Florida Law Review

Volume 5 | Issue 2 Article 7

June 1952

Constitutional Law: Discrimination in Jury Selection

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CASE COMMENTS

CONSTITUTIONAL LAW: DISCRIMINATION IN JURY SELECTION

Shepherd v. Florida, 341 U. S. 50 (1951)

A Florida circuit court convicted three Negroes of the crime of rape, and the Supreme Court of Florida affirmed.[1] Before the United States Supreme Court on certiorari, HELD, defendants were denied due process in the selection of the grand jury which indicted them. Judgment reversed in a memorandum decision on the authority of *Cassel v. Texas*.[2]

The *Cassel* case was the culmination of a series of decisions beginning in 1879,[3] all of which dealt with methods of jury selection discriminating against the Negro race.[4] These cases clearly established the principle that the equal protection clause of the Fourteenth Amendment prohibits any action by a state tending systematically to exclude Negroes from serving on grand or petit juries solely because of race. Although the earlier cases invalidated state statutes expressly excluding Negroes from jury service,[5] the later decisions carefully scrutinized the procedure by which state officials selected jurors, and

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[1]Four Negroes were originally involved in the crime. One was killed while resisting arrest; and the jury returned a recommendation of mercy for Charlie Greenlee, who did not join the petition for certiorari. The two petitioners were shot while allegedly attempting escape in the fall of 1951; Shepherd later died from his wounds.

[2]339 U.S. 282 (1950).

[3]Strauder v. West Virginia, 100 U.S. 303 (1879).

[4]Cassel v. Texas, 339 U.S. 282 (1950); Patton v. Mississippi, 332 U.S. 413 (1947); Akins v. Texas, 325 U.S. 398 (1945); Hill v. Texas, 316 U.S. 400 (1942); Smith v. Texas, 311 U.S. 128 (1940); Pierre v. Louisiana, 306 U.S. 354 (1939); Hale v. Kentucky, 303 U.S. 613 (1938); Hollins v. Oklahoma, 295 U.S. 394 (1935); Patterson v. Alabama, 294 U.S. 600 (1935); Norris v. Alabama, 294 U.S. 587 (1935); Martin v. Texas, 200 U.S. 316 (1906); Rogers v. Alabama, 192 U.S. 226 (1904); Tarrance v. Florida, 188 U.S. 519 (1903); Carter v. Texas, 177 U.S. 442 (1900); Gibson v. Mississippi, 162 U.S. 565 (1896); Smith v. Mississippi, 162 U.S. 592 (1896); Bush v. Kentucky, 107 U.S. 110 (1883); Neal v. Delaware, 103 U.S. 370 (1881); *Ex parte* Virginia, 100 U.S. 339 (1880); Virginia v. Rives, 100 U.S. 313 (1880); Strauder v. West Virginia, 100 U.S. 303 (1879).

[5]Bush v. Kentucky, 107 U.S. 110 (1883); Neal v. Delaware, 103 U.S. 370 (1881); *Ex parte* Virginia, 100 U.S. 339 (1880); Virginia v. Rives, 100 U.S. 313 (1880); Strauder v. West Virginia, 100 U.S. 303 (1879).

in so doing condemned actions that, though apparently not expressly aimed at discrimination, yet in practical effect produced it.[6] As far back as 1934 Chief Justice Hughes began the majority opinion in *Norris v. Alabama*[7] by stating, "There is no controversy as to the constitutional principle involved."

In the *Cassel* case the defendant, a Negro, contended that the method of selecting the grand jury purposely discriminated against his race; and he proffered as evidence of such discrimination the fact that no more than one Negro had been selected on each of twenty-one consecutive grand juries in Dallas County.[8] Mr. Justice Reed, for the Court, clarified the question of proportional representation previously raised in *Akins v. Texas,* which had propounded the theme that fairness in selection does not necessarily compel proportional representation of races on juries.[9] He went a step further and pointed out that, not only is proportional representation not required, but that the Constitution prescribes a jury fairly selected without regard to race. He predicated the reversal of the Texas judgment on the finding that the jury commissioners had failed to familiarize themselves thoroughly with the qualifications of all eligible jurors and had merely chosen the jury from among their own acquaintances.[10]

Inasmuch as the instant opinion is in memorandum form, the factual situation as reported by the Florida Supreme Court must be examined in order to determine which actions of the jury commission constituted an infringement of the defendants' constitutional rights. The chairman of the board of county commissioners testified that

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[6]*E.g.,* Cassel v. Texas, 339 U.S. 282 (1950); Patton v. Mississippi, 332 U.S. 413 (1947); Akins v. Texas, 325 U.S. 398 (1945); Hill v. Texas, 316 U.S. 400 (1942); Smith v. Texas, 311 U.S. 128 (1940); Pierre v. Louisiana, 306 U.S. 354 (1939); Hale v. Kentucky, 303 U.S. 613 (1938); Hollis v. Oklahoma, 295 U.S. 394 (1935); Patterson v. Alabama, 296 U.S. 600 (1935); Norris v. Alabama, 294 U.S. 587 (1934); Gibson v. Mississippi, 162 U.S. 565 (1896).

[7]294 U.S. 587, 589 (1934).

[8]Frankfurter, J., astutely observed in his concurring opinion, 339 U.S. 282, 293 (1950): "If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose."

[9]325 U.S. 398 (1945).

[10]Frankfurter, J., concurring, observed that the lack of more than one Negro on 21 consecutive grand juries indicated that the jury commissioners had misinterpreted the *Akins* case to signify that the inclusion of one Negro on each grand jury satisfied the constitutional requirement, 339 U.S. 282, 290 (1950).