(4) To raise their level of consciousness as to certain areas, e.g. not to consider sentencing, both sides have a "right" to a fair trial, treat the defendant's testimony the same as any other witness, appearance of the defendant has no relation to guilt, etc.

(5) The process reflects your concern over the case (for whatever that is worth), it gives you a sense of having done the responsible thing, and who knows, you might be able to discover a juror that is willing to tell you that he or she is a bigot, that they hate police, that they can't understand the English language, that they are within the fourth degree in consanguinity or affinity to the victim or the defendant, etc.

4. So you want to voir dire a jury.

I will assume that you will want to voir dire a jury. Some DAs don't and therefore don't, and from what I know of their track record it does not reflect that they are less able to convict than any other DA. If it did, then we probably would mandate all DAs voir dire in the way that has "proven successful" for the DAs that do, and we would work to eliminate the offensive provisions of P.C. 1078. We don't and we haven't.

5. The importance of non-verbal communication, astrology, and intuition, etc.

I don't know whether non verbal communication has a significant affect on the "success" of voir dire, but I don't consciously try to do anything that I think is going to make the juror mad. I try to smile when it is appropriate, maybe more than usual to assist the jurors in relaxing and feeling good in the voir dire experience I am taking them through. I am not overly concerned with my dress. Sport coat or suit, depending on which I catch first in the closet. I try to get the pants to match the coat and the same color of right shoe with the left. I have the

feeling that most jurors are impressed with a lawyer that is not impressed with what he or she wears in the court so long as it is within the norm of attire that is something more than casual weekend wear. If I picked a juror that is more concerned with whether my shoes match my tie, than the facts of the case, it is further proof that nobody can tell what it is that determines the guilt of a defendant. So, I don't ask juror if they care if my shoes match my tie.

6. "You can avoid Wheeler by picking the first twelve."

I am concerned about covering my rear on Wheeler motions. I don't dump jurors because of their race. I don't believe that I am going to win or lose a case because I left a juror of a particular race on the case. I honestly believe that despite my motives for trying a case, the community has a right to have a trial conducted without an expression of racial prejudice on the part of the DA. I think it is ugly when I see it, I feel good about not having to engage in it, even if I lose, but especially if I win, and I personally favor having a defendant being told by members of his own race rather than from some other race, that they disaprove of his conduct and that they would like to see him in the state prison. So, I try never to have a jury that does not have at least one person that is a member of the defendant's race.

Nevertheless, members of the defendant's race will often be excused for a variety of reasons, and I insure that when the inevitable Wheeler motion is made at the bench, I make my views clear about the necessity of having representatives of the defendant's race sit in judgement, and that the reason for dismissal of the jurors of the defendants race was that they looked funny, or talked funny, or dressed funny, or would not make eye contact with me, or refused to articulate the reasons for their responses, or the like.

7. Analyze and draft. Analyze and draft.

Every case has its own unique problems. I have come to believe that it is important to disclose those special problems to the jury at the time of voir dire to condition the jurors on receiving the information in as favorable light as possible. I am not comfortable trying a case knowing that an evidentiary bomb is going to explode and hoping the jury will be able to understand and accommodate the context of the problem if they first hear of it during the presentation of the case. This means that in every case, you will have to sit and think where the problem is. What is the defense going to be. How can I condition the juror to accept the People's version despite the problem.

How can this be done by asking certain well phrased questions on voir dire? For example, in a simple drop case, the problem may be the credibility of the officers, in a rape case the existence of penetration, in a molestation case, the ability of the child to testify, in any case the sleaziness of the informant, in a narcotics case the attitude of the juror towards narcotics, or in a DUI case the attitude of the juror toward drinking and driving. Each case has its own. Your mission is to detect the problems, expose them in the most favorable light now that you have the opportunity, and reduce them to their lowest level of significance when they comes up in the case. But I believe strongly that it is of paramount importance, though I have no statistical data to verify it, to do this in voir dire.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- JONATHAN M. BLICK, et al., Defendants.	No. 135189 **Requested Voir Dire Questions**

The People respectfully request the Court to ask the following questions of prospective jurors.

1. Have you, a close friend, or relative ever suffered a serious or disfiguring injury?

2. Are you a twin?

3. Do you have any relatives or close friends who are twins?

4. What is your educational backround?

Dated: February 19, 1991.

