

1999

Constitutional Law - Procedural Due Process - Fifth Amendment Right to Grand Jury

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Recommended Citation

Tracey M. Lewis, *Constitutional Law - Procedural Due Process - Fifth Amendment Right to Grand Jury*, 37 Duq. L. Rev. 407 (1999).

Available at: <https://dsc.duq.edu/dlr/vol37/iss2/12>

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CONSTITUTIONAL LAW—PROCEDURAL DUE PROCESS—FIFTH AMENDMENT RIGHT TO GRAND JURY—The United States Supreme Court held that a Caucasian criminal defendant has standing to raise Equal Protection and Due Process claims based upon the racially discriminatory exclusion of non-Caucasians from serving as his or her grand jury foreperson.

Campbell v. Louisiana, 118 S. Ct. 1419 (1998).

On January 11, 1992, after an evening out with friends, Susan Campbell accepted a ride home from Dr. James Sharp. Unbeknownst to either of them, Terry Campbell, Susan's estranged husband, had followed them.¹ As James Sharp sat in his van, Terry Campbell shot him through the window.² James Sharp later died as a result of his injuries.³ Terry Campbell was arrested and charged with second degree murder under section 14:30.1 of the Louisiana Revised Statutes.⁴

Campbell was subsequently indicted by a Louisiana state grand jury for second degree murder.⁵ Before trial, Campbell filed a motion to quash the grand jury indictment, alleging that the grand jury foreperson selec-

1. *State v. Campbell*, 673 So. 2d 1061,1063 (La. Ct. App. 1996).

2. *Id.* Terry Campbell shot Dr. James Sharp at approximately 2:30 a.m. on January 11, 1992. *Three People Indicted by Grand Jury*, THE BATON ROUGE ADVOC., Feb. 6, 1992, at 3B. The fatal shot struck Dr. Sharp in the heart, resulting in his loss of control of his van. *Id.*

3. *Campbell*, 673 So. 2d at 1064. After being pulled from his van by the Pine Prairie Volunteer Fire Department, Dr. Sharp was taken to Savoy Medical Center, where he was pronounced dead on arrival. *Acadiana Parishes Acadiana Bureau*, THE BATON ROUGE MORNING ADOV., Jan. 14, 1992, at 2B. Terry Campbell was arrested on the afternoon of January 11, 1992, at Cypress Hospital in Lafayette, Louisiana. *Id.* Cypress Hospital specializes in the treatment of mental diseases and drug abuse recovery. *Id.*

4. LA. REV. STAT. ANN. § 14:30.1 (West 1997). The statute provides in relevant part as follows:

§ 30.1 Second degree murder A. Second degree murder is the killing of a human being: (1) When the offender has a specific intent to kill or to inflict great bodily harm; or (2)(a) When the offender is engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree robbery, even though he has no intent to kill or to inflict great bodily harm. B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.

Id.

5. *Campbell*, 673 So. 2d at 1064. An indictment is a prosecutorial accusation of a crime that is issued by a grand jury against the party charged with the crime. BLACK'S LAW DICTIONARY 772 (6th ed. 1990). "An indictment is merely a charge that must be proved at trial beyond a reasonable doubt before defendant may be convicted." *Id.*

tion process used by Evangeline Parish, Louisiana, discriminated against African-Americans.⁶ The trial judge overruled his motion to quash the grand jury indictment, noting that, "there is no racial discrimination in the process used in Evangeline Parish, Louisiana against the Defendant Campbell."⁷ Specifically, the trial judge found that Campbell lacked the necessary standing to assert violations under the Equal Protection Clause or the Due Process Clause on the basis of racial discrimination in the grand jury foreperson selection process.⁸ The judge found that Campbell was not denied equal protection of the law and, therefore, had no standing to raise the issue of discrimination against African-Americans in the grand jury foreperson selection process.⁹ Campbell was sentenced to a mandatory term of life imprisonment without the possibility of parole or suspension of sentence.¹⁰

Campbell appealed to the Louisiana Court of Appeals, asserting that the trial court erred in denying both the motion to quash the grand jury indictment and the motion for a new trial.¹¹ The court of appeals found that Campbell had standing to claim discrimination against African-Americans in the grand jury selection process in Evangeline Parish.¹²

6. *State v. Campbell*, 661 So. 2d 1321,1322 (La. 1995) *rev'd and remanded*, *State v. Campbell*, 651 So.2d 412 (La. Ct. App. 1995).

7. *State v. Campbell*, 651 So. 2d 412, 412 (La. Ct. App. 1995).

