Racial Justice Act Discovery Motions: A Useful Tool for Defense Practitioners

Elizabeth Lashley-Haynes*

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INTRODUCTION

The 2020 California Racial Justice Act ("CRJA") allows individuals to challenge their past and current criminal court proceedings,

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* Elizabeth Lashley-Haynes is the Deputy Public Defender who leads the Racial Justice Act Unit within the Los Angeles County Public Defender's Office. She presented at the 2024 Racial Justice Act Symposium organized by the Berkeley Journal of Criminal Law and the Criminal Law & Justice Center.

state convictions, and sentences, on the basis of racial or ethnic bias.[1] It created important legal mechanisms to challenge racial/ethnic bias and racist conduct both inside and outside of the courtroom as it pertains to a defendant. Penal Code Section 745(a)(1) and (a)(2) claims are used to combat bias exhibited by judges, attorneys, police officers, expert witnesses, or jurors, while (a)(3) and (a)(4) claims allow defense counsel to use data and statistical evidence of racial or ethnic bias in prosecution and sentencing and challenge the structural racism regardless of intent.[2] The CRJA also gives defense counsel an extremely valuable, yet often overlooked, tool: Penal Code Section 745(d) Motion for Relevant Discovery ("D Motion").[3]

Filing a D Motion is an effective way to pursue discovery that can be used in a later CRJA motion but also to strategically litigate the case. This piece of the broader Racial Justice Act statute has provided an avenue of relief for some of my clients: either by cases being dismissed or reaching an agreement to resentence the client, often to a time-served sentence.[4] These outcomes have been achieved without even litigating the entire Racial Justice Act claim.

This article aims to provide guidance and examples to defense counsel pursuing CRJA claims by encouraging them to strategically utilize D Motions for relevant discovery. Further, this article contains an overview of the relevant statute and case law regarding D Motions and lays out the benefits of using D Motions by discussing three case studies in which D Motions were utilized to obtain successful results for clients.

I. RECENT APPELLATE DECISIONS CLARIFYING REQUIREMENTS FOR D MOTIONS

Penal Code Section 745(d) provides that, "A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state."[5] Section 745(d) allows for the prosecution to request redaction of protected or privileged information or the issuance of a protective order if good cause is shown that there is a need.[6] If that statutory right or privilege

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[1] Assemb. B. No. 2542, Reg. Sess. 2019–20 (Cal. 2020) ("Racial Justice Act"), codified as CAL. PENAL CODE § 745; Assemb. B. No. 256, Reg. Sess. 2021–22 (Cal. 2022) ("Racial Justice Act for All").

[2] CAL. PENAL CODE § 745(a).

[3] *Id*. § 745(d).

[4] *See infra* Part II.C.

[5] CAL. PENAL CODE § 745(d).

[6] *Id.* ("Upon a showing of good cause, and in order to protect a privacy right or privilege,

cannot be addressed through redaction or protective order, then the judge has discretion to not order disclosure.[7] Anecdotally, I have yet to see this occur.

Since the Racial Justice Act is still fairly new, there is limited case law discussing and interpreting D Motions for relevant discovery. However, two important cases provide guidance with regards to D Motions: *Young* acknowledged the reality that "discovery is crucial" to establish a violation of the CRJA while establishing a low threshold for the defense[8] and *Garcia* gave the courts guidance that counsel has the right to have adequate time to pursue necessary discovery.[9]

A. *Young*'s Relaxed Plausible Justification Standard

The low standard of plausible justification for D Motions, established by *Young v. Superior Court*, makes D Motions a particularly effective tool for defense counsel.[10] The *Young* court affirmatively established that,

> "[W]e conclude that in order to establish good cause for discovery under the Racial Justice Act, a defendant is required only to advance a plausible factual foundation, based on specific facts, that a violation of the Racial Justice Act 'could or might have occurred' in his case."[11]

A showing of plausible justification, therefore, is "merely a threshold consideration."[12] The Court reasoned that, even if defense counsel does not know if a violation has occurred, they need the information precisely to determine whether a violation occurred.[13] In fact, *Young* reminds the courts that "[d]iscovery is the crucial means by which defendants may provide a trial judge with the information needed in order to determine whether a claim of selective prosecution is meritorious."[14]

While similar to the minimal threshold showing for *Pitchess* discovery,[15] the court noted that this standard is "even more relaxed than the 'relatively relaxed [*Pitchess*] standard' intended to 'insure the

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the court may permit the prosecution to redact information prior to disclosure.").

