

# JUSTIFY, JIMSON WEED & JUSTICE

## FROM THE RACETRACK TO THE COURTROOM

**J**ustify's victory in the 2018 Santa Anita Derby served as the springboard for trainer Bob Baffert's second Triple Crown triumph. In the wake of a 2019 *New York Times* article revealing the colt had tested positive for a banned substance on race day, Ruis Racing has filed a lawsuit against the California Horse Racing Board. Ruis claims the CHRB failed to do its duty, and the 2018 victory and the \$600,000 first-place purse rightfully belong to Bolt d'Oro.

### ► A Duel at Santa Anita

As the starting bell sounded for the million-dollar Santa Anita Derby on April 7, 2018, folks who knew racing knew the contest was likely to come down to a duel between two horses: Bolt d'Oro and Justify. Both were big, beautiful and born to run. Bolt d'Oro, owned/trained by Mick Ruis and ridden by Javier Castellano, had experience on his side. Justify, trained by Bob Baffert, had only two races to his credit, but the handsome colt had won both and was already tagged as a rising star. A first- or second-place finish in Santa Anita would guarantee a spot in the Kentucky Derby, and Baffert, who had captured the Triple Crown with American Pharoah only three years earlier, publicly hinted that his latest protégé could go all the way as well.

Baffert's confidence seemed well placed when Justify, ridden by Mike E. Smith, took an early lead. Having firmly established themselves in second place, Castellano and Bolt d'Oro made their move in the final turn. With announcer Mike Worna describing the match as "prodigious talent versus established class," Bolt d'Oro closed the gap and appeared ready to nose it out. But Justify sprang ahead in the final furlong, and prodigious talent won the day in an electrifying climax. >







▶ **History in the Making**

The rest, as they say, is history. Bob Baffert and Justify kept their string of victories going through a muddy Kentucky Derby, a foggy, rain-soaked Preakness, and a beautiful day at Belmont. Justify became the thirteenth horse to win the Triple Crown, and Baffert decked his already legendary status with fresh laurels. The trainer had chalked up an astonishing two Triple Crowns, five Kentucky Derbies, seven Preakness Stakes, three Belmont Stakes and three Kentucky Oaks.

Baffert had his eyes on The Grand Slam, but a problem with his superstar's left front ankle led to the stallion's retirement in late July 2018. Justify had earned \$3,798,000 in six races. He followed Seattle Slew as the second winner in Triple Crown history to retire undefeated. Breeding rights were sold for a reported \$60 million, plus a \$25-million bonus for the Triple Crown triumph. Justify's stud fee was reportedly set at \$150,000.

▶ **A Stunning Revelation & Angry Allegations**

Then, last fall, a dark cloud appeared above the green pastures of Justify's retirement. On September 11, 2019, *The New York Times* ran an article headlined, "Justify Failed a Drug Test Before Winning the Triple Crown." Racing journalist Joe Drape revealed what the California Horse Racing Board and the horse's trainer and owners had managed to keep secret for over a year. Justify had tested over the acceptable limit for scopolamine on the day of his crucial victory at Santa Anita.

