

Voices from the  
Defense: Public  
Defenders  
Perceptions of the  
California Racial  
Justice Act

Sara Posadas  
Nyla Sammak  
Orestes Vazquez





**Sara Posadas**

Masters in Public  
Administration

B.A. in Criminal Justice,  
B. A. in Spanish,  
minor in Psychology  
*Azusa Pacific University*



**Nyla Sammak**

Masters in Public  
Administration

B.S. in Criminal Justice,  
minor in International  
Security & Conflict  
Resolution  
*San Diego State University*



**Orestes Vazquez**

Masters in Public  
Administration

B.S. in Criminal Justice,  
minor in Sociology  
*San Diego State University*  
A.S. in Administration of  
Justice  
*Grossmont College*

# What is it & Why does it Matter?

## California Racial Justice Act of 2020 (RJA)

- Allows defendants to **address and challenge:** charges, sentencing, convictions, and other factors based on bias
- Fills a void on past precedent of bias in legal context

“Discrimination undermines public confidence in the fairness of the state’s system of justice and deprives Californians of equal justice under law.” - California Racial Justice Act of 2020, Cal. Assemb. B. 2542 (2019-2020), Chapter 317 (Cal. Stat. 2020).



# Racial Disparities in the CJS

## Historical Overview:

- Equal Protection Clause of the 14th Amendment (1868)
- *McCleskey v. Kemp* (1987)



“Justice Powell refused to apply the statistical study in this case given the unique circumstances and nature of decisions that face all juries in capital cases. He argued that the data McCleskey produced is best presented to legislative bodies and not to the courts.”



"*McCleskey v. Kemp*." Oyez, [www.oyez.org/cases/1986/84-6811](http://www.oyez.org/cases/1986/84-6811).

# Assembly Bill No. 2542 (2020)

Cal. Penal Code § 745.

- (a) Framework
- (b) Filing of Motion
- (c) Holding Hearings
- (d) Motion of Records
- (e) Remedies



(a) (1):

- Judge, Attorney, Law enforcement officer, expert witness, or Juror

(a) (3):

- Exercise of peremptory challenges.
- No need for “purposeful discrimination”

(a) (5):

- Longer or more severe sentence
- No need for “purposeful discrimination”

(a) (2):

- During the defendant’s trial, in court and during the proceedings.
- Used racially discriminatory language about the defendant’s race, ethnicity, or national origin, or otherwise exhibited bias or animus.

(a) (4):

- Charged/Convicted of more serious offense than...
- Commit similar offenses and similarly situated and evidence establishes that the prosecution more frequently sought or obtained conviction based on...the county.

# Assembly Bill No. 2542 (Cont.)

Cal. Penal Code § 745.

(e) (1) Before a judgment has been entered, the court may impose any of the following remedies:

- (A) **Reseat** a juror removed by use of a **peremptory challenge**.
- (B) **Declare a mistrial**
- (C) **Discharge** the jury panel and empanel a **new jury**.
- (D) If the court determines that it would be in the **interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.**



# Outline of the CRJA

## CRJA and its Purpose

- Challenges racial disparities
- Lowers evidentiary standards
- Broad interpretation of the Act's language



# Current Status

## CRJA in Action

- Issue with data accessibility
- Implicit bias in the courtroom
- Inconsistent interpretation of the language



*How do Public  
Defenders perceive and  
experience the CRJA?*

# Who We Talked To



- 15 semi-structured interviews with Public Defenders—primarily in San Diego County—to gauge their perception and experience with the CRJA.
- Recruitment: Capstone Partner
  - Contact via email
  - Interviews on Zoom (Recorded with signed consent forms)
  - Snowball/Purposive Sampling
  - Thematic Analysis

# What They Said:

## Findings

- (1) High levels of  
judicial resistance
  - (2) Success varies by  
case
  - (3) It is resource-  
heavy
-

# Judicial Resistance to CRJA

"the judge goes...  
'I've never **lost so much respect** for any lawyer because **you called the DA racist**'" I13

"He called the argument **absurd; far-fetched**" I1

"**They feel like its a personal attack**"

