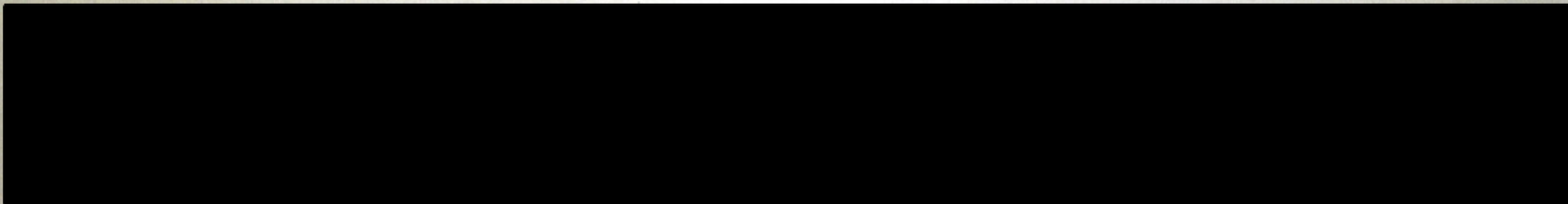


Stage 1

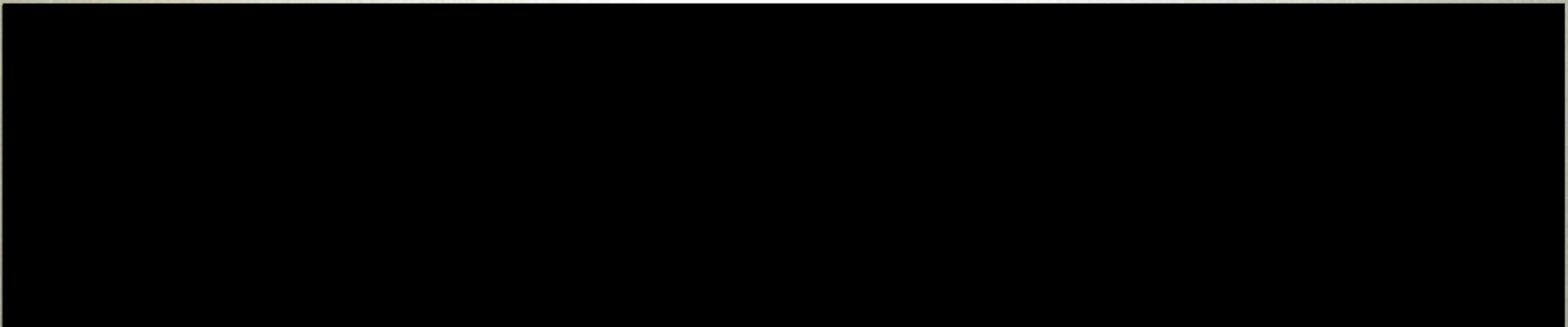
What are cognizable groups?

- 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)



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”
- 

Stage 1

What should you say?

- If the court finds a prima facie case, *you are required* to proceed to stage 2
- With multiple challenges to same cognizable group, once you proceed past stage 1, you don't go back
- If it's a new cognizable group, start at stage 1 again

Stage 1 Exception

If you give a reason that is discriminatory on its face, the court is not going to ignore that at first stage review.

Stage 2

Your Non-Discriminatory Reasons

- You give non-discriminatory reasons for exercising the strike(s)
 - Actual reasons
 - No longer objective, this is subjective

“We emphasize that the prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause”

➤ (*Batson v. Kentucky, supra*, 476 U.S. at p. 97.)

- “The party seeking to justify a suspect excusal need only offer a genuine, reasonably specific, race or group-neutral explanation related to the particular case being tried.”

➤ (*People v. Arias* (1996) 13 Cal.4th 92, 136.)

Stage 2

Your Non-Discriminatory Reasons

- Justify each individual juror challenged during the *Wheeler/Batson* motion
 - On appeal, failure to provide adequate reasons even for one of a cognizable group requires reversal. (*People v. Silva* (2001) 25 Cal. 4th 345.)