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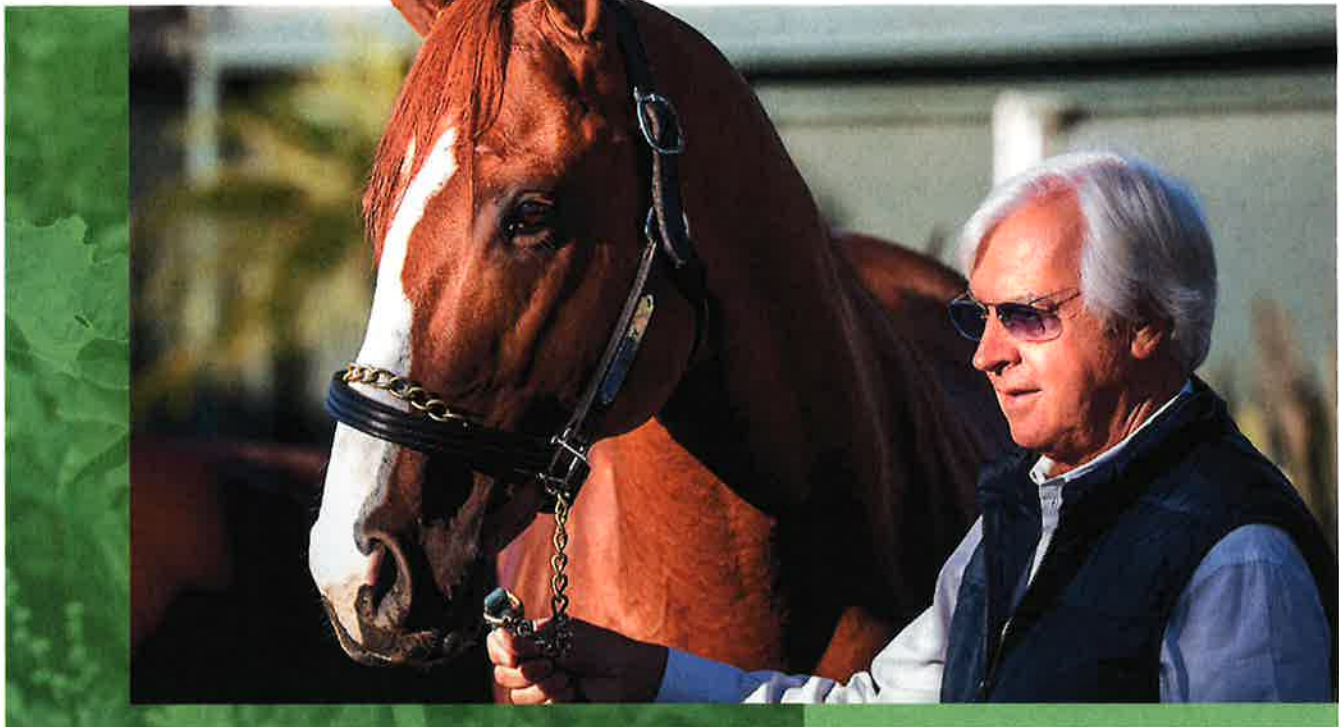
GAVIN NEWSOM - CALIFORNIA GOVERNOR

**BELOW:** Justify pulls away from Bolt d'Oro to win the 2018 Santa Anita Derby.

That would have been a bombshell in and of itself. But the article went on to detail a series of questionable actions by the California Horse Racing Board (CHRB) in the aftermath of the positive test. Actions that, in the eyes of many, defied logic, violated procedure, and made mockery of ethics and transparency. Some even claimed the governing body had violated California law.

Less than two weeks after the *Times* article appeared, California Governor Gavin Newsom publicly blasted the CHRB and the horse racing industry. "What happened last year was unacceptable, and all of the excuses be damned. We own that going into next season, and we're going to have to do something about it," Newsom told the *Times*. "I'll tell you, talk about a sport whose time is up unless they reform. That's horse racing," the governor continued. He went on to excoriate the industry's treatment of racehorses and warn that industries that don't reform themselves get reformed by others.





► **A Race Becomes a Case**

In January 2020, Ruis Racing, which owned and trained Bolt d’Oro, filed a lawsuit in the California courts. The suit contends that, under the California rules for Thoroughbred racing, Justify must be disqualified from the 2018 Santa Anita Derby, Bolt d’Oro must be recognized as the race’s rightful winner, and Ruis Racing must be awarded the first-place prize money. (\$600,000 vs. their \$200,000 second-place purse.) The suit also claims that the CIIRB knowingly violated statutes and procedures, and that Ruis Racing is entitled to compensatory damages and reimbursement for all legal costs incurred by the suit.

In the wake of the first *Times* article, Bob Baffert released a statement declaring that neither he nor his staff administered scopolamine to Justify prior to the Santa Anita run, or to any of his horses, ever. The statement said the substance had undoubtedly entered the horse’s system due to ingesting jimson weed—a natural source of scopolamine that can turn up in hay, straw and cereal grains. Baffert further stated that the CIIRB had found no wrongdoing, that he had no influence over the Board or its decisions, and that Justify had tested clean in all of his other races.

