

Chapter 34: Introduction to Compendium of Statutes and Case Law with Significant Impact in the Development of Our Unjust Legal System (Gov. Code, § 8301, subd. (b)(3)(C))

Introduction

Through its enactment of AB 3121, the Legislature charged the Task Force with compiling “[t]he federal and state laws that discriminated against formerly enslaved Africans and their descendants . . . from 1868 to the present” and identifying “[h]ow California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated.”¹ The Task Force produced Part IX of the report, the legal compendium, to not only catalogue, but to summarize and memorialize for the public the many state and federal laws that have perpetuated discrimination against African Americans in California, as well as some cases and laws that advanced the rights of African Americans by setting aside those racist laws and policies. Due to the myriad ways in which laws and cases have created and nurtured this system of subjugation, the compendium is illustrative, not exhaustive. Nevertheless, Chapters 34-40 are intended to provide a comprehensive documentation of the centuries-long struggle in California, dating back to the earliest years of statehood, for personhood, equality, and equity.

This compendium is divided thematically, based on six major subject areas discussed throughout the Task Force’s report: (1) Housing; (2) Labor; (3) Education; (4) Political Participation; (5) the Unjust Legal System; and (6) Civil Rights. In doing so, the compendium documents many of the constitutional provisions, statutes, and court cases that form the foundations of the discrimination and atrocities discussed throughout Chapters 1-13 of this report.

Beginning with California’s 1850 Constitution, this Compendium highlights laws that discriminated against African Americans and creating and maintained white privilege and supremacy. As described in Chapter 2, Enslavement, when California’s Constitution began taking shape, lawmakers in the state created a racial hierarchy that reinforced slavery and denied African American people freedom and the rights of citizenship. California even adopted a Fugitive Slave Law in 1852 to return freedom seekers to their enslavers. California’s laws also denied African American people voting and homesteading rights, the ability to testify in court, and the ability to enroll their children in the public education system. The state further prohibited African Americans from inheriting property, stifling economic stability and the development of generational wealth.

The state reinforced and broadened this racial hierarchy in the 1879 State Constitution. In it, the state expanded many laws to protect white men’s rights and privileges, while denying the same rights to African American Californians. And, at the same time that the Thirteenth, Fourteenth,

¹ Gov. Code, § 8301.1, subds. (b)(1)(F), (b)(3)(C).

and Fifteenth Amendments to the United States Constitution sought to liberate African Americans, California embraced constitutional provisions and laws that excluded African American people from those liberties, entrenching racial segregation and white supremacy. For example, even though the Fifteenth Amendment to the United States Constitution prohibited states from abridging the right to vote based on race, California state and local officials often prevented African American Californians from voting through residency requirements, poll taxes, and other legal hurdles.

Even when African American Californians made gains in certain areas, full equality has remained out of reach. As described in Chapter 10, *Stolen Labor and Hindered Opportunity*, this compendium documents how the state's laws and policies created an unequal playing field for African American Californians to work and earn a living. One example of this is the Fair Employment Practice Act (FEPA), passed in 1959. Though the California Legislature enacted it in its efforts to eliminate discrimination in employment, in *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496-97, the California Supreme Court interpreted the FEPA to eliminate only discrimination in hiring decisions, not on the job. This case eliminated one potential layer of protection for African American Californians against discriminatory or racist mistreatment by their employers. As the legal cases collected in the compendium show, African American residents repeatedly faced barriers in employment, including exclusion from labor unions, the denial of job contracts, and rulings that prevented African American residents from even seeking damages for violations of anti-discrimination laws. At times, court decisions would recognize instances of discrimination, hinting at progress for African American workers and business owners, but ultimately worsening the situation by creating loopholes that subjected them to greater discrimination.

