

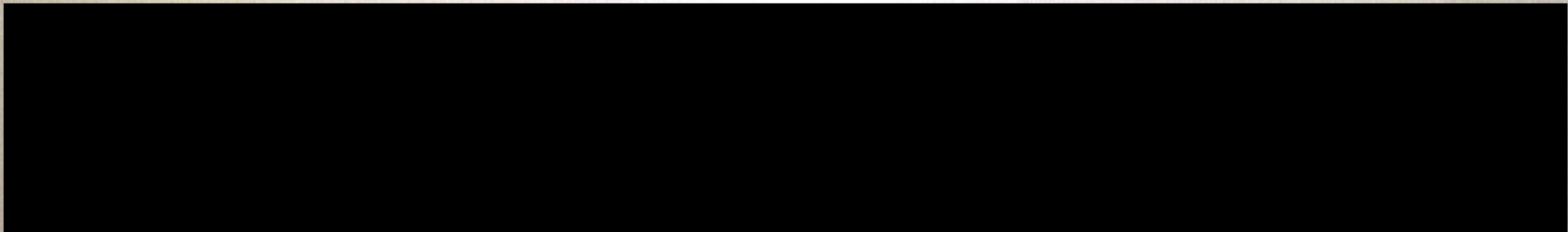
Stage 1

What are cognizable groups?

- Race includes “white”
 - (*People v. Willis* (2002) 27 Cal.4th 811)
- Religion
- Hearing or Vision Impaired
 - CCP § 203 (a)(6) no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person’s ability to communicate or which impairs or interferes with the person’s mobility.
 - But see *People v. Fauber* (1992) 2 Cal.4th 792, 816 [hearing impaired not necessarily protected class, but this is pre-2016 amendment to CCP 231.5].)

Stage 1

What are cognizable groups?

- Yes to black woman, black men . . . (*People v. Young* (2005) 34 Cal.4th 1149)
 - No to “people of color” (*People v. Davis* (2009) 46 Cal.4th 539)
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Stage 1


What are cognizable groups?

- For prima facie violation of the fair cross-section requirement, defendant must show:
 - (1) the group allegedly excluded is a "distinctive" group in the community;
 - (2) the group's representation in jury venires is not fair and reasonable in relation to the number of such persons in the community; and
 - (3) the under-representation is due to the systematic exclusion of such persons in the jury selection process.

(*Duren v. Missouri* (1979) 439 U.S. 357, 364; *People v. Fauber, supra*, 2 Cal.4th at p. 816.)

Stage 1

What is a prima facie case?

- *Johnson v. California* (2005) 545 U.S. 162
 - “the totality of the relevant facts gives rise to an inference of discriminatory purpose”
 - Not more likely than not
 - Not “strong likelihood”
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Stage 1

What is a prima facie case?

- Significant factors:
 - Struck most/all members of the group
 - Used a disproportionate number of strikes on group members
 - Defendant/victim is a member of the group
 - Obvious reasons based on juror's answers
 - Desultory (superficial, token) voir dire
 - Overly aggressive voir dire

Stage 1

Making a Record

- You are allowed to speak during the court's prima facie ruling
 - **BUT don't give your reasons at that time**
 - If court asks for reasons, request a ruling on prima facie case first
 - If give reasons before court's ruling on prima facie case, that stage is presumed met on appeal – going right to stage 3 review

Stage 1

Making a Record

- Regardless of the court's ruling on prima facie case, **make a record!**
 - Defendant's race, gender
 - Number of group members struck by defense counsel
 - Number of group members in the venire, in the box, etc.
 - Number of group members in the panel that you accepted

Stage 1

Making a Record

- Unless the parties say something, no one post-conviction will know the defendant/victim/juror's race
 - And sometimes even gender
- OK to say you have no idea what race/nationality a person is