evidence for the two distinct but interrelated functions.[149] For the same reasons, there is no violation of the right to an impartial jury if a defendant for whom capital charges have been dropped is tried, along with a codefendant still facing capital charges, before a "death qualified" jury.[150]

In *Uttecht v. Brown*,[151] the Court summed up four principles that it derived from *Witherspoon* and *Witt*: "First a criminal defendant has the right to an impartial jury drawn from a venire that has not been tilted in favor of capital punishment by selective prosecutorial challenges for cause. Second, the State has a strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes. Third, to balance these interests, a juror who is substantially impaired in his or her ability to impose the death penalty under the state-law framework can be excused for cause; but if the juror is not substantially impaired, removal for cause is impermissible. Fourth, in determining whether the removal of a potential juror would vindicate the State's interest without violating the defendant's right, the trial court makes a judgment based in part on the demeanor of the juror, a judgment owed deference by reviewing courts." [152]

Exclusion of one juror qualified under *Witherspoon* constitutes reversible error, and the exclusion may not be subjected to harmless error analysis.[153] However, a court's error in refusing to dis-

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[149] 476 U.S. at 180.

[150] Buchanan v. Kentucky, 483 U.S. 402 (1987).

[151] 551 U.S. 1 (2007).

[152] 551 U.S. at 9 (citations omitted). Deference was the focus of Uttecht v. Brown, as the Court, by a 5-to-4 vote, reversed the Ninth Circuit and affirmed a death sentence, finding that the Ninth Circuit had neglected to accord the deference it owed to the trial court's finding that a juror was not substantially impaired. The Court concluded: "Courts reviewing claims of *Witherspoon-Witt* error . . . , especially federal courts considering habeas petitions, owe deference to the trial court, which is in a superior position to determine the demeanor and qualifications of a potential juror." Id. at 22. The reason that federal courts of appeals owe special deference when considering *habeas* petitions is that the Antiterrorism and Effective Death Penalty Act of 1996 "provide[s] additional, and binding, directions to accord deference." Id. at 10. The dissent, written by Justice Stevens and joined by Justices Souter, Ginsburg, and Breyer, noted that the juror whose exclusion for cause was challenged had "repeatedly confirmed" that, despite his "general reservations" about the death penalty, he would be able to vote for it. Id. at 37. Even under the standard of review imposed by the Antiterrorism and Effective Death Penalty Act of 1996, "[w]hile such testimony might justify a peremptory challenge, until today not one of the many cases decided in the wake of Witherspoon v. Illinois has suggested that such a view would support a challenge for cause. . . . In its opinion, the Court blindly accepts the state court's conclusory statement that [the juror's] views would have 'substantially impaired' his ability to follow the court's instructions without examining what that term means in practice and under our precedents." Id. at 37, 38 (citation to *Witherspoon* omitted).

[153] Gray v. Mississippi, 481 U.S. 648 (1987).