[7] *Id.*

[8] Young v. Super. Ct. of Solano Cnty., 79 Cal. App. 5th 138 (2022).

[9] People v. Garcia, 85 Cal. App. 5th 290 (2022).

[10] *Young*, 79 Cal. App. 5th at 159.

[11] *Id.* (citing Warrick v. Super. Ct., 35 Cal. 4th 1011, 1016 (2005)).

[12] *Id.* at 144.

[13] *Id*. at 144-45.

[14] *Id.* at 169-70.

[15] CAL. EVID. CODE § 1043(b).

production . . . of all potentially relevant documents.'"[16] Compared to the *Pitchess* standard, *Young* does not require any affidavit of materiality or a "logical link" between some defense and a pending charge.[17] Following the showing of a plausible justification, the trial court must consider the *Alhambra* factors, including whether the material requested is adequately described, is reasonably available to the government, is not readily available to the defendant, would not violate third party confidentiality or privacy rights, would not necessitate an unreasonable delay of defendant's trial, and would not place an unreasonable burden on the government.[18]

Therefore, D Motions are integral to establishing a violation of the Racial Justice Act and defendants should not have a high burden in establishing the need for discovery to pursue such motions. *Young* established that courts have limited discretion to create an unreasonably high standard that the defense must prove to obtain a discovery order or deny a reasonable D Motion that establishes a plausible justification.

B. *Garcia*'s Requirement to Provide Ample Time to Prepare D Motions

In *People v. Garcia*, the California Court of Appeals emphasized that courts cannot rush the discovery process under the Racial Justice Act;[19] rather courts must allow defense counsel to take the time they need to litigate D Motions to gather evidence for CRJA motions. While the trial court in *Garcia* acknowledged that defense counsel did not have "time to really flesh out the statistics" showing that "people of color are treated more harshly in the criminal justice system," it still denied a motion for a continuance which would have enabled the defendant to develop facts in support of a motion for discovery under the CRJA.[20]

But the appellate court explained that,

> "[a]lthough trial courts enjoy broad discretion to determine whether good cause exists to grant a continuance of trial, such discretion 'may not be exercised so as to deprive the defendant or his attorney of a reasonable opportunity to prepare.'"[21]

The appellate court noted that defense counsel had some statistics, but likely needed more, recognizing that while the defendant was able to make "general arguments" under the CRJA and provide statistical

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[16] *Young*, 79 Cal. App. 5th at 158-59 (citation omitted).
[17] *Id.* at 159.
[18] *Id.* at 144-45.
[19] *Garcia*, 85 Cal. App. 5th at 297.
[20] *Id.* at 295.
[21] *Id.* (citing People v. Alexander, 49 Cal. 4th 846, 934 (2010)).

information in the sentencing brief, that information was outdated and based mostly on national surveys.[22] It did not address racially disparate treatment as to convictions or sentences in the county where the defendant was convicted and sentenced.[23] The court acknowledged that the plausible justification standard, though "minimal," must still be "based on specific facts." Thus, it reasoned that preparing a discovery motion under the CRJA "necessarily entails a fairly thorough review" of the trial record for any remarks or conduct by the trial judge, attorneys, experts, jurors, and law enforcement officers which may "plausibly support the conclusion that a CRJA violation 'could or might have occurred' in [the] case."[24]

The appellate court thus clarified that defense counsel should be given a reasonable opportunity to review the trial record and gather relevant information to prepare a motion for discovery under the CRJA.[25] The appellate court stated that the denial of continuance for Section 745(d) was not harmless because "nothing in the record indicates either way whether defendant's counsel could have discovered facts plausibly supporting a motion for CRJA discovery had [they] been given a reasonable opportunity to do so."[26] Thus, defense counsel should utilize *Garcia* if they are being rushed through the discovery process and need more time to allow for "a reasonable opportunity to prepare" their D Motion.[27]

II. D MOTIONS ARE INCREDIBLY USEFUL TOOLS IN DEFENSE COUNSEL'S TOOLBOX

Defense counsel who have litigated CRJA understand that it is complicated, time consuming, and labor intensive–particularly when it comes to Section 745(a)(3) and (a)(4) claims, which require data to prove bias.[28] This is why Section 745(d), as interpreted by *Young* and *Garcia*,

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[22] *Id.* at 297.
[23] *Id*.
[24] *Id.* (citing *Young*, 79 Cal. App. 5th at 158-59).
[25] *Id*.
[26] *Id*.
[27] *See id.*
[28] CAL. PENAL CODE § 745(a)(3) (requiring statistical evidence, aggregate data, or nonstatistical evidence to show that defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained); *Id*. § 745(a)(4) (requiring statistical evidence, aggregate data, or nonstatistical evidence to show that a longer or more severe sentence was imposed on the

enables defense counsel to request what they need to prove racial or ethnic bias. Yet, D Motions are not only about getting the discovery that defense needs, but also an incredible tool for a variety of strategic reasons, including circumventing problematic Public Records Act resistance, educating the Court and counsel, and encouraging resolution.