8. *Campbell*, 651 So. 2d at 412. To establish standing, a plaintiff must meet the following requirements:

(1) the plaintiff must have suffered an "injury in fact" an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual[;] (2) there must be a causal connection between the injury and the conduct complained of and the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court and (3) it must be "likely," as opposed to merely "speculative," that the injury will be redressed by favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

9. *State v. Campbell*, 661 So.2d at 1322. The judge reasoned that, because Campbell was a white man accused of murdering another white man, he suffered no real injury as a result of a grand jury selection process that had historically resulted in the selection of Caucasian forepersons. *Id.*

10. *Campbell*, 651 So. 2d at 1412. Many jurisdictions have sentencing guidelines that provide the sentencing judge with a specific sentence or sentence range for a particular crime. 24 C.J.S. *Criminal Law* § 1479 (1989). The purposes of such guidelines, which can be mandatory, as in this case, are to provide a system of uniformity and equity, give guidance to the sentencing court, and promote judicial review. *Id.*

11. Brief for Respondent at 5, *Campbell v. Louisiana*, 118 S. Ct. 1419 (1998) (No. 96-1584).

12. *Campbell*, 661 So. 2d at 1332. The court analyzed the claimant's rights as a criminal defendant under the Equal Protection Clause. *Id.* The court of appeals found that Campbell was also entitled to an evidentiary hearing to determine whether statistical data could support his claim of underrepresentation of African-Americans in the grand jury foreperson position. James M. McGoldrick, *Equality and Fairness in the Criminal Justice System: Can a White Defendant*

The prosecution appealed the decision of the court of appeals to the Louisiana Supreme Court on the grounds that Campbell lacked standing to bring his equal protection and due process claims.¹³ The Supreme Court of Louisiana reversed the court of appeals and held that Campbell, as a Caucasian defendant, did not have standing (1) to bring an equal protection claim regarding the racial discrimination in the grand jury foreperson selection process because he was not of the same race as were the people who were systematically excluded from foreperson selection; (2) to bring a due process claim challenging discrimination against African-Americans in the selection of grand jury forepersons because the role was "ministerial"; or (3) to raise an equal protection claim for African-Americans who were not chosen to serve as grand jury forepersons because of their race.¹⁴

Campbell filed a writ of certiorari with the United States Supreme Court alleging that the Louisiana Supreme Court's decision directly conflicts with relevant Supreme Court decisions addressing the same issues of standing.¹⁵ The United States Supreme Court granted certiorari to address a single issue: whether a Caucasian criminal defendant has standing to raise equal protection and due process objections on the basis of discrimination against African-Americans in the selection of grand jury forepersons.¹⁶

In a majority opinion authored by Justice Kennedy, the Court found that Campbell did have the requisite standing to assert equal protection and due process objections.¹⁷ The Court relied on *Powers v. Ohio*¹⁸ to establish Campbell's right to challenge the racially discriminatory selection of his grand jury.¹⁹ Although *Powers* involved the exclusion of prospective African-American jurors through the use of peremptory strikes

Challenge the Exclusion of Nonwhites from Serving as Grand Jury Forepersons?, 4 PREVIEW OF UNITED STATES SUPREME COURT CASES, Dec. 30, 1997, at 237, 238.

To make a prima facie showing of discrimination in the selection of a grand jury foreman, the defendant must show a disproportion over a significant period of time between the percentage of an identifiable minority in the general venire or grand jury venire and the percentage of minority forepersons during that time and must show that the selection process is susceptible of abuse. *Campbell*, 651 So. 2d 412, 413 citing *State v. Young*, 569 So. 2d 570 (La. Ct. App. 1990), writ denied, 575 So. 2d 386 (La. 1991).

13. Brief for Respondent at 7, *Campbell v. Louisiana*, 118 S. Ct. 1419 (1998) (No. 96-1584).

14. Brief for Petitioner at 6, *Campbell v. Louisiana*, 118 S. Ct. 1419 (1998) (No. 96-1584).

15. *Id.*

16. *Campbell v. Louisiana*, 118 S. Ct. 1419, 1421 (1998). Certiorari is a writ granted by a higher court, i.e., the United States Supreme Court, as a discretionary tool in choosing the line of cases for review. BLACK'S LAW DICTIONARY 228 (6th ed. 1990).

17. *Campbell*, 118 S. Ct. at 1421.

18. 499 U.S. 400 (1991).

19. *Campbell*, 118 S. Ct. at 1422.

at the petit jury²⁰ level, the Court concluded that the reasoning of *Powers* applied.²¹ In *Powers*, the Court determined that a Caucasian defendant suffers a definite injury when his or her jury is composed using discriminatory means because such discrimination not only hinders the defendant's chance for a fair trial, but also undermines the integrity of the judicial system as a whole.²²

In applying these rules of third-party standing, the Court determined that Campbell proved that he suffered an identifiable injury, established a close relationship with the excluded African-Americans through his attempts of eradicating discrimination from the grand jury selection process, and provided evidence that the excluded grand jurors would not have likely asserted their own rights through litigation given the economic disincentives for doing so.²³

In addressing Campbell's due process rights, the Court relied on its decision in *Peters v. Kiff*²⁴ to determine whether a third-party defendant has standing.²⁵ In particular, the *Peters* plurality concluded that a criminal defendant, regardless of race, "has standing to challenge the system used to select his grand or petit jury, on the ground that it arbitrarily excludes from service the members of any race, and thereby denies [the defendant] due process of law."²⁶

The Court also relied on *Hobby v. United States*,²⁷ in which it determined the remedy available based on the assumption that the defendant had standing to assert a due process claim in response to the discrimina-

20. There is a united system between the functions of the grand jury, before which one is accused, and the petit jury, before which the accused is tried. GEORGE J. EDWARDS, *THE GRAND JURY: AN ESSAY* 21 (1973). "The ordinary jury for the trial of a civil or criminal action; so called to distinguish it from the grand jury." *BLACK'S LAW DICTIONARY* 856 (6th ed. 1990).

