



## **CAL-FIJA TIMES – Jury Reforms Editorial**

*California Reforms Jury Selection Process to Combat Race Bias by Prosecutors*

June 18, 2021

**SAN DIEGO, CA** – California ranks among the top five in states with the highest numbers of incarcerated prisoners who were wrongfully convicted and subsequently exonerated. Yet there remains tens of thousands who are still incarcerated in California prisons by a system that demonstrates “institutional indifference” for wrongfully convicted victims.

Since 1989 there have been over 200 exonerations of wrongfully convicted victims in California. The states of Texas, Illinois, and New York make up other states where exonerations are at or well above these high levels. Estimates of the wrongfully convicted range between a low of 2% to as high as 15% of the current U.S. prison population. While these may seem low percentages, the stark reality is that the numbers range between 75,000 and nearly 500,000!

CAL-FIJA (California Fully Informed Jury Association) announced today that among its many efforts as a public benefit non-profit corporation, focus on the Wrongfully Convicted will be at the top of the organizations list in public awareness efforts and fund raising goals to provide financial resources to organizations that provide legal services to the wrongfully convicted. The organization is now completing its final formalities that will establish its non-profit 501(c)(3) status and plans are underway to coordinate efforts with numerous organizations who take up the case for a prisoner who has been wrongfully convicted.

The problem in wrongful convictions is such a dynamic result of so many factors, it is difficult to identify any one single cause. The two primary reasons a person is wrongfully convicted can be identified as first, there were serious procedural defects throughout the investigation and trial including the jury selection process. Race bias in jury selection is a serious problem that continues to raise eyebrows regarding prosecutors and their conduct.

Secondly and more tragic, the person convicted is the wrong person. This amplifies the tragedy of the underlying crime for the person wrongfully convicted and their family and eliminates the closure to the family of the victim of the original crime as now we have a case where the person who did commit the crime has escaped justice.



## The BATSON decision and Jury Selection

Jury selection throughout the pre-trial process in California has suffered years of race bias by prosecutors who make preemptory challenges striking both Black and Hispanic jurors from the jury in a specific trial. The issue of race bias in jury selection is not a new problem, in fact it is well known amongst prosecutors if you have a Black or Hispanic defendant, you want to narrow as much as possible “certain Black and Hispanic” potential jurors from participating in that trial.

(Excerpt From “TheAppeal.Org)

Read entire article <https://theappeal.org/politicalreport/california-jury-selection-racial-discrimination/>

QUOTING FROM AN ARTICLE PUBLISHED BY THEAPPEAL.ORG

In part.....

*The defense lawyers objected, accusing prosecutors of trying to pick a jury that excluded “the human experience of what a Black person goes through in this society.” It’s unconstitutional for prosecutors (and defense lawyers) to strike jurors because of their race, a rule the Supreme Court established in its landmark 1986 decision Batson v. Kentucky.*

*But even under Batson, courts still allow prosecutors to exclude jurors for reasons that track closely with race and racial stereotypes, like living in a predominantly Black neighborhood or wearing dreadlocks, providing wide leeway that has led to the continued exclusion of Black people from jury service. Many cases have also held that prosecutors can strike jurors specifically because they or their family members had been victims of racial discrimination in the criminal legal system, viewed police and prosecutors with skepticism, or advocated for racial justice. Being Black isn’t a valid reason to dispense with a juror. But living the reality of being Black in America, or trying to do something about it, is, in many cases, fair game.*



This problem in race bias throughout the jury system is widespread in areas of the state where we have a serious problem of the juror selection process. I recall in the 1990's during my efforts for the National FIJA Organization, race bias in jury selection was in the top five major concerns and this position was almost always met with great resistance. In some manner, decades later those who support strong jury reforms can feel vindicated by California and its steps to finally reform the jury system. Race bias and underrepresentation of Black and Hispanic jurors in criminal trials truly has become an epidemic.

*Still, for one of the judges who heard their appeal, California First District Appellate Court Judge Jim Humes, the case screamed for reform. "In light of the undeniable evidence that some minority groups—particularly black men—have been over policed and subjected to harsher sentences than others," he wrote in a concurrence, "it hardly seems race neutral to categorically allow potential jurors to be stricken simply because they have had contact with or hold negative opinions about law enforcement or the judicial system. Reflexively allowing these strikes compounds institutional discrimination."*

*"The time has come," Judge Humes said, "for the Legislature, Supreme Court and Judicial Council to consider meaningful measures to reduce actual and perceived bias in jury selection."*

*California responded recently with a new law that overhauls how peremptory challenges may be used in California jury trials. It shrinks prosecutors' ability to exclude Black people and others based on their affiliation with protected groups.*

### **CALIFORNIA FORGES NEW GROUND BASED ON RACE BIAS**

**Assembly Bill 3070**, introduced by Assembly member Shirley Weber and signed into law by Governor Gavin Newsom, and is a significant if incomplete blow against racial discrimination in jury selection. It establishes a presumption that certain reasons for excluding jurors are improper proxies for racial discrimination, and targets implicit or unconscious bias in jury selection—something that the Batson ruling did not prohibit and may have actually invited. The law takes effect for criminal cases in January 2022, and will apply to civil cases in 2026.

It's the first legislative reform of its kind in the country, though it follows a similar rule that the Washington State Supreme Court adopted in 2018. Other state supreme courts, including California's, are studying potential reforms as well.



Race bias in jury selection in California, particularly in areas such as San Diego, and Los Angeles counties is not a new problem and in fact we may now have a path whereby many defendants who are incarcerated have a legal ground in gaining review of their convictions based on procedural jury bias by prosecutors. Time will tell when we begin to see appeals cases being filed asserting the Due Process and “Fair Trial” protections were violated.

**(Excerpt From “TheAppeal.Org)**

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*Another jury reform, Senate Bill 592, will expand California’s pool of prospective jurors by including everyone who files an income tax return. This will make the jury pool better reflect the state’s population because jurors are now primarily drawn from people who are registered to vote or have a driver’s license. This practice disproportionately excludes Black and Latinx residents, as well as people with lower income.*

*Newsom also signed the California Racial Justice Act (AB 2542), a sweeping reform that will allow people to challenge convictions and sentences that are based on race.*

*While AB 3070 tightens the rules on the front end of prosecutions, during jury selection, the Racial Justice Act provides a remedy for discrimination on the back end, allowing for post-conviction hearings to present evidence that racial or ethnic animus infected any stage of the prosecution, including “in the exercise of peremptory challenges.” Crucially, this new law permits statistical evidence to show racial disparities in charging and sentencing decisions over time, and allows courts to grant relief where they exist.*

In conclusion, California seems to be leading the nation with these reforms and finally after decades of race bias in the jury selection, jury pool, and trial jury process that will allow defendants an opportunity to bring appeals and challenges to a judicial system that for too long has remained insensitive and indifferent to race neutral practices.