► **Getting into the Weeds**

Baffert’s statement correctly identified jimson weed as an environmental source of scopolamine. The chemical is a naturally occurring alkaloid found in noxious plants, including jimson weed. Invasive and aggressive, jimson weed is despised by farmers around the globe. Its defenses against nature’s plant-eaters include thorny seed pods, an unpleasant smell, and an extremely bitter flavor. Scopolamine not only contributes to the plant’s unappetizing taste, it adds toxicity. Though used in small amounts in human digestive remedies

**ABOVE:**  
Justify with  
trainer Bob  
Baffert.

for centuries, modern medical experts consider jimson weed ineffective and unsafe, since ingesting the plant or its seeds can produce vomiting, seizures, muscle cramps and death. Its toxic effects extend to horses as well.

While horses would likely avoid dining on jimson weed in natural surroundings, the plant is impossible to totally eradicate from modern farm fields, and small amounts of it occasionally turn up in horse feed, hay and straw. Horses that eat parts of the plant or its seeds will test positive for both scopolamine and atropine, another alkaloid found in jimson weed. The presence of both alkaloids in a horse’s blood or urine is typically taken as a sign of environmental contamination via jimson weed ingestion.

**BELOW:**  
*Datura*  
*stramonium*,  
commonly  
known as  
jimson weed.

The presence of scopolamine *without* atropine in test results would likely be evidence that a horse has been treated with Buscopan, a pharmaceutical approved by





< the FDA for the treatment of spasmodic colic in horses. This is because Buscopan contains a synthetic compound that is remarkably similar to scopolamine. In addition to relieving colic, the drug could also relax airways in the lungs, improving airflow. Buscopan's labeling identifies increased heart rate as the drug's major side effect.

► **Science & Substance**

While scopolamine might theoretically increase racing performance, there is no scientific evidence indicating the alkaloid is an effective performance enhancer. As with many other substances, scopolamine is banned based on its theoretical potential, not real-world results.

The *New York Times* piece that revealed Justify's failed drug test reported a high level of scopolamine in the colt's post-race urine sample: 300 ng/ml—well above the common industry thresholds of 60 or 75 ng/ml. The article never stated that Baffert or anyone on his staff had doped the horse. It did, however, include a disturbing quote regarding that high level from Dr. Rick Sams, who headed the Kentucky Horse Racing Commission's drug laboratory for some seven years. "I think it has to come from intentional intervention," Sams said.

BELOW:  
Justify,  
ridden by  
Mike Smith, in  
the winners  
circle after  
winning the  
2018 Santa  
Anita Derby.

Many came to Baffert's defense, including Tim Layden, who penned an article for NBCSports.com. Layden pointed out that Sams is a respected PhD and lab chief but is not a veterinarian, and that no vets' or other experts' opinions, some of which might well have contradicted Sams, were offered in the *Times* piece. Similar to an article I co-authored for *The Horseman's Journal*, Layden outlined a case for environmental contamination at Santa Anita due to the presence of jimson weed in locally sourced hay and straw.

► **The Environmental Contamination Defense**

The arguments for environmental contamination are hard to dismiss. Historically speaking, scopolamine positives have been few and far between. They often occur in clusters, which is an indicator of plant contamination. The Association of Racing Commissioners International (ARCI) recorded 28 positive scopolamine results over 30 years—22 of which occurred in California. Jimson weed thrives in the state, and its natural drought resistance makes it more likely to show up in feed when dry conditions reduce crop yields. In 2016, the CTRB officially warned industry professionals in Del Mar of the presence of jimson weed in straw.

In 2018, Justify was one of six horses that tested positive for scopolamine in California around the time of the Santa Anita Derby, making feed contamination a likely culprit. All six animals also tested positive for atropine—a strong indicator that a plant, not a pharmaceutical, was the source of the compound.





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ABOVE:  
Bolt d'Oro

RIGHT:  
Trainer Bob Baffert is interviewed after winning the 2018 Santa Anita Derby.

< The presence of scopolamine at 300 ng/ml in Justify's urine does seem high. But the presence of a substance in a urine sample indicates that it has been eliminated from the animal's bloodstream by the kidneys. Properly functioning kidneys work to flush out as much of a natural or synthetic toxin as quickly as possible. Complicating matters, the level of a horse's hydration and the acidity of its urine can also affect the levels of substances in its urine—all of which makes the measuring of substances in the blood a far more accurate indicator. As of this writing, the CIIRB has not officially released Justify's post-Santa-Anita test results. But multiple sources have reported that the level of scopolamine in Justify's blood test was significantly lower.