B. *Defense Case.*

Defendant presented alibi testimony by his mother, stepfather, stepbrothers, his girlfriend, two women who were living at his mother's house, and employees of Hillhaven Convalescent Home in East Palo Alto. Their testimony was to the effect that defendant left home with his stepbrothers and girlfriend about 12:10 or 12:30 p.m. on the day Dukar was killed to attend a Halloween party at Hillhaven where defendant's stepbrother Barry worked. They arrived 10 to 15 minutes after leaving defendant's house. The witnesses' testimony varied, however, as to the time. The group could have arrived anywhere from 12:30 to 1:35. The varied defense testimony indicated that defendant stayed for 45 minutes to an hour.

Police had been dispatched to the murder scene about 12:52 p.m. It takes about 29 minutes to drive from the murder scene to defendant's residence.

Defendant's family testified that he had lost his wallet in early 1980. They remembered his complaints about it and searching the house for it. Department of Motor Vehicles' records showed that defendant had obtained a duplicate license in February 1980.

Defendant presented expert testimony that there were no fingerprints on the catalog of sufficient quality for comparison purposes. Defendant's mother testified that a few days before the robbery Hodges had come to her house with some jewelry cases and catalogs. Defendant had handled the catalog and had advised his mother not to deal with Hodges.

II. JURY SELECTION ISSUES

A. *Representative Cross-section.*

(1a) Defendant contends that the granting of hardship exclusions because of the projected length of the trial tended to systematically exclude poor persons in a disproportionate manner. His contention fails. (2) Claims of denial of a fair cross-sectional jury are analyzed by ascertaining whether a cognizable class has been excluded. (*People* v. *Fields* (1983) 35 Cal.3d 329, 345 [197 Cal.Rptr. 803, 673 P.2d 680].) (1b) Even assuming that only poor persons were given hardship exclusions, a fact not proven here, persons with low incomes do not constitute a cognizable class. (*People* v. *Estrada* (1979) 93 Cal.App.3d 76, 91 [155 Cal.Rptr. 731]; see also *People* v. *Fields, supra,* 35 Cal.3d at pp. 348-349; *People* v. *Milan* (1973) 9 Cal.3d 185, 195-196 [107 Cal.Rptr. 68, 507 P.2d 956].)

(3) Defendant also contends that the process of death-qualifying a California jury results in the systematic underrepresentation of Blacks and

women on capital juries and denied him his right to a representative jury at the guilt phase. A majority of this court rejected such an argument in *People* v. *Fields, supra,* 35 Cal.3d at pages 349-350, footnote 7 (plur. opn.), 374 (Kaus, J., conc.).

(4) Defendant further contends that the exclusion for cause of prospective jurors who would automatically vote against a death sentence deprived him of a representative jury. This claim has been rejected by both this court and the United States Supreme Court. (*People* v. *Miranda* (1987) 44 Cal.3d 57, 78-79 [241 Cal.Rptr. 594, 744 P.2d 1127]; *Lockhart* v. *McCree* (1986) 476 U.S. 162 [90 L.Ed.2d 137, 106 S.Ct. 1758].)

(5a) Defendant also assigns as error the trial court's denial of his motion pursuant to *People* v. *Wheeler* (1978) 22 Cal.3d 258 [148 Cal.Rptr. 890, 583 P.2d 748]. In *Wheeler,* we held that peremptory challenges may not be used to remove prospective jurors solely on the basis of presumed group bias. We defined group bias as a presumption that certain jurors are biased merely because they are members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds. (*Id.* at p. 276.) (6) The United States Supreme Court similarly held in *Batson* v. *Kentucky* (1986) 476 U.S. 79 [90 L.Ed.2d 69, 106 S.Ct. 1712] that the Equal Protection Clause forbids peremptory challenges of potential jurors solely on account of their race when the defendant is a member of that race. Such challenges may not be used "to strike black veniremen on the assumption that they will be biased in a particular case simply because the defendant is black." (*Id.* at p. 97.)

