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LDF Files Amicus Brief in California Supreme Court Criticizing Race-Based Jury Selection

Brief Challenges Legitimacy of “O.J. Simpson Question”

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) filed an [amicus brief](#) urging the California Supreme Court to grant a new trial to Johnny Duane Miles, a Black man sentenced to death in 1999. The brief argues that the prosecution used a racially discriminatory question about the O.J. Simpson trial to strike Black Californians from the capital jury.

“Excluding jurors on the basis of their race is fundamentally at odds with the law and the basic tenets of our democracy,” said LDF Senior Counsel [Alexis Hoag](#). “Race-based discrimination in jury selection not only renders the verdict illegitimate, but it also further undermines the integrity of the criminal justice system as a whole. The California Supreme Court must ensure that Mr. Miles receives a fair trial with a jury selection process that has not been infected by racial discrimination.”

More than a century ago, the United States Supreme Court ruled that purposefully excluding Black people from a jury trial violates the United States Constitution. Since that ruling, courts have been tasked with rooting out racial discrimination from the jury selection process. Due to state and federal courts’ unequivocal stance on this issue, it is now less common for prosecutors to openly exclude potential Black jurors based their race. As a result, however, prosecutors have resorted to more covert tactics to achieve the same impermissible result, including the use of race proxies to justify the unlawful elimination of Black people.

In *California v. Miles*, the prosecution asked potential jurors if they were upset by the verdict in the O.J. Simpson trial, employing what’s known as the “O.J. Simpson Question.” If a Black potential juror said “no,” then the prosecution would use their answer to justify striking them from the jury. Conversely, the prosecutor did not prohibit non-Black jurors who answered “no” from serving on the jury, leaving no doubt that the prosecutor deployed the O.J. Simpson Question for the sole purpose of discriminating against Black people.

In asking the O.J. Simpson Question during the jury selection process, the prosecutor in Mr. Miles’s case tapped into deep racial divisions revealed by the O.J. Simpson trial. It was no secret that reactions to the “not guilty” verdict in the O.J. Simpson trial were racially-polarized. Most Black people viewed the case as a referendum on the deep-seated racial discrimination that pervades the criminal justice system, and either approved of—or were ambivalent towards—the not guilty verdict. In contrast, many white people were generally convinced of Mr. Simpson’s guilt given the physical evidence against him and were, therefore, disappointed by the verdict.

In its amicus brief, LDF argues that the prosecution violated both the United States and California Constitutions when the prosecutor intentionally excluded Black people from Mr. Miles's jury through the use of the O.J. Simpson Question. Both Constitutions prohibit the elimination of a potential juror based on his or her race.

Read the entire brief [here](#).

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.