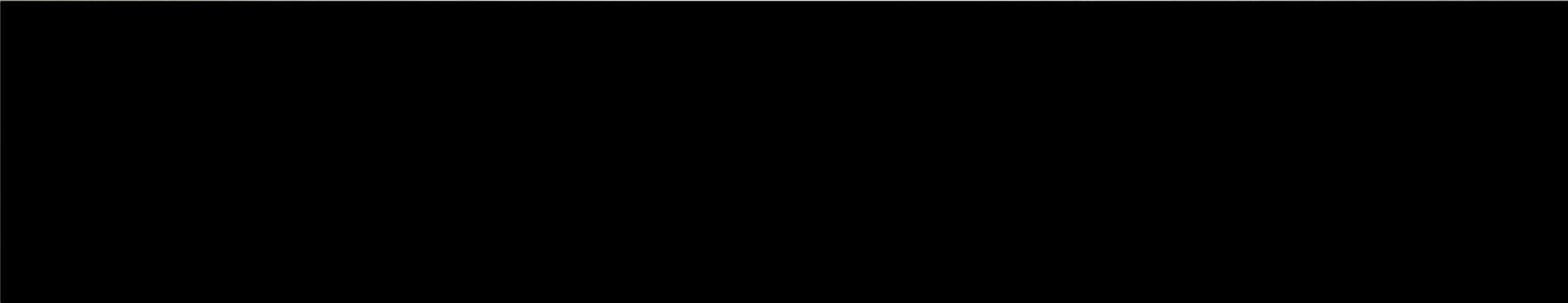


Stage 1

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 is a prima facie case?

- No magic number/formula – 1 can be enough, 4 might not be enough...
- Not actual reasons, looking at circumstantial evidence of reasons, objective circumstances
- Totality of the evidence

Stage 1

Making a record

- 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

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 2

The 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.)

