

Excerpt from the Supreme Court decision in HERNANDEZ V. TEXAS 347 U.S. 475

Argued January 11, 1954 – Decided May 3, 1954

. . . .

IN NUMEROUS DECISIONS, THIS COURT HAS HELD THAT IT IS A DENIAL OF THE EQUAL PROTECTION OF THE LAWS TO TRY A DEFENDANT OF A PARTICULAR RACE OR COLOR UNDER AN INDICTMENT ISSUED BY A GRAND JURY, OR BEFORE A PETIT JURY, FROM WHICH ALL PERSONS OF HIS RACE OR COLOR HAVE, SOLELY BECAUSE OF THAT RACE OR COLOR, BEEN EXCLUDED BY THE STATE, WHETHER ACTING THROUGH ITS LEGISLATURE, ITS COURTS, OR ITS EXECUTIVE OR ADMINISTRATIVE OFFICERS. (FN2) ALTHOUGH THE COURT HAS HAD LITTLE OCCASION TO RULE ON THE QUESTION DIRECTLY, IT HAS BEEN RECOGNIZED SINCE STRAUDER V. WEST VIRGINIA, 100 U.S. 303, THAT THE EXCLUSION OF A CLASS OF PERSONS FROM JURY SERVICE ON GROUNDS OTHER THAN RACE OR COLOR MAY ALSO DEPRIVE A DEFENDANT WHO IS A MEMBER OF THAT CLASS OF THE CONSTITUTIONAL GUARANTEE OF EQUAL PROTECTION OF THE LAWS. (FN3) THE STATE OF TEXAS WOULD HAVE US HOLD THAT THERE ARE ONLY TWO CLASSES - WHITE AND NEGRO - WITHIN THE CONTEMPLATION OF THE FOURTEENTH AMENDMENT. THE DECISIONS OF THIS COURT DO NOT SUPPORT THAT VIEW. (FN4) AND, EXCEPT WHERE THE QUESTION PRESENTED INVOLVES THE EXCLUSION OF PERSONS OF MEXICAN DESCENT FROM JURIES, (FN5) TEXAS COURTS HAVE TAKEN A BROADER VIEW OF THE SCOPE OF THE EQUAL PROTECTION CLAUSE. (FN6)

THROUGHOUT OUR HISTORY DIFFERENCES IN RACE AND COLOR HAVE DEFINED EASILY IDENTIFIABLE GROUPS WHICH HAVE AT TIMES REQUIRED THE AID OF THE COURTS IN SECURING EQUAL TREATMENT UNDER THE LAWS. BUT COMMUNITY PREJUDICES ARE NOT STATIC, AND FROM TIME TO TIME OTHER DIFFERENCES FROM THE COMMUNITY NORM MAY DEFINE OTHER GROUPS WHICH NEED THE SAME PROTECTION. WHETHER SUCH A GROUP EXISTS WITHIN A COMMUNITY IS A QUESTION OF FACT. WHEN THE EXISTENCE OF A DISTINCT CLASS IS DEMONSTRATED, AND IT IS FURTHER SHOWN THAT THE LAWS, AS WRITTEN OR AS APPLIED, SINGLE OUT THAT CLASS FOR DIFFERENT TREATMENT NOT BASED ON SOME REASONABLE CLASSIFICATION, THE GUARANTEES OF THE CONSTITUTION HAVE BEEN VIOLATED. THE FOURTEENTH AMENDMENT IS NOT DIRECTED SOLELY AGAINST DISCRIMINATION DUE TO A "TWO-CLASS THEORY" - THAT IS, BASED UPON DIFFERENCES BETWEEN "WHITE" AND NEGRO.

AS THE PETITIONER ACKNOWLEDGES, THE TEXAS SYSTEM OF SELECTING GRAND AND PETIT JURORS BY THE USE OF JURY COMMISSIONS IS FAIR ON ITS FACE AND CAPABLE OF BEING UTILIZED WITHOUT DISCRIMINATION. (FN7) BUT AS THIS COURT HAS HELD, THE SYSTEM IS SUSCEPTIBLE TO ABUSE AND CAN BE EMPLOYED IN A DISCRIMINATORY MANNER. (FN8) THE EXCLUSION OF OTHERWISE ELIGIBLE PERSONS FROM JURY SERVICE SOLELY BECAUSE OF THEIR ANCESTRY OR NATIONAL ORIGIN IS DISCRIMINATION PROHIBITED BY THE FOURTEENTH AMENDMENT. THE TEXAS STATUTE MAKES NO SUCH DISCRIMINATION, BUT THE PETITIONER ALLEGES THAT THOSE ADMINISTERING THE LAW DO.