21. *Campbell*, 118 S. Ct. at 1423.

22. *Powers v. Ohio*, 499 U.S. at 411 (1991).

23. *Campbell*, 118 S. Ct. at 1424. With regard to the second requirement, the Court found that Campbell did not attempt to establish a relationship with or assert the rights of jurors who had been excluded over the many years; rather Campbell, attempted to show a pattern of discrimination. *Id.* at 1424. "To assert the rights of those venirepersons who were excluded from serving on the grand jury in his case, Campbell must prove their exclusion was on account of intentional discrimination." *Id.* at 1424.

24. 407 U.S. 493 (1972). In this plurality opinion, the Court did not present a definite remedy for the violation of a defendant's due process rights as a result of the discriminatory exclusion of a group from the defendant's grand jury. In *Peters*, a Caucasian defendant challenged the discriminatory exclusion of African-Americans from jury service. *Peters*, 407 U.S. at 496. Specifically, the defendant alleged that African-Americans had been "systematically excluded" from the grand and petit juries involved in his case. *Id.* at 497.

25. *Campbell*, 118 S. Ct. at 1424.

26. *Id.* at 504.

27. *Hobby v. United States*, 468 U.S. 339 (1984).

tory selection of a federal grand jury foreperson.²⁸ In *Hobby*, the Court found that the Caucasian criminal defendant had not suffered a violation of his due process rights as a result of the discriminatory selection of a grand jury foreperson.

The Court distinguished *Hobby* from its decision in the case of *Rose v. Mitchell*.²⁹ In *Rose*, the Court concluded that an African-American criminal defendant had a valid equal protection claim based on the racially-biased selection of his state grand jury foreperson.³⁰ The Court explained that the different treatment of these cases was predicated, not on the race of the criminal defendant, but on the selection process and procedural duties of the grand jury forepersons and the impact that such a selection regime has on the grand jury as a whole.³¹ In *Rose*, the Court found that the selection process the state of Tennessee used to select grand jury forepersons called for the foreperson to be appointed by a judge (a process that was separate from the randomly selected pool of potential jurors.)³² In addition, the Court found that, in Tennessee state court, the foreperson played an essential role in the overall grand jury process. The Court emphasized the influential role of the grand jury foreperson and the foreperson's potential affect on the outcome of a defendant's hearing.³³ In contrast, in *Hobby*, the Court concluded that, because the federal grand jury foreperson engages in "ministerial" duties,

28. *Campbell*, 118 S. Ct. at 1424.

29. *Hobby*, 468 U.S. at 342.

30. 443 U.S. 545 (1979). In this Tennessee case, four African-American men were indicted by a state grand jury for murder. *Rose*, 443 U.S. at 547. Prior to trial, the defendants filed a written pro se motion to suspend or postpone their prosecution. *Id.* at 548. A motion for pro se is a motion brought on one's own behalf or when an individual represents himself or herself in court. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990). The defendants sought further relief through dismissal of the state grand jury indictment on the basis of racially discriminatory selection process used to choose the grand jury foreperson. *Rose*, 443 U.S. at 548.

31. *Campbell*, 118 S. Ct. at 1425.

32. *Rose*, 443 U.S. at 548, n.2. Under Tennessee law, "[the foreperson] who shall be the thirteenth member of each grand jury organized during his [or her] term of office, having equal power and authority in all matters coming before the grand jury with the other members thereof." *Id.*

33. *Id.* Citing the Tennessee Code Annotated, the Court stated as follows:

[T]welve members of the grand jury must concur in order to return an indictment. . . . The [foreperson] may be one of the twelve [The foreperson] is charged with the duty of assisting the district attorney in investigating crime, may order the issuance of subpoenas for witnesses before the grand jury, may administer oaths to grand jury witnesses, must endorse every bill returned by the grand jury and must present any indictment to the court in the presence of the grand jury. . . . The absence of the [foreperson's] endorsement makes an indictment "fatally defective."

Id.

"there was no infringe[ment] . . . of fundamental fairness."³⁴

The *Campbell* Court found that the Louisiana Supreme Court's application of *Hobby* to preclude Campbell from asserting his due process challenge to the discriminatory selection of his grand jury foreperson was erroneous.³⁵ In holding that Campbell did not have standing to assert a due process claim, the Louisiana Court found that like *Hobby*, *Campbell* dealt with the "ministerial" duties of the state grand jury foreperson, which did not amount to a serious violation of the defendant's due process rights.³⁶ The Supreme Court found that Louisiana's interpretation of *Hobby* failed to take into consideration the long-standing rule that a criminal defendant has standing to assert a due process claim for any violation of his or her right to a fundamentally fair trial, including the discriminatory selection of a grand jury foreperson.³⁷ The Court distinguished Campbell's claim from the claim asserted in *Hobby* because the Campbell's entire grand jury was corrupted by the discriminatory appointment or selection of the foreperson, who, under Louisiana law, is a voting member of the grand jury.³⁸ In *Hobby*, the Court noted "[s]o long as the grand jury itself is properly constituted, there is no risk that the appointment of one of its members as foreman will distort the overall composition of the array or otherwise taint the operation of the judicial process."³⁹

Furthermore, the Court found that any person, regardless of skin color, could be injured by a racially-discriminatory grand jury selection process.⁴⁰ The Court noted that "the grand jury, like the petit jury, acts as a vital check against the wrongful exercise of power by the State and its prosecutors."⁴¹

Justice Thomas, joined by Justice Scalia, dissented from the major-

34. *Campbell*, 118 S. Ct. at 1425. The Court cited a 1984 Supreme Court decision, *Hobby v. United States*, 468 U.S. 339 (1984).

