

Wheeler/Batson Motion

3 step process

1. Party objecting to challenge must make out *prima facie* case
2. If *prima facie* case shown, burden shifts and party must explain adequately the challenge
3. Court then makes decision

Burden of Proof

- Defense has ultimate burden of proof
- Must show purposeful discrimination by a preponderance of the evidence
- Consider totality of circumstances
- Presumption that challenge is proper

New Objective Standard

- Totality of the circumstances
- **Substantial likelihood** that an **objectively reasonable person** would view race, etc. as a **factor** in the use of the peremptory challenge
- Need not find **purposeful discrimination**

Objectively Reasonable Person

- Is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in California
- “Unconscious bias” includes implicit and institutional biases.

What Can Court Consider?

- Totality of circumstances
- Reasons actually given (shall not speculate)
- Whether defendant, victim and/or witnesses are member of the same perceived cognizable group
- Whether race, etc. bear on the facts of the case
- Disparate questioning
- Comparative analysis
- Reason might be disproportionately associated with a race, etc.
- Reason was contrary to or unsupported by the record
- History of DDA or Office

Presumptively Invalid Reasons

Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system

Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.

Having a close relationship with people who have been stopped, arrested, or convicted of a crime. (3)

A prospective juror's neighborhood

Having a child outside of marriage

Receiving state benefits

Not being a native English speaker.

The ability to speak another language

Dress, attire, or personal appearance

Employment in a field that is disproportionately occupied by group members or that serves a population disproportionately comprised of group members

Observations/Demeanor

1. Inattentive, or staring or failing to make eye contact
 2. Lack of rapport or problematic attitude, body language, or demeanor
 3. Unintelligent or confused answers
- Presumptively invalid unless court confirms behavior

Remedies

- Quash the jury venire and start jury selection anew.
- If after jury impaneled → mistrial
- Seat the challenged juror
- Provide the objecting party additional challenges
- Provide another remedy as appropriate (i.e., monetary fine)

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, parolee/probationer, felon 290s, non-resident
- 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