THE PETITIONER'S INITIAL BURDEN IN SUBSTANTIATING HIS CHARGE OF GROUP DISCRIMINATION WAS TO PROVE THAT PERSONS OF MEXICAN DESCENT CONSTITUTE A SEPARATE CLASS IN JACKSON COUNTY, DISTINCT FROM "WHITES." (FN9) ONE METHOD BY WHICH THIS MAY BE DEMONSTRATED IS BY SHOWING THE ATTITUDE OF THE COMMUNITY. HERE THE TESTIMONY OF RESPONSIBLE OFFICIALS AND CITIZENS CONTAINED THE ADMISSION THAT RESIDENTS OF THE COMMUNITY DISTINGUISHED BETWEEN "WHITE" AND "MEXICAN." THE PARTICIPATION OF PERSONS OF MEXICAN DESCENT IN BUSINESS AND COMMUNITY GROUPS WAS SHOWN

TO BE SLIGHT. UNTIL VERY RECENT TIMES, CHILDREN OF MEXICAN DESCENT WERE REQUIRED TO ATTEND A SEGREGATED SCHOOL FOR THE FIRST FOUR GRADES. (FN10) AT LEAST ONE RESTAURANT IN TOWN PROMINENTLY DISPLAYED A SIGN ANNOUNCING "NO MEXICANS SERVED." ON THE COURTHOUSE GROUNDS AT THE TIME OF THE HEARING, THERE WERE TWO MEN'S TOILETS, ONE UNMARKED, AND THE OTHER MARKED "COLORED MEN" AND "HOMBRES AQUI" ("MEN HERE"). NO SUBSTANTIAL EVIDENCE WAS OFFERED TO REBUT THE LOGICAL INFERENCE TO BE DRAWN FROM THESE FACTS, AND IT MUST BE CONCLUDED THAT PETITIONER SUCCEEDED IN HIS PROOF.

.

CIRCUMSTANCES OR CHANCE MAY WELL DICTATE THAT NO PERSONS IN A CERTAIN CLASS WILL SERVE ON A PARTICULAR JURY OR DURING SOME PARTICULAR PERIOD. BUT IT TAXES OUR CREDULITY TO SAY THAT MERE CHANCE RESULTED IN THERE BEING NO MEMBERS OF THIS CLASS AMONG THE OVER SIX THOUSAND JURORS CALLED IN THE PAST 25 YEARS. THE RESULT BESPEAKS DISCRIMINATION, WHETHER OR NOT IT WAS A CONSCIOUS DECISION ON THE PART OF ANY INDIVIDUAL JURY COMMISSIONER. THE JUDGMENT OF CONVICTION MUST BE REVERSED.

TO SAY THAT THIS DECISION REVIVES THE REJECTED CONTENTION THAT THE FOURTEENTH AMENDMENT REQUIRES PROPORTIONAL REPRESENTATION OF ALL THE COMPONENT ETHNIC GROUPS OF THE COMMUNITY ON EVERY JURY (FN16) IGNORES THE FACTS. THE PETITIONER DID NOT SEEK PROPORTIONAL REPRESENTATION, NOR DID HE CLAIM A RIGHT TO HAVE PERSONS OF MEXICAN DESCENT SIT ON THE PARTICULAR JURIES WHICH HE FACED. (FN17) HIS ONLY CLAIM IS THE RIGHT TO BE INDICTED AND TRIED BY JURIES FROM WHICH ALL MEMBERS OF HIS CLASS ARE NOT SYSTEMATICALLY EXCLUDED - JURIES SELECTED FROM AMONG ALL QUALIFIED PERSONS REGARDLESS OF NATIONAL ORIGIN OR DESCENT. TO THIS MUCH, HE IS ENTITLED BY THE CONSTITUTION. REVERSED.