When it comes to Ruis Racing's civil lawsuit, whether Justify accidentally nibbled on jimson-weed-tainted feed or was deliberately doped is strangely beside the point. After all, Ruis Racing isn't suing Bob Baffert or Justify's ownership group. Mick Ruis and his family are suing the California Horse Racing Board. And their case has the potential to shake American Thoroughbred racing to its core.

► **What the CHRB Did & Didn't Do**

The following timeline chronicles CIIRB's actions during 2018 in light of Justify's positive test for scopolamine. The timeline is based on press reports and information in the Ruis' legal filing. Be aware that the CIIRB's refusal to publicly release all relevant information makes some dates and details impossible to pin down.

On April 7, Justify won the Santa Anita Derby. Post-race samples were drawn from the horse for testing and sent to the official CIIRB laboratory. On April 18, the lab reported the detection of scopolamine in Justify's samples to the

CIIRB. CIIRB rules required that both the organization's executive director and medical director be notified.

On April 20, the CIIRB's legal counsel, its chief investigator, and Executive Director Rick Baedeker received an email from CIIRB Equine Medical Director Dr. Rick Arthur. The email noted that the Justify matter should be "handled differently than usual."

On April 26, Bob Baffert was notified of the test results and requested a split sample for independent testing. The split sample was sent to the lab on May 1. Justify won the Kentucky Derby on May 5. Three days later, on May 8, the split sample results confirmed the presence of scopolamine. CIIRB Executive Director Baedeker informed Board members that, "The CIIRB investigations unit will issue a complaint and a hearing will be scheduled." (No complaint was issued, and no hearing was scheduled.)

On May 19, Justify won the Preakness. On May 24, news of the horse's breeding rights sale broke in *The New York Times*.

At some point in May, the CIIRB drafted revised drug classification rules, reducing the penalties for scopolamine. Under the proposed rules, what was a Class 3/Penalty B violation would become a Class 4/Penalty C violation. These changes would rescind requirements for disqualification and forfeiture of winnings.

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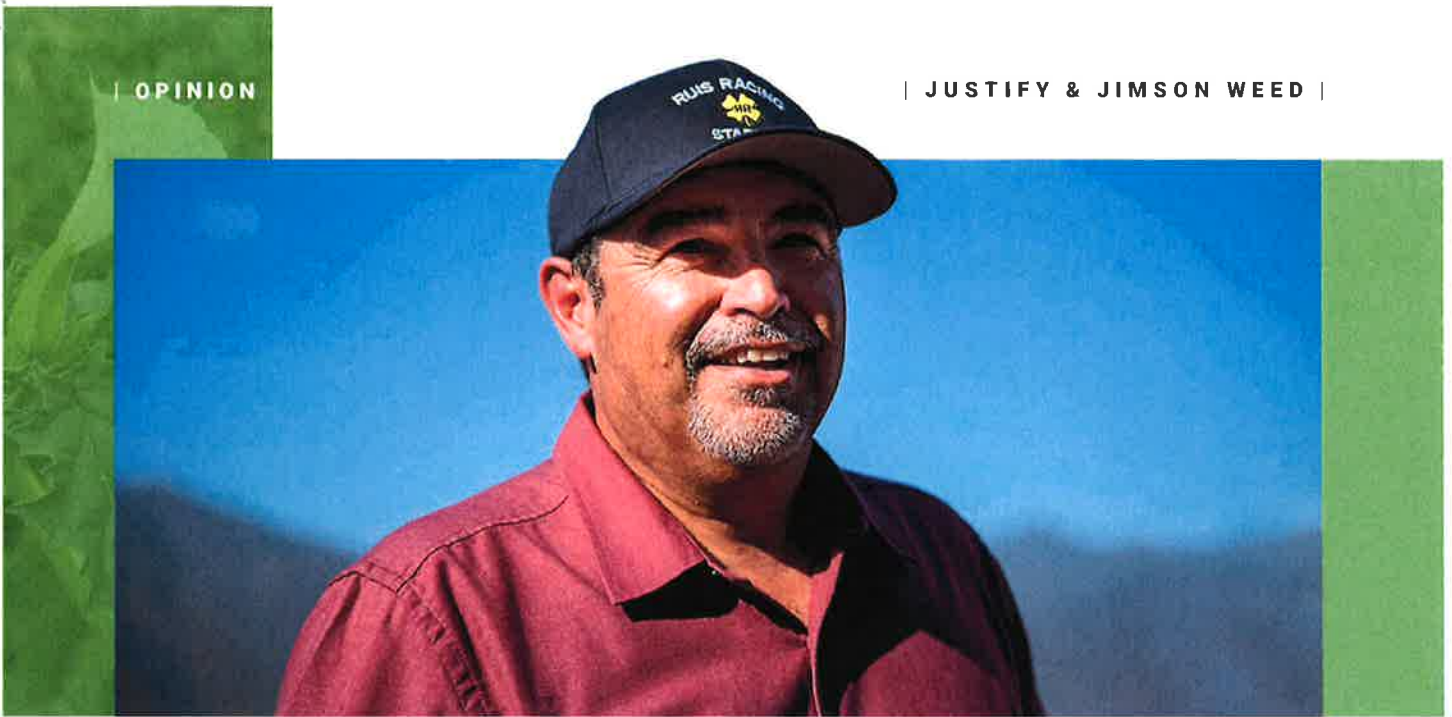
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< On June 9, Justify won the Belmont Stakes, clinching the Triple Crown.

