

**From:** [REDACTED]  
**To:** [Smittcamp, Lisa](#); [REDACTED]  
**Subject:** Racial Justice Act opinion  
**Date:** Friday, May 27, 2022 12:14:00 PM  
**Attachments:** [A162850.PDF](#)

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Attached is the first published opinion discussing discovery with the racial justice act [REDACTED] out of the 1<sup>st</sup> district.

Interesting things the defense attorney asked for in discovery in preparation of filing a motion:

1. The name and case number of every individual against whom charges for a violation of Health and Safety Code 11378, 11379, 11377, and 11350 have been filed in the last five years from January 1, 2016 to March 17, 2021 or the date of receipt of this request, whichever is later.
2. The police reports that form the basis of all of the charges in all of those cases.
3. The disposition if any of all of the cases.
4. The name and case number of every individual against whom the district attorney declined to prosecute for any of the above-listed Health and Safety Code violations.
5. The name and case number of every sentencing that occurred for a violation of one of the above-listed Health and Safety Codes, whether or not joined with other charges, from the period between January 1, 2016 and March 17, 2017, or the date of receipt of this request, whichever is later.
6. The criminal history of every defendant for whom the district attorney provides the above-requested data.

Trial court denied [REDACTED] and the appellate court sent it back down with some direction.

I have not read the entire opinion yet.

[REDACTED]  
Assistant District Attorney  
Fresno County District Attorney [REDACTED]'s Office  
[REDACTED]  
[REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** RE: Racial Justice Act resources - Part 1 of 2  
**Date:** Thursday, September 23, 2021 10:15:00 AM

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Received!! Thank you!!

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**From:** [REDACTED]  
**Sent:** Thursday, September 23, 2021 10:07 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Racial Justice Act resources - Part 1 of 2

**CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK**

[REDACTED]  
Attached is the most helpful resource I can offer the Inquisitive Prosecutor's Guide to CRJA. My office has only responded orally so far and the record is not very good because the judge thought there was no merit to it.

I am also sending some samples from LADA that were posted on the CDAA Listserv.

Please let me know you received this.



[REDACTED]  
Senior Deputy District Attorney

Santa Barbara District Attorney - North  
312 E. Cook St., Ste D  
Santa Maria, CA 93454

[REDACTED]  
[REDACTED]

**From:**

**To:**

**Subject:**

Section 1 tells us the intent of the Act. It is not to go around hurling accusations of racism at one another. We gotta change the way we look at this.

**Date:**

Wednesday, January 5, 2022 5:24:59 PM

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**CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK**

(Next) SECTION 1.

This act shall be known and may be cited as the California Racial Justice Act of 2020.

(Next | Previous) SEC. 2.

The Legislature finds and declares all of the following:

(a) Discrimination in our criminal justice system based on race, ethnicity, or national origin (hereafter **race** or **racial bias**) has a deleterious effect not only on individual criminal defendants but on our system of justice as a whole. The United States Supreme Court has said: **Discrimination on the basis of race, odious in all respects, is especially pernicious in the administration of justice.** (Rose v. Mitchell, 443 U.S. 545, 556 (1979) (quoting Ballard v. United States, 329 U.S. 187, 195 (1946))). The United States Supreme Court has also recognized **the impact of... evidence [of racial bias] cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses.** (Buck v. Davis, 137 S. Ct. 759, 777 (2017)). Discrimination undermines public confidence in the fairness of the state's system of justice and deprives Californians of equal justice under law.

(b) A United States Supreme Court Justice has observed, **[t]he way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination.** (Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary, 572 U.S. 291, 380-81 (2014) (Sotomayor, J., dissenting)). We cannot simply accept the stark reality that race pervades our system of justice. Rather, we must acknowledge and seek to remedy that reality and create a fair system of justice that upholds our democratic ideals.