35. *Id.*

36. *Id.*

37. *Id.* In *Hobby*, the Court ruled against the defendant because "the ministerial role of a federal grand jury foreperson is not such a vital one that discrimination in the appointment of an individual to that post significantly invades due process." 118 S. Ct. at 1425.

38. *Id.* In Louisiana, the judge selects the foreperson from the pool of potential grand jurors before the remaining members of the grand jury are chosen through the system. *Id.* at 1422.

39. *Hobby*, 468 U.S. at 348.

40. *Id.* at 1423. The Court cited to *Rose v. Mitchell*, 443 U.S. 545,556 (1979). In *Rose*, the Court reasoned that, because the grand jury is central to the criminal justice process, all necessary steps must be taken to ensure that the grand jury process as part of the court system is protected and guarded for the benefit of the community as a whole. *Rose*, 443 U.S. at 556.

41. *Campbell*, 118 S. Ct. at 1423. The court cited *Powers v. Ohio*, 499 U.S. 400, 411(1991) in making its decision.

ity's reliance on *Powers v. Ohio*⁴² to grant a Caucasian defendant third-party standing to raise a claim of discrimination against African-Americans.⁴³ The dissent reasons that *Powers* should be overruled because it establishes incorrect and excessively liberal requirements to establish third-party standing on the part of a criminal defendant to raise the discriminatory selection of prospective jurors.⁴⁴ Justice Thomas noted that, even if *Powers* establishes the correct elements, *Campbell* is distinguishable because *Powers* involved the use of peremptory strikes rather than overt discrimination to exclude jurors and involved a petit jury rather than a grand jury.⁴⁵ Furthermore, the dissent concludes that *Campbell*, like *Powers*, fails to satisfy the requirements for establishing third-party standing.⁴⁶ Justices Thomas and Scalia opine that *Campbell* failed to prove an "injury in fact;" i.e., a close relationship between himself and those persons excluded from potentially serving as the grand jury foreperson; and a flaw within the judicial system preventing those persons who were excluded from asserting their rights.⁴⁷

The Court has historically dealt with the attempted eradication of discrimination by use of the Fourteenth Amendment.⁴⁸ In the 1879 case of *Strauder v. West Virginia*,⁴⁹ the Court first addressed the question of whether the grand or petit jury selection process may exclude African-

42. 499 U.S. 400 (1991).

43. *Campbell*, 118 S. Ct. at 1426.

44. *Campbell*, 118 S. Ct. at 1427. (Scalia, J., dissenting).

45. *Id.* at 1427 (Scalia, J., dissenting).

46. *Id.* at 1427-28 (Scalia, J., dissenting).

47. *Id.* Justice Scalia addressed *Campbell*'s failure to meet the requirements of third party standing, noting,

I fail to see how a 'close relationship' would have developed between the petitioner and veniremen . . . [e]ven if a 'bond' . . . could develop between veniremen and defendants during voir dire, such a bond could not develop in the context of a judge's selection of a grand jury foreman—a context in which the defendant plays no role . . . Nor can any "common interest," between a defendant and excluded veniremen arise based upon a public humiliation suffered by the latter, because unlike the exercise of peremptory strikes, Evangeline Parish's process of selecting foremen does not constitute "overt" action against particular veniremen.

Id. at 1428.

48. Barbara D. Underwood, *Ending Racial Discrimination in Jury Selection: Whose Right Is It Anyway?*, 92 COL. L. REV. 725 (1992).

The object of the Fourteenth Amendment was to create equality among [the various races, but primarily focused on African-Americans and Caucasians], but in the nature of things it could not have been intended to abolish distinction based upon color, or to enforce social as distinguished from political equality of a commingling of the two races upon terms unsatisfactory to either.

H.B. BROWN & J.M. HARLAN, *THE NEGRO IN AMERICAN HISTORY, A TASTE OF FREEDOM 1854-1927*, 126 (Mortimer J. Adler et al. eds., 1969).

49. 100 U.S. 303 (1879).

Americans on the basis of race when the defendant is an African-American. The *Strauder* Court found that the United States Constitution guarantees all citizens the right to a trial by jury.⁵⁰ Justice Strong, writing for the majority, reasoned that the Fourteenth Amendment provides every citizen with equal protection of the laws, and, as such, an African-American defendant should be afforded the same right to a trial by his or her peers as is any Caucasian defendant.⁵¹ The Court concluded that the West Virginia statute, which discriminated against African-Americans in the selection of jurors, was a denial of the African-American defendant's right to equal protection.⁵²

Almost one hundred years later, in *Castaneda v. Partida*,⁵³ the Court addressed issues of discrimination against Hispanics in the selection of grand jurors.⁵⁴ Specifically, the Court considered whether the state of Texas had properly designed and implemented its grand jury selection process so as not to violate the equal protection rights of Hispanic criminal defendants by excluding Hispanics from the grand jury selection process.⁵⁵ The Supreme Court found that, for a defendant to prevail on an