On a date in late August, the CTRB is believed to have held a closed or executive meeting to discuss the Justify situation. It appears that in the course of this meeting, Executive Director Rick Baedeker recommended the case be dismissed, and all those present voted to do so.

In October, 2018, the CTRB's revised rules for scopolamine officially took effect.

► **Ruis Racing Weighs In**

The Justify matter remained a well-kept secret until the *Times* published its exposé. In the months since, individuals who were members of the CTRB when Justify tested positive for scopolamine have spoken publicly about the matter. They have stated that an internal investigation determined that the scopolamine discovered in Justify's urine was the result of accidental jimson weed ingestion, and the Board acted properly in allowing Justify to remain as the Santa Anita Derby winner while taking no further actions against Baffert or his horse. No harm, no foul. Mick Ruis and his attorneys disagree.

The core of the Ruis Racing claim is that the CTRB failed in its mandatory duty by not following or enforcing its own rules, as required by California law. At the time of the 2018 Santa Anita Derby, California rules required a horse testing over the limit for scopolamine be disqualified, and any purse won be forfeited. Period.

The Ruis suit claims that the CTRB did not apply the proper penalty at the time of the Santa Anita Derby, deviated from standard testing procedure, and failed to properly redistribute prize money after Justify's positive scopolamine test. It also claims the CTRB failed in its mandatory duty, utilized a non-existent rule and an unofficial, illegal testing procedure, abused its powers of discretion, treated evidence in a selective manner, and applied a secret, unofficial standard. The lawsuit states that this amounts to arbitrary and capricious behavior by the Board, and that such behavior is biased, unacceptable and illegal, and violates Mick Ruis' constitutional rights. There's more, but you get the idea.

“  
IF YOU DON'T REFORM  
YOURSELF, YOU'RE GOING  
TO GET RUN OVER AND  
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THAT YOU DON'T LIKE.”

GAVIN NEWSOM'S WARNING TO THE  
RACING INDUSTRY AND ITS REGULATORS

ABOVE:  
Mick Ruis

► **Secrecy, Transparency & the Future of the Sport**

You may believe Justify accidentally ingested jimson weed in his feed and was vindicated by the CTRB. Or you may feel the CTRB played fast and loose to protect the record and reputation of a legendary trainer and his superstar horse. But no matter where you stand on the issue, it's difficult not to be disheartened by the California Board's lack of transparency in its processes and decisions regarding Justify's scopolamine positive.

As with all horse racing authorities in the U.S., the CTRB is supposed to enforce defined rules in a fair, consistent and uniform manner in order to protect horses, industry professionals, and above all, the public. It's hard to see how the Board's secrecy surrounding the Justify test results dovetails with that mission.

Whatever the judge decides, Ruis Racing's case will likely have deep, lasting ramifications for the horse racing industry. As the particulars play out in court, we would all do well to remember Governor Newsom's warning to the racing industry and its regulators: "If you don't reform yourself, you're going to get run over and others are going to reform you in ways that you don't like." I could not have said it better myself. ■