Juries

It has been established since *Strauder v. West Virginia* [1669] that exclusion of an identifiable racial or ethnic group from a grand jury [1670] that indicts a defendant or a from petit jury [1671] that tries him, or from both,[1672] denies a defendant of the excluded race equal protection and necessitates reversal of his conviction or dismissal of his indictment.[1673] Even if the defendant's race differs from that of the excluded jurors, the Court held, the defendant has third-party standing to assert the rights of jurors excluded on the basis of race.[1674] "Defendants in criminal proceedings do not have the only cognizable legal interest in nondiscriminatory jury selection. People excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion." [1675] Thus, persons may bring actions seeking affirmative

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[1669] 100 U.S. 303 (1880). *Cf.* Virginia v. Rives, 100 U.S. 313 (1880). Discrimination on the basis of race, color, or previous condition of servitude in jury selection has also been statutorily illegal since enactment of § 4 of the Civil Rights Act of 1875, 18 Stat. 335, 18 U.S.C. § 243. *See Ex parte* Virginia, 100 U.S. 339 (1880). In Hernandez v. Texas, 347 U.S. 475 (1954), the Court found jury discrimination against Mexican-Americans to be a denial of equal protection, a ruling it reiterated in Castaneda v. Partida, 430 U.S. 482 (1977), finding proof of discrimination by statistical disparities, even though Mexican-surnamed individuals constituted a governing majority of the county and a majority of the selecting officials were Mexican-American.

[1670] Bush v. Kentucky, 107 U.S. 110 (1883); Carter v. Texas, 177 U.S. 442 (1900); Rogers v. Alabama, 192 U.S. 226 (1904); Pierre v. Louisiana, 306 U.S. 354 (1939); Smith v. Texas, 311 U.S. 128 (1940); Hill v. Texas, 316 U.S. 400 (1942); Cassell v. Texas, 339 U.S. 282 (1950); Reece v. Georgia, 350 U.S. 85 (1955); Eubanks v. Louisiana, 356 U.S. 584 (1958); Arnold v. North Carolina, 376 U.S. 773 (1964); Alexander v. Louisiana, 405 U.S. 625 (1972).

[1671] Hollins v. Oklahoma, 295 U.S. 394 (1935); Avery v. Georgia, 345 U.S. 559 (1953).

[1672] Neal v. Delaware, 103 U.S. 370 (1881); Martin v. Texas, 200 U.S. 316 (1906); Norris v. Alabama, 294 U.S. 587 (1935); Hale v. Kentucky, 303 U.S. 613 (1938); Patton v. Mississippi, 332 U.S. 463 (1947); Coleman v. Alabama, 377 U.S. 129 (1964); Whitus v. Georgia, 385 U.S. 545 (1967); Jones v. Georgia, 389 U.S. 24 (1967); Sims v. Georgia, 385 U.S. 538 (1967).

[1673] Even if there is no discrimination in the selection of the petit jury which convicted him, a defendant who shows discrimination in the selection of the grand jury which indicted him is entitled to a reversal of his conviction. Cassell v. Texas, 339 U.S. 282 (1950); Alexander v. Louisiana, 405 U.S. 625 (1972); Vasquez v. Hillery, 474 U.S. 254 (1986) (habeas corpus remedy).

[1674] Powers v. Ohio, 499 U.S. 400, 415 (1991). Campbell v. Louisiana, 523 U.S. 392 (1998) (grand jury). *See also* Peters v. Kiff, 407 U.S. 493 (1972) (defendant entitled to have his conviction or indictment set aside if he proves such exclusion). The Court in 1972 was substantially divided with respect to the reason for rejecting the "same class" rule—that the defendant be of the excluded class—but in Taylor v. Louisiana, 419 U.S. 522 (1975), involving a male defendant and exclusion of women, the Court ascribed the result to the fair-cross-section requirement of the Sixth Amendment, which would have application across-the-board.

[1675] Carter v. Jury Comm'n of Greene County, 396 U.S. 320, 329 (1970).