I2

"Nobody wants to be **accused of being a racist**"

I12

"they **fly off the handle** every time an RJA motion is filed" I15

"I was not prepared for.. the **visceral hostility** and **pushback**" I13

"He called me a **sideshow** and a **promoter of fantasies**"

I13

# Success Looks Different

"Sometimes just the **threat of litigation** can get us where we want to be for our client." **I2**

"let's resolve this and take your motion off calendar.... That is positive for people, but that **may not** mean **winning motions**" - **I7**

"my client got to have a full-day of someone **strongly advocating for his experience of racism in the system**" **I10**

**"Making the claim and just going into court and arguing is a win..."** **I5**

# CRJA is Resource-Heavy

“litigating some of these issues **requires a lot of time**, and that's our time **our clients are unsafe in jail**” I7

“**...thousands** and **thousands** of dollars” I4

“**..such an onerous process**” I6

“there could be **1,000 to 10,000** police reports... and **one of me**” I4

“We're looking at **trial transcripts, prelim transcripts**, we're trying to pull **police records...the amount of time and energy that goes into these cases is insane!**” I8

# Recommendations

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# Normalize Implicit Bias to Reduce Courtroom Stigma

- Education for ALL – courtroom actors (prosecutors, public defenders, judges, jurors), **and clients**
- **Transparency among actors**



*“we need to not stop talking about it...our community, the legal community, is learning a ton about it.. But I think we also need to **focus it outward**... clients need to know that it's a resource available to them so they can say to their attorneys, **‘hey, I was discriminated against, what can we do about it?’**” 15*

# Increase Accessibility: Streamline

- In-county data, in-house analyst
- Specialty role/office designated for RJA

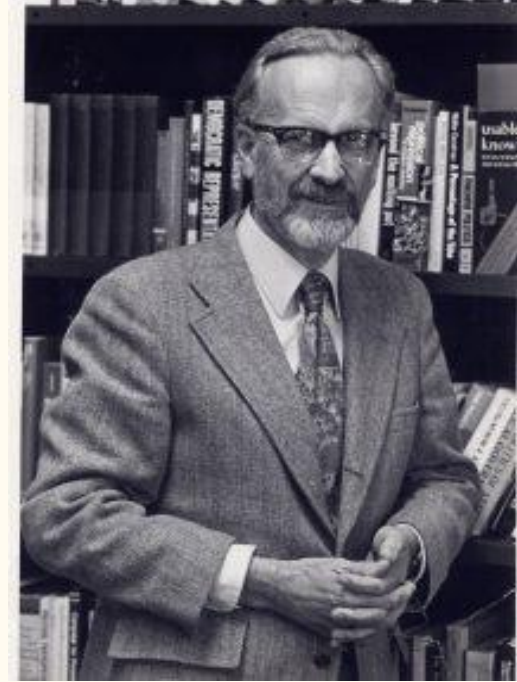
*“Orange and LA County...have these portals where you can go into different county agencies and filter data...That is so helpful to CRJA claims. We do not have that in San Diego County. In fact, what we do is the exact opposite. I feel like it is a very secretive environment...like we don't want to share the data”* 18

# Update Language of the Act

- Categories A3/A4 use terms like:
  - “*similarly situated*”
  - “*more frequently sought or obtained*” or
  - “*significant difference*” are **vague** and **unclear**, and allow for loose interpretation; language needs to be more “precise and realistic” (I4)
- Remedies should **not** be an exhaustive list

# With that said...

"The fact that they aren't being denied outright is a success, because that's where we were at 2 years ago. They were **just denied**. So now, we have them, we're assigned to judges. We are getting discovery. Those are all successes. Because **2 years ago, we wouldn't have gotten any of those things**. So it's slow and incremental, but it's happening." - I8



# Thank you!

Pascual Benitez  
Public Defenders  
Dr. Burrel Vann Jr.  
School of Public Affairs  
Cohort of 2026



**SDSU**

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San Diego State  
University