50. *Strauder*, 100 U.S. at 308. In *Strauder*, the Court considered whether an African-American defendant could challenge the exclusion of other African-Americans from his grand jury. *Id.* *Strauder* was indicted for murder and convicted. *Id.* at 304. *Strauder* objected to West Virginia law, which prohibited African-Americans from participating as jurors at both the grand jury level and the petit level, as a violation of his Fourteenth Amendment rights. *Id.* The jury is intended to be a body of the defendant's peers, "that is, . . . of his neighbors, fellows, associates, persons having the same legal status in society as which he holds." *Id.* In a trilogy of cases decided in 1879 (including *Strauder*), the Supreme Court analyzed the right of African-American defendants to raise equal protection violations for the discriminatory selection of blacks from their grand juries. *Peters*, 407 U.S. 493, 499 (1972). The Court cited *Virginia v. Rives*, 100 U.S. 313 (1879) and *Ex parte Virginia*, 100 U.S. 339 (1879).

51. *Strauder*, 100 U.S. at 307. The language of the Fourteenth Amendment contains an immunity or right for the African-American race; i.e., "the right to exemption from unfriendly legislation against them distinctively as colored, . . . exemption from *legal discriminations, implying inferiority in civil society*, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." *Id.* at 308. (emphasis added). The intentional exclusion by law of African-Americans from participation in the jury process, solely on the basis of race, creates an unspoken notion of inferiority among the excluded race. *Id.*

52. *Id.* at 309.

53. 430 U.S. 482 (1977). In *Castaneda*, a Mexican-American prisoner, filed a writ of habeas corpus after being indicted and sentenced to eight years in prison for the crime of burglary with intent to commit rape. *Castaneda*. 430 U.S. at 485. *Partida* challenged the discriminatory nature of the grand jury selection process to which he was subjected in Hidalgo County, Texas. *Id.*

54. *Id.*

55. *Id.* at 483. The "key man" system is a method of jury selection in which community "leaders" are selected as prospective jurors. JAMES J. GOBERT & WALTER E. JORDAN, *JURY SELECTION, THE LAW, ART, AND SCIENCE OF SELECTING A JURY* § 6.09 (2d ed. 1990). Texas used the "key man" system to select prospective jurors from the community as a whole. *Castaneda*, 430 U.S. at 483. The state argued that fifty percent of the names on the list of prospective

alleged equal protection violation, he or she must prove that the procedures used in the selection of the grand jury members resulted in a "substantial underrepresentation" of his or her race or designated group.⁵⁶ The *Castaneda* Court concluded that, once a defendant proves that there has been a continuous and systematic exclusion of his or her race or group in the grand jury selection process, the defendant has established a prima facie⁵⁷ case of purposeful discrimination.⁵⁸ *Castaneda* was able, through statistical analysis, to prove that over an eleven-year period, less than half of the Hispanic population of the county in question was summoned for grand jury service.⁵⁹ The Court found that the "key-man" jury selection process as applied in this case, was susceptible to abuse because it identified Hispanic individuals, thereby, facilitating an easy method by which those individuals were excluded from the list of qualified county residents "randomly" selected for jury service.⁶⁰ On the basis of its review of the relevant testimony regarding the grand jury selection process, the statistical data, and the method of jury selection, the Court found that *Castaneda* established a prima facie case of discrimination in the grand jury selection process; therefore, the process violated his equal protection rights.⁶¹

In *Peters v. Kiff*, the Court expanded its focus on the effects of discriminatory exclusion in the jury selection process by considering whether a Caucasian criminal defendant has standing under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to

jurors for the defendant's grand jury were of Spanish or Mexican-American descent, as determined from surnames. *Id.*

56. *Id.* at 494.

57. "Prima facie case represents the collection of minimum elements, which, when established by a plaintiff in the course of a trial, result in putting the defendant to his [or her] proof." HOWARD HILTON SPELLMAN, *HOW TO PROVE A PRIMA FACIE CASE* 4 (Prentice-Hall 3d ed. 1954).

58. *Id.* In *Castaneda*, the Court established the following three-prong test for establishing a prima facie case for an Equal Protection violation: "[f]irst, the defendant must be a member of a suspect class capable of being singled out for different treatment. Second, the degree of the class substantial in relation to its representation in the community over a significant period of time. Finally, the selection procedure must be susceptible of abuse." Kurt M. Saunders, *Race and Representation in Jury Selection*, 36 DUQ. L. REV. 49, 56 (1997).

59. *Castaneda*, 430 U.S. at 495.

60. *Id.* at 497.

[T]he Supreme Court has ruled that, in principle, such a method [the key-man system] can be constitutional, it has recognized the inherent subjectivity of this approach results in the underrepresentation of an identifiable group. Because of such challenges, as well as the trend toward making juries more democratic, the key man system has largely fallen into disuse.

JAMES P. LEVINE, *JURIES AND POLITICS* 43 (1992).