We recognized in *Wheeler,* and the United States Supreme Court recognized in *Batson,* that peremptory challenges have historically served as a valuable safety valve in jury selection. We said in *Wheeler* that such challenges are permissible so long as they are based on specific bias, which we defined as a bias relating to the particular case on trial or the parties or witnesses thereto: "For example, a prosecutor may fear bias on the part of one juror because he has a record of prior arrests or has complained of police harassment, and on the part of another simply because his clothes or hair length suggest an unconventional lifestyle. In turn, a defendant may suspect prejudice on the part of one juror because he has been the victim of crime or has relatives in law enforcement, and on the part of another merely because his answers on voir dire evince an excessive respect for authority. Indeed, even less tangible evidence of potential bias may bring forth a peremptory challenge: either party may feel a mistrust of a juror's objectivity on no more than the 'sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another' [cita-

tion]—upon entering the box the juror may have smiled at the defendant, for instance, or glared at him." (*Wheeler, supra,* 22 Cal.3d at p. 275.)

Batson does not use the term "specific bias." It permits challenges so long as they may be justified by "a neutral explanation related to the particular case to be tried." (*Batson* v. *Kentucky, supra,* 476 U.S. at p. 98 [90 L.Ed.2d at p. 88].) The court emphasized, however, "that the prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause." (*Id.* at p. 97 [90 L.Ed.2d at p. 88].)

(7a) Under *Wheeler* and *Batson,* if a party believes his opponent is improperly using peremptory challenges for a discriminatory purpose, he must raise a timely challenge and make a prima facie case of such discrimination. Once a prima facie case has been shown, the burden shifts to the other party to come forward with an explanation that demonstrates a neutral explanation related to the particular case to be tried. (*People* v. *Wheeler, supra,* 22 Cal.3d at pp. 280-282; *Batson* v. *Kentucky, supra,* 476 U.S. at pp. 96-98 [90 L.Ed.2d at pp. 87-89].) The court in *Batson* noted that the prosecutor may not rebut the defendant's prima facie case merely by denying that he had a discriminatory motive or affirming his good faith in making individual selections: "If these general assertions were accepted as rebutting a defendant's prima facie case, the Equal Protection Clause 'would be but a vain and illusory requirement.' "[2] (*Batson, supra,* at p. 98 [90 L.Ed.2d at p. 88].)

Both *Wheeler* and *Batson* profess confidence in the ability of the trial courts to determine the sufficiency of the prosecutor's showing. In *Wheeler,* we said that we will "rely on the good judgment of the trial courts to distinguish bona fide reasons for such peremptories from sham excuses belatedly contrived to avoid admitting acts of group discrimination." (*People* v. *Wheeler, supra,* 22 Cal.3d at p. 282.) The court indicated likewise in *Batson.* (*Batson* v. *Kentucky, supra,* 476 U.S. at p. 98, fn. 21 [90 L.Ed.2d at p. 89].) The trial court, however, must make "a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known, his knowledge of trial techniques, and his observations of the manner in which the prosecutor has examined members of the venire and has exercised challenges for cause or peremptorily. . . ." (*People* v. *Hall* (1983) 35 Cal.3d 161, 167-168 [197 Cal.Rptr. 71, 672 P.2d 854].)

[2]The dissent has taken this quotation out of context at pages 1287-1288 in using it to support the argument that subjective reasons are unacceptable. The United States Supreme Court said nothing about subjective versus objective reasons. Its concern was that the reasons be nondiscriminatory, clear, and reasonably specific. (*Batson* v. *Kentucky, supra,* 476 U.S. at p. 98, fn. 20 [90 L.Ed.2d at p. 88].)

In the present case the prosecutor exercised peremptory challenges to remove three Black jurors, four Jewish jurors and two Asian jurors. Defendant objected to exclusion of these jurors by a *Wheeler* motion.[3] The trial court did not make an express finding that defendant had made a prima facie case of group bias. However, the court asked the prosecutor "Do you wish to respond [to the defendant's *Wheeler* motion]?" It then proceeded to hear the prosecutor's explanations for the use of the peremptory challenges. In *People* v. *Turner* (1986) 42 Cal.3d 711 at pages 718-719 [230 Cal.Rptr. 656, 726 P.2d 102], a decision handed down after this case was tried, we concluded that such an inquiry by the trial court constituted "at least an implied finding" of a prima facie showing. Accordingly, we proceed to evaluate the prosecutor's explanations.