The compendium also documents many of the laws and policies discussed in Chapter 5, *Separate and Unequal Education*, used by the state to exclude African American Californians from countless educational opportunities since the beginning of the state's public education systems in the 1870s.² While African American Californians struggled and made advances to end education discrimination throughout the twentieth century, government officials continued to place new hurdles before them. Even when several court rulings reiterated the Supreme Court's determination in *Brown v. Board of Education* (1955) 349 U.S. 294, that districts could not operate segregated schools, local officials resisted and sidestepped this ruling in order to fight to maintain segregation.³ For instance, in *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779, the city of Yorba Linda attempted to form a separate, predominantly white school district to avoid having its white children attend school with African American children in the area, a tactic used throughout the country—especially across states in

² See *Ward v. Flood* (1874) 48 Cal. 36.

³ See, e.g., *National Ass'n for the Advancement of Colored People v. San Bernardino City Unified School Dist.* (1976) 17 Cal.3d 311 (declaring that the state had a "constitutional obligation" to take the necessary steps toward desegregation).

the South that had been members of the Confederacy—to maintain segregation.

Similarly, the laws and policies included in the compendium reveal how African American Californians faced tremendous political restrictions from the state’s inception, reinforcing this report’s discussion in Chapter 4, Political Disenfranchisement. Initially, the state’s Constitution did not consider African American residents state citizens, nor did it permit African American residents to vote or run for office. It was not until 1879 that California amended its constitution to recognize men of African descent (it took even longer to include African American women). But by then, white men had already established a stranglehold over key positions of power in California, excluding African American residents from the corridors of power for decades more. And this entrenched power enabled and maintained the systems of racial discrimination discussed throughout this report.

In addition to this report’s discussion of the Unjust Legal System in Chapter 6, this compendium highlights many of the egregious laws and rulings reinforcing discrimination against African American people in our state and in our country. Several cases include examples of strategies prosecutors used to exclude African American potential jurors to secure all-white juries, contributing directly to the current mass incarceration crisis. Other cases challenged laws banning African American people from testifying against white people, such as *People v. Hall* (1854) 4 Cal. 399. Similarly, *People v. Gullick* (1961) 55 Cal.2d 540, exposed how police influenced witnesses into identifying African American suspects in line-ups, regardless of their accuracy. As a supplement to the history of the atrocities laid out in chapters 1-13 of this report, this compendium serves as an overview of the many laws that built up state and federal legal systems designed to subjugate African American Californians.

It is important to note, however, that there are numerous state and federal cases and laws that are not included in this compendium. For example, the cases listed in the compendium include only ones decided by the California Supreme Court and the United States Supreme Court between 1850 and 2020, tracking the years from this state’s founding to the year AB 3121 was enacted. Though comprehensive, this compendium does not exhaustively list every case, law, policy, and practice that reinforced the structures of slavery and racial discrimination; to do so would result in a compendium far exceeding the length of the report itself. The compendium also did not include local and municipal laws, nor cases from municipal courts, trial courts, district courts, or other appellate courts. Given the long and wide-ranging history of discrimination in this state and across our country, a full list would be nearly impossible to authoritatively and accurately compile and would result in an unwieldy record. Instead, the compiled constitutional provisions, statutes, and cases support the findings set forth in Chapters 1-13, demonstrate the need for the policy changes recommended in Chapters 18-30, and support the Task Force’s effort, as further

described in Chapter 33, to educate the public regarding the longstanding and wide-ranging ways in which governmental entities, often through the strategic use of the court system, have reinforced the system of permanent discrimination, a legacy of enslavement in our country.

Chapters 35-40 consist of statutes and case law that had significant impacts in the development of our unjust legal system as it relates to African Americans. Specifically, each chapter includes both federal and state statutes and case law. Chapter 35 consists of statutes and case law relating to how African Americans have been wronged by housing laws. Chapter 36 consists of statutes and case law relating to how African Americans have been wronged by labor laws. Chapter 37 consists of statutes and case law relating to how African Americans have been subjected to racial discrimination in education. Chapter 38 consists of statutes and case law relating to how African Americans have been denied full political participation. Chapter 39 consists of statutes and case law relating to how African Americans have been wronged by our unjust legal system. And Chapter 40 consists of statutes and case law relating to how African Americans have been wronged by civil rights cases.

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