Florida Law Review

Volume 5 | Issue 2 Article 7

June 1952

Constitutional Law: Discrimination in Jury Selection

Louis de la Parte

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

---

[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

---

[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).

the names of the jurors were taken ". . . from the voters' registration list of Lake County in proportion to the number of white and colored persons whose names were on the voters' registration books."[11] In other words, the United States Supreme Court apparently based its reversal on the use of racial proportion as the test of fairness in selection. The *Cassel* case had covered this precise question.

State officials in charge of selecting grand and petit juries must accordingly recognize the fact that all local restrictions on qualifications for jury duty must square with the requirements of the United States Constitution. Attempts to base selection on race, or presumably, on creed as well, violate the Fourteenth Amendment, regardless of any apparent momentary benefit or detriment to the race or creed singled out for consideration. On more than one occasion the Court has pointed out that the accused may not demand or expect that members of his race be represented on the jury.[12] He has merely the right to demand that a jury be selected fairly, without regard to race.

LOUIS DE LA PARTE

CONSTITUTIONAL LAW: STATE REGULATION OF SOLICITORS ENGAGED IN INTERSTATE COMMERCE

Breard v. Alexandria, 341 U.S. 622 (1951)

Appellant, a regional representative of Keystone Readers Service, Inc., was arrested in the City of Alexandria, Louisiana, while engaged in door-to-door soliciting of subscriptions for nationally known magazines. He was convicted on the ground that he had not obtained prior consent of the occupants of residences solicited, as required by ordinance. After affirmance by the Louisiana Supreme Court, appeal lay[1] to the United States Supreme Court. HELD, the ordinance is a valid exercise of the municipality's police power and its enforcement is not an undue burden on interstate commerce.[2] Judgment affirmed, Chief Justice Vinson and Justice Douglas dissenting.

---

[11]At p. 884.

[12]Akins v. Texas, 325 U.S. 398 (1945); Thomas v. Texas, 212 U.S. 278 (1909); Martin v. Texas, 200 U.S. 316 (1906).

[1]28 U.S.C. §1257 (1948)

[2]Appellant relied on three contentions in pleading the unconstitutionality of