Themes:	Judicial resistance to CRJA	Success looks different	CRJA is resource heavy
Descriptions:	Reactions from Judges, Prosecutors, Courts, or clients on RJA in use	looks at how public defenders perceive success related to RJA claims	reliance/need for data, experts, money
Codes:	<p>"at the end of it, you know, not surprisingly, the judge denies, denies our motion the second time, saying he doesn't see, you know, he called the argument absurd, far-fetched, all of these things. So he denies, the motion, and it's... it's really demoralizing, right?" (Int. 1)</p> <p>"But the kind of tone that they took was, you know, angry, in disbelief, you know, like, this is absurd. And just kind of that, what I would call, like, racial gaiting, you know, like, essentially saying that my client wasn't experiencing what he experienced" (Int. 1)</p> <p>"you know, it's just... it's tense. It's... it's a tense proceeding, because nobody... nobody likes to be accused of... of racism, whether it's conscious or unconscious, nobody likes it. And so you do see a lot of... Move, like, more anger and vitriol in the courtroom than you do with, like, other types of proceedings, which is interesting." (Int. 1)</p> <p>"getting... The judges to... To move on them has been a challenge, not all judges, but I think especially maybe the judges who've been on the bench for a long time. They are... I think less open to the idea that Racism can be systemic, that bias can be implicit, right? And so when we're trying to introduce those concepts to them, they're really resistant to it. And they... they feel like it's a personal attack." (Int. 2)</p> <p>"Because they've been a part of the system for a long time, and so I think they just take it personally, even though it's not intended to be that way, right? And I think the DA's office takes it, obviously, very personal as well... No matter how we phrase it, and how you know, truly kind we try to be, and generous in the phrasing and the wording." (Int. 2)</p> <p>"I think, honestly, the main barrier is... I think judges are really reluctant to grant an RJA." (Int. 2)</p> <p>"I do think we've met a lot of resistance from the bench." (Int. 2).</p> <p>"I think part of it is that judges are elected. And so if they throw out a case, right, and then if it catches media attention, there's always that threat of perhaps not being re-elected. And so I think that's a piece of it. And then also, I think the threat of... you know... what if I do throw out this case, and then the client does something bad, right? Like, they think that's always on a judge's mind, right? Judges are conscientious. They... they're good people, right? They don't want to do something and then have that person go hurt someone. And so, I think that's a part of it. I think re-election is a part of it. They obviously don't want to lose their job, and so if they can't get re-elected because the media catches wind of it, and then they don't get re-elected, that's a problem." (Int. 2)</p> <p>"we have challenges that we can use on a case, and so we can challenge judges, DAs can challenge judges. So if a judge were to grant an RJA on a bigger case, then DAs can start challenging those judges, and they don't have to go there anymore. And then they're not getting fun cases, they're gonna be stuck maybe doing just misdemeanors or DUIs." (Int. 2)</p> <p>"I think politically, there could be some fallout for granting RJAs" (Int. 2)</p> <p>"They [DA] just are very motivated, excuse me, by... convictions, and so... You know, obviously they don't want to be called racist, like we've already discussed, and... But they... they also don't like to have cases dismissed. And this, you know, a lot of times in RJA, a remedy can be a dismissal, so they fight really hard against any remedy for dismissal we ask for." (Int. 2)</p>	<p>"I mean, at the end of the day, it was a win. His case was dismissed, and... He knew, I knew, he knew, that it was because of... the Racial Justice Act, motion that's pending, and... But he didn't actually get the... you know, he didn't actually get that satisfaction. They didn't give that to him." (Int. 1)</p> <p>"I think standing up and advocating for anybody in that position is a win, to some degree. You know, just even... the amount of times I've had clients, like, turn to me and say thank you just for doing my job, right? Just for being their... the advocate for them and making the arguments." (Int. 1)</p> <p>"making People come in, and Having to listen to, you know, the arguments being made about implicit bias and unconscious bias, maybe that will help them in the future recognize it, even if we don't ultimately win in the case, like, maybe the officer who, you know, we lost our claim with the El Cajon Police Department officer, but maybe that experience and coming into court, like, all those times, maybe... in the future, he will be more cognizant of a bias, you know?" (Int. 1)</p> <p>"the biggest one [win] is getting a remedy, right?" (Int. 1)</p> <p>"Making sure our clients don't, end up serving life without parole or end up on death row, just because they are a person of color. Making sure that our clients aren't being charged, more given greater charges, right? Being charged with more charges or more severe charges because they're a person of color, making sure that they're not receiving a harsher sentence, down to getting enhancements dismissed all