61. *Castaneda*, 430 U.S. at 497.

challenge the systematic and deliberate exclusion of African-Americans from grand and petit jury service.⁶² The Court held that any criminal defendant, regardless of race, has standing to challenge a discriminatory jury selection system that is used to compose his or her grand or petit jury.⁶³ The Court noted that it has a duty to protect the integrity of the jury selection process and judicial system by upholding a defendant's due process rights in both cases of actual bias and cases of apparent bias.⁶⁴

In the 1979 case of *Rose v. Mitchell*,⁶⁵ the Court addressed the issue of whether an African-American defendant could seek to have his or her conviction set aside to remedy the purposeful exclusion of African-Americans from serving as grand jury foreperson.⁶⁶ The Court concluded that discrimination in a state grand jury selection process is a basis for the setting aside of a criminal conviction.⁶⁷ The Court noted that this solution is proper when a criminal defendant's right to equal protection of the

62. *Peters*, 407 U.S. at 494. The Court noted that the jury lists were compiled from county tax digests, which, according to Georgia law, were separated by race. *Id.* at 496, n.3. This was the first opportunity for the Court to examine the challenge of a Caucasian defendant regarding the exclusion of African-Americans from the jury selection process at both the grand and petit levels. *Id.* at 498. *Peters*, a Caucasian male, alleged that both the grand and petit juries that had indicted and convicted him had systematically excluded African-Americans during the selection process. *Id.* at 496. The Supreme Court reasoned that a jury selection process (whether at the grand or petit level) that systematically excludes an identifiable segment of the population violates due process and is "in violation of the Constitution and the laws of the United States." *Id.* at 502. The Court held that *Peters* had standing to challenge the discriminatory selection process used to exclude African-Americans as members from his grand and petit jury. *Id.* at 504. When this case was decided, a number of states and lower federal courts followed the "same class" rule regarding challenges to discrimination in jury selection, holding that only a member of the class excluded from jury service had standing to challenge the discriminatory action. *Id.* at 496-97, n.4. See, Note, *The Defendant's Challenge to a Racial Criterion in Jury Selection*, 74 YALE L.J. 919 (1965) for an explanation of the states following the same class rule.

63. *Id.* at 505. The Court explained that this notion of standing for any criminal defendant, regardless of race, was distinctively relevant when the individuals intentionally excluded from jury service were African-American. *Id.* This exclusion is a criminal violation under 18 U.S.C. § 243 (1994). *Id.* This statute prohibits the following:

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000.

18 U.S.C. § 243 (1994).

64. *Peters*, 407 U.S. at 504.

65. *Rose v. Mitchell*, 443 U.S. 545. *Mitchell* and three other African-American defendants were jointly indicted by a Tennessee grand jury on two counts of first-degree murder in connection with a robbery and later convicted. *Id.* at 547. The defendants alleged that there had been discrimination in the selection of the grand jury and its foreperson. *Id.* at 549.

66. *Id.* at 550.

67. *Id.* at 559.

laws has been violated by such discriminatory behavior.⁶⁸

Five years after *Rose*, in *Hobby v. United States*,⁶⁹ the Supreme Court resolved a conflict among the circuits regarding whether the general discriminatory underrepresentation of African-Americans and women in the role of federal grand jury foreperson required the reversal of a Caucasian male defendant's conviction.⁷⁰ *Hobby*, the defendant, was indicted and, before trial, moved to have his indictment dismissed because of the discriminatory selection of the grand jurors, in general, and the jury foreperson, in particular, on the basis of "race, color, economic status and occupation in violation of the Fifth and Sixth Amendments to the United States Constitution."⁷¹ In support of his motion, *Hobby* provided statistical data to evidence that, during one seven-year period, there were no African-American or female grand jury forepersons in any grand jury proceedings in the United States District Court for the Eastern District of North Carolina.⁷²

The Court concluded that the Due Process Clause does not entitle a criminal defendant, such as *Hobby*, to have a federal grand jury indictment or conviction set aside to remedy the discriminatory selection of the grand jury foreperson from a properly selected federal grand jury.⁷³ In light of the ministerial⁷⁴ role played by the federal grand jury foreperson,

68. *Id.* at 556.

69. 468 U.S. 339 (1984). *Hobby* was indicted for federal fraud charges under the Comprehensive Employment and Training Act of 1973, 29 U.S.C. § 801. *Id.* at 340. Before his trial, *Hobby* moved to have his indictment dismissed on the grounds that the discriminatory selection of his grand jury violated the Due Process Clause and Fifth Amendment. *Id.* at 339.

70. *Id.* at 340. The Court considered the narrow issue of whether any remedy was available to the defendant, because the Court had already determined that there was an implied assumption that Caucasian criminal defendants have the requisite standing to raise due process objections to the discriminatory selection of grand jury forepersons. *Id.* at 342.

71. *Hobby*, 468 U.S. at 341.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law

U.S. CONST. amend. V §§ 1-3.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation.

U.S. CONST. amend. VI § 1.

72. *Id.* Of fifteen grand juries impaneled between 1974 and 1981, none had an African-American or female foreperson. *Id.*

73. *Id.* at 342.