A. D Motions Can Circumvent Problematic California Public Records Act Resistance

Some have pondered the utility of D Motions for discovery gathering because of the California Public Records Act ("CPRA").[29] The choice between use of the CPRA and D Motions is case specific, and must be a decision based on what is best in a particular case. Moreover, counsel can consider using both at the same time because they are not mutually exclusive. However, sometimes the limitations of the CPRA may render D Motions a valuable tool, allowing defenders to collect more data than they would have been able to under the CPRA.

Defense counsel can use D Motions to obtain necessary data and discovery for their case which may not be available through the CPRA, either due to it not being in possession of the agency, not being covered under CPRA provisions, or because the agency is opposing, resisting, or delaying turning over the information. In this situation, the D Motion may be the only way to obtain the necessary discovery. As an example, a CRJA that involved Torrance police officers from their racist text message scandal required the actual text messages with racist statements from the prosecution in order to prove a CRJA claim.[30] The CPRA would not have been a good method for obtaining those text messages for a variety of reasons.[31] The police departments would likely have vigorously resisted CPRA disclosure by claiming various privileges and exemptions from

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defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed).

[29] CAL. GOV'T CODE § 7920.000 et seq.

[30] *See* James Queally, *Several Torrance police officers linked to racist text scandal no longer employed by city*, L.A. TIMES (Jan. 14, 2023, 5:00 AM), https://www.latimes.com/california/story/2023-01-14/several-torrance-police-officers-linked-to-racist-text-scandal-no-longer-employed-by-city; Sandhya Dirks, *These California police officers have created a scandal. They sent racist texts*, NAT'L PUB. RADIO (April 27, 2023, 5:01 AM), https://www.npr.org/2023/04/27/1171369375/california-police-scandal-racist-texts.

[31] *See* Queally, *supra* note 30; Dirks, *supra* note 30.

such disclosure. Yet, if the prosecution has possession of this racist material and there is good cause, then defense counsel would have a right to receive that information under Section 745(d).

In sum, defense counsel can use D Motions as an alternative to the CPRA when there is resistance from the agency; the CPRA statute does not cover the discovery you need; or the Public Records request is taking too long. We have seen some defense counsel try to get discovery from a prosecutor's office only to learn that they are unresponsive to CPRA requests from the defense.[32] In this situation, a D Motion is tremendously helpful because the court can get involved and order the release of the information sought under Section 745(d).[33]

B. D Motions Can Serve to Preview Issues in Cases and Educate the Court

D Motions can also be incredibly helpful to preview the issues in a case or to educate the prosecution or the bench. It is beneficial for defense counsel to do background research on the judges for whom they are appearing in front of, particularly in CRJA cases. It is important to understand how much background knowledge a judge may have in implicit bias, racism, or such topics as the connection between slavery and mass incarceration. If a judge's background is, for instance, working in a law firm which practices in civil litigation or tax law, it could be assumed that they may not have a deep understanding of the racial or bias issues in the case. In such cases, defense counsel should start educating their bench early. One way to do so is through D Motions, where defense counsel can ask for discovery, and prove good cause by attaching material about implicit bias, racism, or police stops for the court to begin digesting. D Motions can be long, and defense counsel should use that to their advantage.

Defense counsel need not worry about the timing of a D Motion, as with other elements of the Racial Justice Act, there is no one size fits all approach. D Motions can be made at various times, either before the CRJA motion, or at the same time as a CRJA motion. Litigating the D

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[32] The ACLU and Chicanxs Unidxs filed a lawsuit against Orange County District Attorney Todd Spitzer for violating the state's Public Records Act by refusing to release documents concerning the county's implementation of the Racial Justice Act. *See Orange County DA Denies Public Records Access, Chicanxs Unidxs and ACLU Sue,* ACLU S. CAL. (Oct. 19, 2022), https://www.aclusocal.org/en/press-releases/orange-county-da-denies-public-records-access-chicanxs-unidxs-and-aclu-sue.