(5b) As to the Jewish jurors, the prosecutor stated that one was a "very nervous person," gave the defendants "a very noticeable smile," was opposed to the death penalty or leaned that way. The second person was 71 years old, looked tired, had a relative who was a lawyer, and felt the death penalty was not a deterrent. He seemed to have a great deal of rapport with defense counsel and appeared more friendly to the defendant than the average juror. The third person was 61 years old and was a "very tired appearing person." She was critical of a police department she had dealt with and she felt an officer had lied. She also gave defendants a very sympathetic look. The prosecutor thought the fourth person was "weird," that sympathy for the defendants might be a problem for him, and that he "didn't seem to be willing to commit to promises to make a decision based on the facts of the evidence." The prosecutor also stated he felt totally unable to relate to him.

As to the Asian jurors, one did not approve of the death penalty and said she could not pass judgment. She seemed to have some trouble understanding the people questioning her. The other person said she preferred life without possibility of parole over the death penalty and was concerned that the case be proven without any doubt. She had also contested a speeding ticket and had lost and had some feelings about that.

Regarding the three Black jurors, Ms. S.'s ex-husband was a policeman, and she seemed to be prejudiced against policemen. She had a brother-in-

[3] Defendant is Black. Under *Batson* v. *Kentucky, supra,* 476 U.S. at page 96 [90 L.Ed.2d at pages 87-88], defendant could challenge only the exclusion of the group of which he is a member. Under *Wheeler,* however, defendant need not be a member of the group to challenge its exclusion. (22 Cal.3d at p. 281; see also *People* v. *King* (1987) 195 Cal.App.3d 923, 931, fn. 3 [241 Cal.Rptr. 189].) Moreover, under *Batson* it is at least questionable whether the generic description Asian or a religious group can constitute a "cognizable group." (See *United States* v. *Sgro* (1st Cir. 1987) 816 F.2d 30.)

law who had been arrested and had known others who had gone to jail. 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. It was the practice of the prosecutor to rate each juror on a scale. Ms. T. was given a slightly lower than average rating by the prosecutor; he would have left her on had he had a jury panel where others had lower ratings. She was overweight and poorly groomed, indicating that she might not have been in the mainstream of people's thinking. She was very nervous about the death penalty and kept her hand over her mouth when talking about it. She didn't approve of the death penalty. She did not relate to the prosecutor and seemed not to trust him. Mr. F.S. had been arrested numerous times and had been in and out of jail and court many times as a defendant. "He talked about police officers abusing people and juries treating blacks differently, police treating blacks differently." He would not state a position on the death penalty and said he would require proof beyond a shadow of doubt. He did not come to court twice when asked to by the clerk.

After listening to the detailed explanations given by the prosecutor and the objections by defense counsel to the subjectivity of some of the cited reasons, the court denied the *Wheeler* motion. Unlike *People* v. *Hall, supra,* 35 Cal.3d 161, here there is nothing suggesting that the court misunderstood its obligation to evaluate the prosecutor's explanations. In *Hall* the court indicated hostility to the *Wheeler* holding, stating "'a peremptory challenge is a peremptory challenge, otherwise, it's meaningless.'" (*Id.* at p. 165.) The trial court in *Hall* completely abdicated its responsibility under *Wheeler* and expressed the view that "group bias is shown only when a prosecutor declares an intent to exclude all members of an ethnic group from the jury." (*Id.* at p. 169.) Here, by contrast, the trial court's statement of the basis of a *Wheeler* motion indicated a clear understanding of the distinction between group bias and individual bias, and its explanation of its ruling shows that it found that the challenges had been based on an individual evaluation of each juror and his individual bias. The court thus understood its obligations under *Wheeler* and made a conscientious determination that the prosecutor had not been guilty of group bias.

The dissent's argument to the contrary is unconvincing. First, it rejects a number of reasons given by the prosecutor as being "trivial." Nowhere does *Wheeler* or *Batson* say that trivial reasons are invalid. What is required are reasonably specific and neutral explanations that are related to the particular case being tried. Second, the dissent dismisses a number of statements about particular jurors' dislike of the death penalty on the ground that further questioning revealed such jurors would vote for the death penalty if it were appropriate. Those answers, however, merely ruled out a challenge