74. *Id.* The Court concluded that the discriminatory selection of the federal grand jury fore-

the Court concluded that any discriminatory action with respect to the selection of a federal grand jury foreperson would not have a substantial effect on the due process rights of the defendant.⁷⁵

The Court proceeded to distinguish *Hobby*⁷⁶ from *Rose*.⁷⁷ In *Rose*, the Court determined that the selection process and duties assigned to the state grand jury foreperson were so essential to the overall grand jury process that any discriminatory behavior with respect to the foreperson selection would have a substantial effect on the due process rights of the defendant before the grand jury.⁷⁸ Therefore, in *Rose*, the Court found that any discrimination in the selection of members of a grand jury would violate a defendant's due process rights.⁷⁹ However, the Court held that, because the defendants failed to make out a prima facie case of racial discrimination regarding the selection of the grand jury foreperson, there were no violations of the defendants' due process rights.⁸⁰ In contrast, the Court found that *Hobby* was not entitled to the dismissal of his indictment by a federal grand jury, in light of the ministerial role involved, because the discrimination in the selection of the grand jury foreperson did not result in a substantial violation of his rights under the Due Process clause.⁸¹

Finally, in *Powers v. Ohio*,⁸² the Court addressed the issue of

person in *Hobby* was not a serious intrusion on the defendant's fundamental rights because the federal grand jury foreperson holds only figurehead or clerical responsibilities. *Id.* at 345. The Court reasoned that these responsibilities have no real effect on the defendant's right to a fair trial, because the foreperson has no special duties to set him or her apart or place him or her in a position of authority over the grand jury as a whole. *Id.*

75. 468 U.S. at 347. The Court distinguished *Hobby* from *Rose v. Mitchell*, 443 U.S. 545 (1979). In *Rose*, the Court concluded that an iota of discrimination in the selection process of a Tennessee state grand jury foreperson was grounds for reversal of the defendant's indictment or conviction. *Rose*, 443 U.S. at 548. The Court reasoned that, given the numerous and essential duties assigned to the state grand jury foreperson (assisting the District Attorney with the investigation, subpoena witnesses and, most important, endorsing any indictment for validity), any discrimination in the selection of this juror would have a substantial effect on the due process rights of the defendant. *Hobby*, 468 U.S. at 347.

76. *Id.*

77. *Rose v. Mitchell*, 443 U.S. 545 (1979).

78. *Hobby*, 468 at 347. The selection process for the state grand jury foreperson required that twelve jurors be selected by the jury commissioners at random from a list of qualified citizens, while the thirteenth juror, or foreperson, be privately appointed by a judge. *Id.* In the federal system, the grand jury foreperson is chosen from among thirteen selected grand jurors. FED. R. CRIM. P. 6(c).

79. *Rose v. Mitchell*, 443 U.S. at 545.

80. *Id.* at 574. "The proof of a prima facie case is the keystone in the arch of successful litigation." HOWARD HILTON SPELLMAN, HOW TO PROVE A PRIMA FACIE CASE 1 (Prentice-Hall 3d ed. 1954).

81. *Hobby*, 468 U.S. at 350.

82. *Powers v. Ohio*, 499 U.S. 400 (1991). Powers objected to the use of peremptory chal-

whether a Caucasian criminal defendant has the requisite standing to raise equal protection and due process claims arising from the prosecution's use of race-based peremptory challenges to strike prospective African-American jurors.⁸³ The Court held that a criminal defendant may raise third-party equal protection claims in the name of individuals who were excluded as jurors on the basis of race.⁸⁴ The Court noted that it has previously recognized the right of criminal defendants to raise the rights of third parties in an effort to challenge their convictions, so long as the moving party satisfies the three required elements to establish third-party standing.⁸⁵ The Court determined that the prosecution's use of the race-based peremptory challenges caused Powers to suffer an injury, which he, as any other defendant, had a protected interest in prohibiting.⁸⁶ This is the right to a "neutral jury selection" procedure and a complete trial free from corruption.⁸⁷ Furthermore, the Court noted that, historically, those persons who are excluded from the jury pool on the basis of race often fail to assert their

lenges by the prosecution to remove seven African-American venirepersons from his petit jury. *Id.* at 400. Powers was convicted of aggravated murder and other offenses by the impaneled jury. *Id.* On appeal, Powers alleged that although he was Caucasian, he had the right to object to the use of peremptory challenges to exclude African-Americans from petit jury service. *Id.*

83. *Id.* at 400. A peremptory challenge is "[t]he right to challenge a juror without assigning, or being required to assign, a reason for the challenge." BLACK'S LAW DICTIONARY 1137 (6th ed. 1990).

Peremptory challenges allow lawyers to withdraw potential jurors during jury selection without giving a reason. This procedure enables lawyers to select juries that favor their clients. However, lawyers often base their decisions about when to use peremptory challenges on biased assumptions about race, gender, religion, and class. Such authorized bias is a form of institutionalized discrimination in the legal system that damages the ideals of fairness and justice. Abolishing peremptory challenges would minimize this bias during juror selection; it would also decrease trial length and expense while increasing public confidence in the judicial system.

THE JURY SYSTEM 38 (David Bender ed., Greenhaven Press 1997).

In *Batson v. Kentucky*, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits the use of peremptory challenges to exclude certain persons from the jury pool on the basis of race. Barbara D. Underwood, *Ending Race Discrimination in Jury Selection: Whose Right Is It, Anyway?*, 92 COLUM. L. REV. 725, 725-26 (1992).

84. *Powers*, 499 U.S. at 415.

85. *Id.* Article III of the United States Constitution requires that a litigant have "standing" to bring a case before the federal courts for adjudication. U.S.CONST. art. III, § 2.