[33] CAL. PENAL CODE § 745(d) ("Upon a showing of good cause, the court shall order the records to be released.").

Motion first has the important benefit of previewing the potential issues in the case for the bench. But there can be situations, particularly when the proceedings may have a shorter timeframe, where it makes sense to do both simultaneously; you may need relevant discovery, but you may still be able to go forward with the CRJA claim, either way. Due to the CRJA being fairly new and confusing and because the subject matter of racism is one that many people want to avoid, many judges appear hesitant to hear the motion for CRJA discovery,[34] which can be used to our client's advantage. Defense counsel should be thoughtful and strategic in bringing CRJA claims. Part of this thoughtfulness includes recognizing the natural adverse reaction that people have to the topic of race, racism, and bias. This should guide defense counsel's decision-making process when approaching CRJA so that they can achieve the best outcomes for their clients. A D Motion is a good way to ease a hesitant bench officer into a CRJA motion.

C. D Motions Can Encourage Resolution

Finally, due largely in part to the D Motions, clients have been released from incarceration: either by cases being dismissed or the prosecution or the bench agreeing to re-sentence the client, often to a time-served sentence. Once the court orders discovery to be provided by the prosecution, they need to decide if that discovery is available, onerous to obtain, or something they would prefer not to disclose. This process for the prosecution can often lead to decisions with favorable results for the defense. D Motions can be so effective that these outcomes can be achieved without even litigating any of the Racial Justice Act claim.

1. D Motion in Torrance Racist Officers Text Scandal: Client Resentenced and Released

In late 2021, it came to light that racist, sexist, antisemitic, homophobic text messages were exchanged by at least a dozen Torrance police officers. This came out in an investigation into two Torrance police officers who were being accused of spray painting swastikas on a vehicle impounded by the police department.[35] In time, a plethora of racist text

[34] Anecdotally, many defense counsel have observed a variety of tactics in court that appear to be avoidance of the D Motion, from handling the case at the very end of the day, to transferring it to another courtroom, or continuing the case on the court's own motion.

[35] James Queally, *Torrance Police Traded Racist, Homophobic Texts*, L.A. TIMES (Dec. 8, 2021, 5:00 AM), https://www.latimes.com/california/story/2021-12-08/torrance-police-traded-racist-homophobic-texts-it-could-jeopardize-hundreds-of-cases.

messages by Torrance police officers were revealed which covered such horrifying topics as hunting Black people, using the N-word, and beating people while on patrol.[36] It was uncovered through investigations and search warrants that at least 15 officers had been exchanging racist messages for years.[37] For example, one of the officers, Brian Kawamoto, sent messages referring to Black Lives Matters protestors as "savages," and wanting to "make Torrance great again" in response to another officer's comment about beating a suspect.[38] As a result of the text scandal, many criminal cases in which the officers were involved were dismissed.[39]

Five of the officers involved in our client's case were part of the racist text scandal. We planned to file an (a)(2) claim based on racial or ethnic bias exhibited by law enforcement during the criminal proceeding. We made the decision to file a D Motion in this case because we did not need data or information obtainable through the California Public Records Act. The following information was requested:

> "The entirety of the text messages that occurred between these officers while employed by the Torrance Police Department, including but not limited to pictures, memes, audio/video recordings, links, articles, emoji responses, such as smiles, laughter, etc., that mentions race, racist comments, Hispanic/Latino/Mexican people, Marginalized people, minority groups, bias based on National Origin, skin color or immigration status."

Additionally, we sought disciplinary write-ups, complaints, counseling, or investigation into the officers that pertain to their racist comments, or complaints filed about them.

Most importantly in this case, we requested the entirety of the text messages that occurred between these officers while employed at the Torrance Police Department. We were careful in the discovery motion to be specific about what discovery we were seeking due to the fact that previously the District Attorney took the position that they were providing limited summaries in order to satisfy *Brady*.[40] For example, they would provide us with one quote from an officer or a summary of a conversation, either simply labeling it as "racist" or that they used the N-word in a group

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[36] James Queally, *Torrance Police Officers Racist New Text,* L.A. TIMES (Aug. 25, 2022, 5:00 AM), https://www.latimes.com/california/story/2022-08-25/torrance-police-officers-racist-new-texts.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] Brady v. Maryland, 373 U.S. 83 (1963).

text. Yet, for CRJA litigation, that quote, or summary would be insufficient. It was critical for us to know which other officer(s) reacted to that text by laughing or responding with a thumbs up, which would show racial bias or animus on behalf of the reacting officer. Likewise, the District Attorney pursuant to their *Brady* obligation shared that an officer sent a meme or an image depicting racist stereotypes against Latino people or there was language including "jokes" about hanging Black people. Overall, the small quotes or summaries of the extreme racism was not enough to decipher exactly what the officers in our case said, posted, or responded to, which would be directly relevant to our CRJA motion.