(c) Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because courts generally only address racial bias in its most extreme and blatant forms. More and more judges in California and across the country are recognizing that current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system. (State v. Saintcalle, 178 Wash. 2d 34, 35 (2013); Ellis v. Harrison, 891 F.3d 1160, 1166-67 (9th Cir. 2018) (Nguyen, J., concurring), reh'g en banc granted Jan. 30, 2019; Turner v. Murray, 476 U.S. 28, 35 (1986); People v. Bryant, 40 Cal.App.5th 525 (2019) (Humes, J., concurring)). Even when racism clearly infects a criminal proceeding, under current legal precedent, proof of purposeful discrimination is often required, but nearly impossible to establish. For example, one justice on the California Court of Appeals recently observed the

legal standards for preventing racial bias in jury selection are ineffective, observing that requiring a showing of purposeful discrimination sets a high standard that is difficult to prove in any context. (Bryant, 40 Cal.App.5th 525 (Humes, J., concurring)).

(d) Current legal precedent often results in courts sanctioning racism in criminal trials. Existing precedent countenances racially biased testimony, including expert testimony, and arguments in criminal trials. A court upheld a conviction based in part on an expert's racist testimony that people of Indian descent are predisposed to commit bribery. (United States v. Shah, 768 Fed. Appx. 637, 640 (9th Cir. 2019)). Existing precedent has provided no recourse for a defendant whose own attorney harbors racial animus towards the defendant's racial group, or toward the defendant, even where the attorney routinely used racist language and harbor[ed] deep and utter contempt for the defendant's racial group (Mayfield v. Woodford, 270 F.3d 915, 924-25 (9th Cir. 2001) (en banc); id. at 939-40 (Graber, J., dissenting)). Existing precedent holds that appellate courts must defer to the rulings of judges who make racially biased comments during jury selection. (People v. Williams, 56 Cal. 4th 630, 652 (2013); see also id. at 700 (Liu, J., concurring)).

(e) Existing precedent tolerates the use of racially incendiary or racially coded language, images, and racial stereotypes in criminal trials. For example, courts have upheld convictions in cases where prosecutors have compared defendants who are people of color to Bengal tigers and other animals, even while acknowledging that such statements are highly offensive and inappropriate (Duncan v. Ornoski, 286 Fed. Appx. 361, 363 (9th Cir. 2008); see also People v. Powell, 6 Cal.5th 136, 182-83 (2018)). Because use of animal imagery is historically associated with racism, use of animal imagery in reference to a defendant is racially discriminatory and should not be permitted in our court system (Phillip Atiba Goff, Jennifer L. Eberhardt, Melissa J. Williams, and Matthew Christian Jackson, Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences, Journal of Personality and Social Psychology (2008) Vol. 94, No. 2, 292-293; Praatika Prasad, Implicit Racial Biases in Prosecutorial Summations: Proposing an Integrated Response, 86 Fordham Law Review, Volume 86, Issue 6, Article 24 3091, 3105-06 (2018)).

(f) *Existing precedent also accepts racial disparities in our criminal justice system as inevitable.* Most famously, in 1987, the United States Supreme Court found that there was a discrepancy that appears to correlate with race in death penalty cases in Georgia, but the court would not intervene without proof of a discriminatory purpose, concluding that we must simply accept these disparities as an inevitable part of our criminal justice system (McCleskey v. Kemp, 481 U.S. 279, 295-99, 312 (1987)). In dissent, one Justice described this as a fear of too much justice (Id. at p. 339 (Brennan, J., dissenting)).

(g) Current law, as interpreted by the courts, stands in sharp contrast to this Legislature's commitment to ameliorate bias-based injustice in the courtroom subdivision (b) of Section 1 of Chapter 418 of the Statutes of 2019 (Assembly Bill 242). *The Legislature has acknowledged that all persons possess implicit biases (Id. at Section 1(a)(1)), that these biases impact the criminal justice system (Id. at Section (1)(a)(5)), and that negative implicit biases*

*tend to disfavor people of color (Id. at Section (1)(a)(3)-(4)). In California in 2020, we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California, both prospectively and retroactively.*

(h) There is growing awareness that no degree or amount of racial bias is tolerable in a fair and just criminal justice system, that racial bias is often insidious, and that purposeful discrimination is often masked and racial animus disguised. The examples described here are but a few select instances of intolerable racism infecting decisionmaking in the criminal justice system. Examples of the racism that pervades the criminal justice system are too numerous to list.

(i) It is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California. *Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant's case and to the integrity of the judicial system. It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them.*

(j) It is the further intent of the Legislature to provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional discrimination. *It is the further intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences.*

[2020 Cal ALS 317, 2020 Cal AB 2542, 2020 Cal Stats. ch. 317](#)