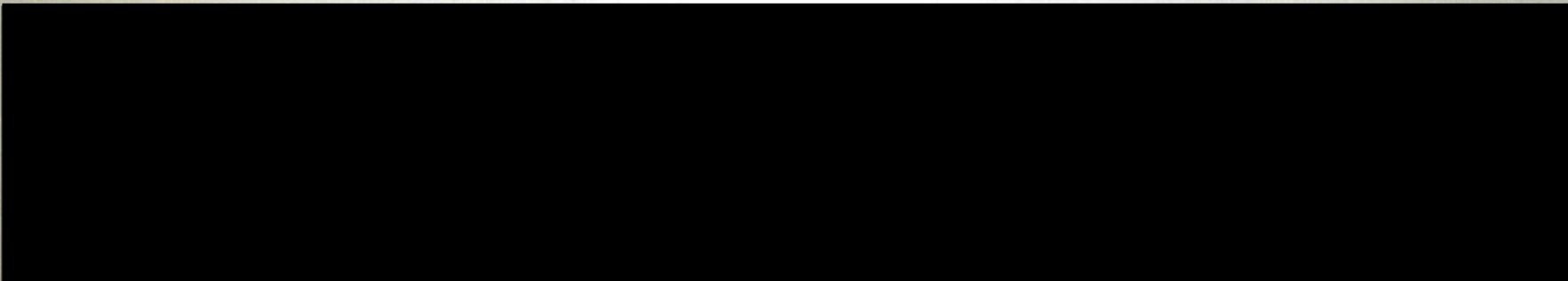


Stage 1

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

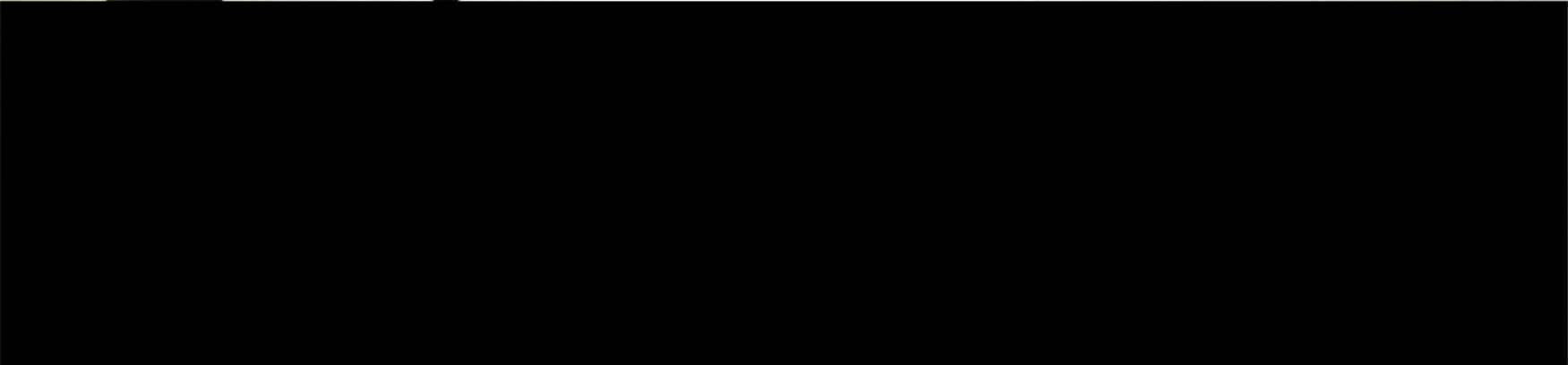
What are cognizable groups?

- 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”**
- 

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

- What if the court finds no prima facie case? Do you stop?
 - NO
 - Cal Supreme latest pronouncement → *People v. Scott* (June 8, 2015)
61 Cal.4th 363
 - Ideal Record: p. 349
 - » (1) Trial court finds no prima facie case;
 - » (2) Prosecutor states 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
- If this is present, 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.



Stage 1

Making a record

- **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 1

- 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