of those things are really wins." (Int. 1)</p> <p>"I think making the claim and just going into court and arguing it is a win to some degree." (Int. 1)</p> <p>"the most successful RJA case to date would be not from our county, but in another county, one lawyer got a special circumstance, which is a death penalty allegation dismissed. I think that's probably... the pinnacle, right? Like, that's the best you can do." (Int. 2)</p> <p>"she [colleague] filed a new RJA claim and litigated that, and eventually the DA's office got tired of the litigation and dismissed the case. So that is also a very good outcome." (Int. 2)</p> <p>"sometimes the... just filing the motions, even just a discovery motion to get data about an RJA, the DA's office sometimes... make a better offer. So we can sometimes get movement on the case just by filing the motion without actually litigating the whole motion, and so that can be a very successful route" (Int. 2)</p> <p>"if we can... get... an allegation knocked off, or a dismissal because they've filed a certain race statistically move often, that would be a good outcome." (Int. 2)</p> <p>"outcomes would be getting evidence dismissed, or kept out of the trial, or getting allegations or cases dismissed, those, for me, are good outcomes." (Int. 2)</p>	<p>"I'm in the middle of one right now where the data is just voluminous and overwhelming. And so it's... it's just a lot of work. We're in a statistical claim. You know, I'm not... I'm a lawyer, I'm not a math person, and so understanding the statistics has been a challenge" (Int. 2)</p> <p>"it is hard to put together all that data" (Int. 3)</p> <p>"the RJA requires so much research" (Int. 4)</p> <p>"we have a case that's going on year 5 right now, on an A5 claim. On a misdemeanor. Five years, and we're still battling this out. I do not think this is what the legislature intended. I don't think those cases meant to be the equivalent of, like, five people's dissertations to get their PhD for, like, a single claim...It's just not sustainable for this system." (Int. 4).</p> <p>"when we have experts and statisticians, and we're trying to say, look, like, okay, we analyzed all these police reports. One, the time-consumingness, right? Like, there could be... 1,000, 10,000 police reports of every single person who was arrested for whatever crime, ex-crime. Now, I might want to look at, alright, who are the people of another race that were arrested, but the DA never charged them, right? And so now I have to try to show that those people who didn't have any charges filed had engaged in similar conduct to my client. how do I do that when there's... thousands of places report, and one of me?" (Int. 4)</p> <p>"If I had one where it was under Provision C, which looks at statistics and data about police conduct, about judicial conduct, you know which one I'm talking about? That was going to require pulling a significant amount of data. I think that I would probably try to find the perfect case, with the perfect client, and I don't know what that is defined as, but exactly the right one before undertaking that level of extreme work. But my deciding who... which client is perfect is also going to involve some level of bias. And that's the frustrating thing. So I think that these should be filed in every single case where there is Evidence of bias playing a role. But I know they're not, and so... we need to challenge our own bias. If we're... if we're calling out bias in the system, it's also... It's... we also have to call out our own decisions about who gets one and who doesn't get one, and I don't know how we fix that." (Int. 5)</p> <p>"it does seem like other counties have set up entire divisions that are just doing this work, and that seems like a very beneficial way. To set up divisions that are focused, that are looking at every complaint and every police, every police report, and highlighting where these need to be filed, that would be super helpful, particularly when you're just overloaded with cases, and as much as you might want to file one in every case, that's not realistic, it's just not possible. (Int. 5)</p> <p>"The courts have made litigating RJ motions so difficult and so it's such an <i>onerous process</i> that lawyers are hesitant to file them." - 16</p> <p>"More information will always be helpful. But sometimes the downside of getting more information is time in jail, time away from family. Right. Time away from loved ones, either, you know, exposed to a lot of danger in jail, it's not a safe place. There's lots of trauma that they undergo in custody, and so you know, these are just conversations you have with your client. Explain the upsides and downsides." - 17</p> <p>"time... litigating some of these issues requires a lot of time. And that's our time our clients are unsafe in jail. It's also time that I wish I had more of. So I think that a limitation is just resources. There is no lack of, I have never met someone in my practice that does not have a desire to litigate these claims and file these claims. But it's the ability to do it." - 17</p> <p>"when information is so difficult to obtain and things are not transparent that is a barrier to litigating these claims. And so although there's a discovery provision, it would be better if records are more transparent. Police records are more transparent, DA charging decisions are more transparent" - 17</p>