In the end, the District Attorney agreed to resentence our client, which the client chose to accept and not continue with the CRJA motion. Were it not for the D Motion, our client might still be serving a lengthy prison term with no mention of the racism by these police officers. As of December 2021, the Los Angeles County Public Defender's office had identified about 100 ongoing cases that involved the Torrance police officers involved in the racist text scandal. The Los Angeles County District Attorney had dismissed about 40 felony cases, and the Torrance City Attorney had dismissed about 50 misdemeanor cases involving these officers.[41]

2. D Motion in Pasadena "ShotSpotter" Technology: Case Dismissed

In 2021, the city of Pasadena invested in and began using technology called "ShotSpotter," which consists of enhanced microphones placed in the community allegedly to detect gunfire and dispatch police faster to the location.[42] In Pasadena, what this meant was that the microphones were almost exclusively placed in Northwest Pasadena, a predominately Black and Latino neighborhood. This technology has been criticized for also alerting to sounds that are not gunshots, and has caused controversy because it inevitably leads to more biased police interactions and searches.[43] The ACLU warned that the

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[41] Natasha Chen, *Torrance Police Cases Dismissed Racist Texts,* CNN (Dec. 12, 2021, 2:11 PM), https://www.cnn.com/2021/12/12/us/torrance-police-cases-dismissed-racist-texts/index.html.

[42] Emily Dugdale, *ShotSpotter Police Pasadena Crime Gunfire System Shootings,* LAIST (Dec. 17, 2021, 6:00 AM), https://laist.com/news/criminal-justice/shotspotter-police-pasadena-crime-gunfire-detection-system-shootings.

[43] André Coleman, *Controversial ShotSpotter Contract Approved,* PASADENA NOW (Oct. 4, 2021, 11:47 PM), https://www.pasadenanow.com/main/controversial-shotspotter-contract-approved.

acquisition of the technology would harm the most vulnerable populations who have been "overpoliced, over-surveilled, and undervalued" in recent years, and that it would increase the police footprint in Black and Brown communities in Pasadena which would lead to further frisks, contacts, detentions, seizures, and arrests.[44] Studies in Chicago and St. Louis have already shown that this technology does not abate crime.[45]

Our case involved an alleged ShotSpotter alert, which resulted in police going to a house in Northwest Pasadena where our client was sitting in a car in his driveway next to his house. When the police arrived at the location of the alleged ShotSpotter alert, there was no victim of a gunshot and no appearance of any problem or concern. The police proceeded to question and harass our client for approximately an hour, cajoling him to get out of the car, where he sat listening to music and smoking. Eventually our client was arrested. We planned to bring a CRJA claim under Penal Code Section 745(a)(3) and (a)(4), alleging disproportionate prosecution and sentencing, originating from the bias inherent in this technology and the placement of it in a predominantly Black and Brown neighborhood. We requested every case that the prosecutor's office filed based on a "ShotSpotter hit" since the acquisition of the technology in Pasadena. In court, the prosecutor claimed that they did not keep that information and would have to go through every case to obtain the information we sought.

Included in the D Motion was a map which depicted where the ShotSpotter microphones have been placed in Pasadena (inside the red line). We compared it to another map showing the racial demographics of Pasadena by neighborhood. This map displays the majority Hispanic neighborhoods in yellow, and majority Black neighborhoods in green. With these two maps side-by-sides, we were able to show, visually, the overlap between where ShotSpotter microphones were placed in Pasadena and where the people of color live in Pasadena. This case was dismissed by the prosecution before they were ordered to turn over anything by the judge.

