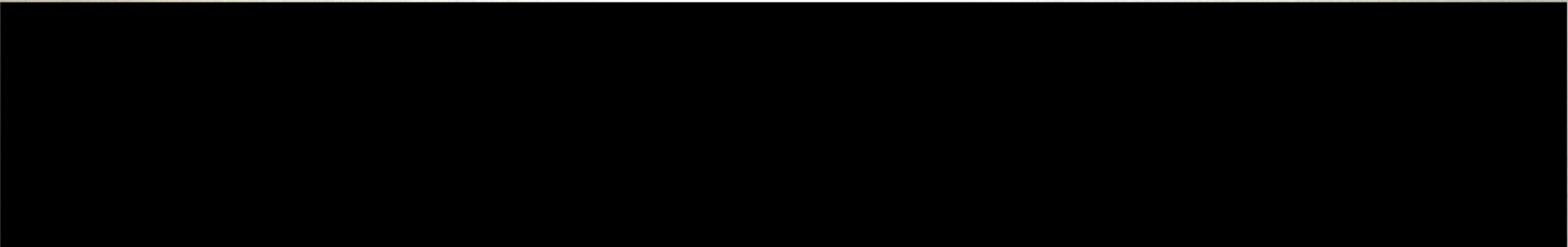


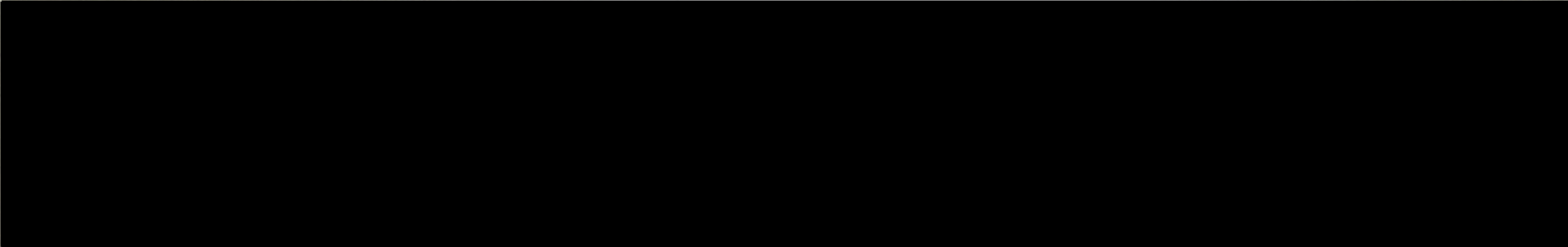
Stage 1

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)
- 

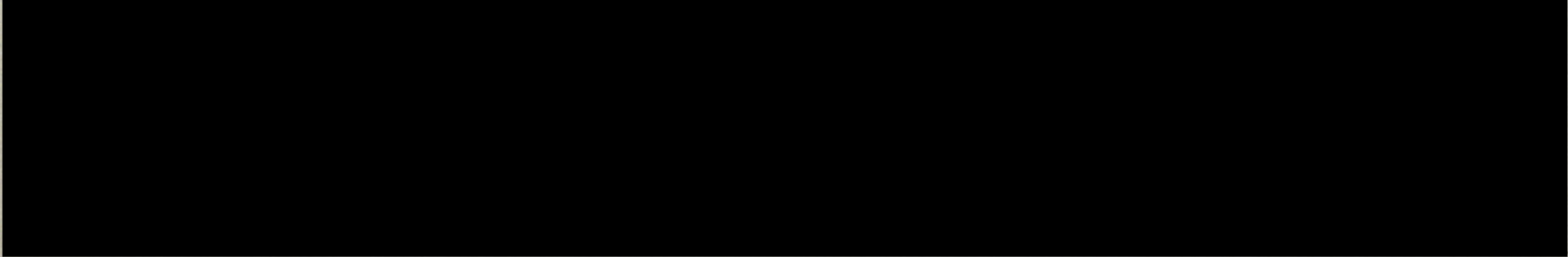
Stage 1

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”
- 

Stage 1

Should Your Notes Document Race?

- *Miller-El v. Dretke* (2005) 545 U.S. 231: In a case tried pre-Batson, USSC found notes documenting race are evidence of discrimination.
 - *People v. Lenix* (2008) 44 Cal.4th 602, 671, fn. 12: “We emphasize, however, that post *Batson*, recording the race of each juror is an important tool to be used by the court and counsel in mounting, refuting or analyzing a *Batson* challenge.”
 - *Green v. Lamarque* (9th Cir. 2008) 532 F.3d 1028: “[T]he prosecutor had noted the race of each venire member he struck from the jury pool; when the trial judge asked him who he struck and why, the prosecutor was able to read off a list, and he had noted the race of each venire member next to the member’s name.”
- 

Stage 1

- *People v. Scott* – Supreme Court “clarifies” Batson/Wheeler review
- “In sum, where (1) the trial court has determined that no prima facie case of discrimination exists, (2) the trial court allows or invites the prosecutor to state his or her reasons for excusing the juror for the record, (3) the prosecutor provides nondiscriminatory reasons, and (4) the trial court determines that the prosecutor’s nondiscriminatory reasons are genuine, an appellate court should begin its analysis of the trial court’s denial of the *Batson/Wheeler* motion with a review of the first-stage ruling.”
- **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

The Non-Discriminatory Reasons

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

Stage 2

The Non-Discriminatory Reasons

- Justify each individual juror challenged during the Wheeler/Batson motion