The litigant must have suffered an "injury in fact," thus giving him . . . a "sufficiently concrete interest" in the outcome of the issue in dispute; . . . the litigant must have a close relation to the third party; . . . and there must exist some hindrance to the third party's ability to protect his or her own interests.

U.S. CONST. art. III, § 2.

86. *Powers*, 499 U.S. at 411.

87. *Id.*

rights to prevent and prohibit such actions.⁸⁸

The United States Supreme Court's decision in *Campbell* has expanded the due process rights of criminal defendants.⁸⁹ The Court's decision clearly establishes that challenges regarding the unlawful exclusion of African-Americans from a grand jury may be made by Caucasian and African-American defendants alike. The Court correctly applied *Powers* to establish Campbell's standing to challenge the discriminatory composition of his grand jury.⁹⁰

Until *Campbell*, the Supreme Court had not decided whether a Caucasian criminal defendant whose due process rights had been violated by the state's discriminatory appointment of a grand jury foreperson was entitled to a remedy.⁹¹ The Court's decision has confirmed that the guarantees of the Equal Protection Clause and the Due Process Clause are properly provided to any defendant whose rights are violated as a result of the illegal actions of federal or state judicial officials in the process of selecting grand jury forepersons and jurors.⁹²

It has long been established that African-Americans are guaranteed the right to be tried by a jury selected not by nondiscriminatory means; it is only rational that such protections should be extended to Caucasian defendants. Although a Caucasian criminal defendant may not experience the same societal repercussions of discrimination as does an African-American, the Caucasian defendant may still have an interest in assisting in the extinguishing of discrimination in the judicial system. Even when the defendant's underlying reason for bringing a discrimination claim inures to his or her benefit, the defendant will most likely establish the *Powers*⁹³ elements of standing.

The dissent in *Campbell* is misguided in that it ignores the fact that Campbell has properly established a prima facie case of third-party standing. Accordingly, Campbell is entitled to bring forth a claim of racial discrimination in the selection of the grand jury foreperson on behalf of previously excluded African-Americans, notwithstanding that he will receive the benefit of having his conviction set aside.⁹⁴ The task of end-

88. *Id.* The Court cited *Carter v. Jury Commission of Greene County*, 396 U.S. 320 (1970).

89. *Peters v. Kiff*, 407 U.S. 493 (1972). "A fair trial is a basic requirement of due process The due process right to a competent and impartial tribunal is quite separate from the right to any particular form of proceeding." *Id.* at 501. "Due process requires a competent and impartial tribunal in administrative hearings." *Id.*

90. *Campbell*, 118 S. Ct. at 1419.

91. *Id.*

92. *Id.* at 1425.

93. *Powers v. Ohio*, 499 U.S. 400 (1991).

94. Henry P. Monaghan, *Third Party Standing*, 84 COLUM. L. REV. 277, 282 (1984).

ing discrimination in the judicial system is no small undertaking; therefore, it should be the duty of all persons involved in the judicial system to ensure that discrimination does not overtake the system.⁹⁵

In conclusion, the *Campbell* Court has properly expanded the protections originally created to ensure equal protection under the law as guaranteed by the Fourteenth Amendment.⁹⁶ The Court's decision in *Campbell* both provides enhanced protection of the due process rights of criminal defendants and ensures that the jury system will function as intended; that is, a defendant will be tried before a jury composed of his or her peers.⁹⁷

Tracey McCants Lewis

[T]hird party standing law can be grounded in a premise shared by both the public and private rights paradigms that the protection of individual rights is an important judicial concern. Many third party standing cases ought to be understood in first party terms: the litigant is simply asserting a violation of his [or her] own right to be regulated in accordance with a constitutionally valid rule.

Id.

95. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (1835), reprinted in *RACE MATTERS* at 135 (Cornell West 1994).

I do not imagine that the white and black races will ever live in a country upon an equal footing. But I believe the difficulty to be still greater in the United States than elsewhere. An isolated individual may surmount the prejudices of religion, of his country, or of his race, and if this individual is a king he may effect surprising changes in society; but a whole people cannot rise, as it were, above itself. A despot who should subject the Americans and their former slaves to the same yolk, might perhaps succeed in commingling their races; but as long as the American democracy remains at the head of affairs, no one will ever undertake so difficult a task; and it may be foreseen that the freer the white population of the United States becomes, the more isolated will it remain.

Id.

96. *Id.* The exclusion of jurors on account of race is a federal crime and any criminal defendant may allege that a judicial officer or another person has violated this rule by excluding any qualified citizen because of his or her race. See *supra* note 63.

97. Shawna Burgess, *High Court Decision Gets Local Approval*, *The New Pittsburgh Courier*, April 29, 1998, at A1.

[*Campbell v. Louisiana*] will help to yield a more representative pool of jurors [I]t is significant because the Supreme Court addresses the defendant's right to challenge an indictment. It also shows that a person bringing a challenge of racial discrimination doesn't have to be a minority [T]here cannot be racial exclusion no matter the situation. The greater evil is discrimination, . . . exclusion on the basis of race. No one should be excluded from the jury pool.

Interview by Shawna Burgess with Kurt Saunders, Former Allegheny County Jury Commissioner, Pittsburgh, Pennsylvania. (April 28, 1998).