Theme	Nyla	Sara	Orestes	Group Totals:
Judicial resistance	5/5	5/5	5/5	15/15 (100%)
Takes a long time	3/5	3/5	4/5	10/15 (67%)
It is expensive	3/5	1/5	0/5	4/15 (27%)
Data access is challenging	3/5	3/5	3/5	9/15 (60%)
Before the CRJA, it was challenging to address racial bias in court	1/5	3/5	3/5	7/15 (47%)
Had a positive impression at first	3/5	4/5	4/5	11/15 (73%)
Judicial resistance is a natural consequence of implicit bias	4/5	2/5	4/5	10/15 (67%)
Data is voluminous	4/5	1/5	3/5	8/15 (53%)
It will get better over time (optimistic for future)	3/5	3/5	5/5	11/15 (73%)
A1 and A2 are different and easier to interpret than A3 and A4	5/5	1/5	1/5	7/15 (47%)
Need to modify current RJA language	5/5	3/5	3/5	11/15 (73%)

# Appendix B

## Interview Guide

**Introduction:** Hello, my name is \_\_\_\_\_ and I am a graduate student at San Diego State University, School of Public Affairs. With classmates at SDSU, we are working on a capstone project to learn more about the California Racial Justice Act and Public Defenders' perceptions of, and experience with the Act. We are interested in speaking with you about your beliefs about its impacts and effects.

[Review consent form]

Do you have any questions or concerns before we begin?

### **{Framing Questions/Pre-CRJA} Introduction**

- Could you tell me a little bit about your time as a public defender (e.g. how long, what courts/units you've been assigned to, what types of cases you typically see)?
- Can you share a little bit about a typical day for you as a public defender?
- How did you first become aware of the CRJA?
- Probe: What were your impressions?
- How often does counsel in your office see cases where CRJA can be used?
- Prior to CRJA, how were cases of racial bias addressed (e.g. what were the tools or methods involved in focusing on racial bias)?
- Could you tell me about any prior training you had regarding racial bias and serving as counsel on racial bias cases?

### **{Current CRJA Perceptions}**

- Could you share a little about the filing process for a CRJA motion?
- How would you define a "successful" CRJA case?
- What does a successful CRJA case look like in practice (e.g. what methods, arguments, or types of cases are best suited for a "successful" outcome)?
- What are some of the changes you've observed in how courts, prosecutors, or judges respond to CRJA since its implementation?
- Could you share some of the challenges you've faced with CRJA claims?

### **{Experience with CRJA}**

- What are some changes you've seen in your clients' experiences since the passage of the CRJA?
- How does the presence of CRJA shape how clients perceive fairness in the criminal justice system?
- How do you exercise discretion in your decision about whether or not a case "qualifies" as a CRJA case?
- What barriers currently exist that limit the CRJA's effectiveness from your perspective?
- How effective do you believe CRJA is in practice?
- If you could strengthen or redesign the CRJA, what would you modify (e.g. training, external partnerships, academy of CRJA)?

### **{Recommendations/Post-CRJA}**

- What are some of your criticisms of CRJA? (Possibly could provide context of the EPC and how it changed the RJA; what other changes could we expect over time?)
- In your opinion, do you believe that the CRJA is overutilized, underutilized, or something in between?

### **{IF TIME}**

- Is there anything about the CRJA (or your experiences with it) that you feel is important for me, researchers, legal professionals, or the general public to know?