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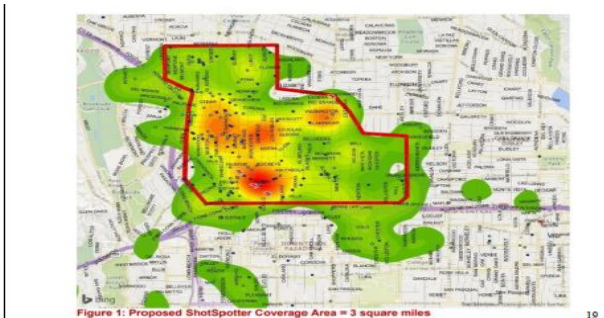
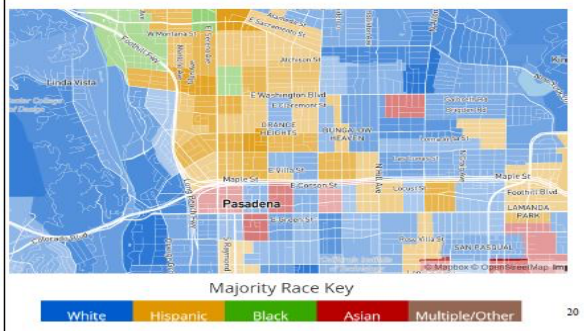
[44] Jay Stanley, *Four Problems With the Shotspotter Gunshot Detection System*, ACLU (Aug. 24, 2021), https://www.aclu.org/news/privacy-technology/four-problems-with-the-shotspotter-gunshot-detection-system.

[45] *Id*.





[19] This slide was created by the Pasadena police department's presentation to the Pasadena City Council's Public Safety Committee on June 21, 2023. It is a slide of the 3 mile are that the ShotSpotter technology is location.

MOTION FOR RELEVANT DATA PURSUANT TO PC 745(D)
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3. D Motion in Third-Strike Challenge: Client Resentenced and Released

The issue of racial disparities in third strike sentences is an area ripe for CRJA litigation. In 1994, "African Americans in Los Angeles County [were] accused of a third 'strike' at 17 times the rate of their White counterparts."[46] My office had been litigating on behalf of a client with a twenty-year old case and attempting to get him resentenced from a third-strike life sentence for a low-level offense since 2014. We tried utilizing Proposition 36,[47] Proposition 47,[48] and any other available remedy to highlight this injustice.

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[46] V. Schiraldi & M. Godfrey, *Racial Disparities in the Charging of Los Angeles County's "Third Strike" Cases*, CENTER ON JUV. & CRIM. JUST. (1994).

[47] California Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, was an initiative statute that permanently changed state law to allow qualifying defendants convicted of nonviolent drug possession offenses to receive a probationary sentence in lieu of incarceration. But Prop 36 is not retroactive.

[48] California Proposition 47 was a referendum passed in 2014 which recategorized some nonviolent offenses as misdemeanors, rather than felonies, as they had previously been categorized.

After the Racial Justice Act was enacted, we began by filing a D Motion requesting all strikes filed since 1994, including the number of prior strikes each person had, the charges in the commitment case and the prior strikes cases, information on cases that could have been charged as three strikes, and all *Romero*[49] motions opposed by the District Attorney's Office compared to all *Romero* motions unopposed. Additionally, we asked for all office memos, written protocols, and policies concerning strikes and Romero Motions.

To provide good cause as to why we needed information from the District Attorney's Office to challenge a retroactive (a)(3) and (a)(4) third-strike case, we provided the court with eight academic and research papers about racial disparities in third-strike sentences. As we litigated the D Motion the prosecution took the position that providing the discovery would be onerous and unduly burdensome for their office. The Judge was inclined to order the discovery and made the position clear that she would likely order the disclosure. The client was finally re-sentenced and ordered released from prison. Interestingly, the Judge noted that, "the court firmly rejects Petitioner's suggestion that he was treated differently on the basis of his race. The court does not typically know the race of a defendant unless it is pointed out to the court, or the defendants appear in person or by Webex." After ten years of fiercely litigating the case and little hope for resentencing, it was only after filing the D Motion and beginning to litigate CRJA that the Judge finally decided to resentence our client, who is now free from prison after serving twenty-six years.

CONCLUSION

The motion for relevant discovery included in the California Racial Justice Act, Penal Code Section 745(d), is an incredibly useful tool for defense counsel to obtain discovery that may not be available through CPRA or as an alternative method when counsel encounters resistance to CPRA requests. Additionally, D Motions are useful in obtaining successful plea bargains or re-sentencing, previewing the CRJA claim for the parties, and educating the bench and prosecution about the racial issues in the case. Defense practitioners should not simply submit boilerplate motions or lists of discovery they desire but rather dig into the issues of racism and bias in their case in the motion for relevant discovery.

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[49] *See* People v. Super. Ct., 13 Cal. 4th 497 (1996) [Romero] (holding that a trial court, pursuant to Section 1385(a) of the California Penal Code, may, on its own, and "in furtherance of justice" strike or vacate an allegation that a defendant has been previously convicted of a serious and/or violent felony).