



PEREMPTORY CHALLENGES

BY: MARK A. SPEISER

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- **THE JURY SELECTION PHASE OF A TRIAL INVOLVES SIGNIFICANT CONSTITUTIONAL ISSUES**

- **EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE US CONSTITUTION IS THE SWORD BY WHICH US SUPREME COURT HAS ATTACKED RACIAL DISCRIMINATION IN FEDERAL AND STATE JURY SELECTION**

FEDERAL DECISIONS



SWAIN V. ALABAMA

380 US 202 (1965)

- **BLACK DEFENDANT CONVICTED OF RAPE BY ALL WHITE JURY IN RURAL ALABAMA**
- **DEFENDANT ON APPEAL CLAIMED HE WAS DENIED EQUAL PROTECTION OF LAW BY DISCRIMINATORY JURY SELECTION**
- **2 TYPES OF JURY DISCRIMINATION ARGUED**
 - **DISCRIMINATION IN SELECTION OF**
 - **JURY VENIRE**
 - **JURORS FROM JURY VENIRE**

SWAIN CONTINUED:

- **US SUPREME COURT AFFIRMED CONVICTION**
- **HOLDING**
 - **DEFENDANT NOT CONSTITUTIONALLY ENTITLED TO A PROPORTIONATE NUMBER OF HIS RACE ON THE JURY WHICH TRIES HIM**
 - **PROSECUTOR MAY CONSTITUTIONALLY USE PEREMPTORY CHALLENGES TO ELIMINATE ALL OF ACCUSED'S RACE FROM THE JURY**
 - **FACT THAT ALTHOUGH 26% OF THOSE ELEGIBLE FOR JURY DUTY IN THAT COUNTY WERE BLACK THAT NONE HAD EVER SERVED ON A JURY DID NOT SHOW THAT THE PEREMPTORY STRIKE SYSTEM USED BY PROSECUTORS WAS PREJUDICIAL OR CORRUPT**

BATSON V KENTUCKY

476 US 79 (1986)

- **OVERRULED SWAIN DECISION**
- **BLACK DEF CHARGED WITH BURGLARY**
- **PROSECUTOR USED HIS PEREMPTORY CHALLENGES TO STRIKE ALL 4 BLACK PROSPECTIVE JURORS FROM JURY PANEL**
- **ALL WHITE JURY SELECTED AND DEFENDANT CONVICTED**

BATSON CONTINUED

- **AT TRIAL, JUDGE REJECTED DEFENDANT'S MOTION TO DISCHARGE JURY BEFORE IT WAS SWORN ON GROUNDS THAT PROSECUTOR'S REMOVAL OF BLACK JURORS CONSTITUTED A VIOLATION OF HIS RIGHTS UNDER 6TH & 14TH AMENDMENTS TO A JURY DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY AND EQUAL PROTECTION OF THE LAWS**

BATSON CONTINUED

- **TRIAL JUDGE RULED THAT FAIR CROSS-SECTION OF THE COMMUNITY DOCTRINE ONLY APPLIES TO SELECTION OF VENIRE AND NOT TO SELECTION OF PETIT JURY**
- **KENTUCKY SUPREME COURT AFFIRMED TRIAL COURT**

BATSON CONTINUED

- **US SUPREME COURT REVERSED CONVICTION**
- **ALTHOUGH PROSECUTER CAN ORDINARILY EXERCISE PEREMPTORY CHALLENGES FOR ANY REASON THAT IS CONSISTENT WITH HIS VIEW CONCERNING THE OUTCOME OF THE CASE, THE EQUAL PROTECTION CLAUSE PROHIBITS PROSECUTOR FROM CHALLENGING POTENTIAL JURORS DUE TO THEIR RACE OR ON ASSUMPTION THAT BLACKS AS A GROUP WILL BE UNABLE TO IMPARTIALLY CONSIDER THE STATE'S CASE AGAINST A BLACK DEFENDANT**

BATSON TEST

- **DEF CAN SHOW A “PRIMA FACE” CASE OF PURPOSEFUL DISCRIMINATION BY PROSECUTOR IN SELECTION OF TRIAL JURY BY HIS MANNER OF EXERCISE OF PEREMPTORY CHALLENGES**
 - **THIS IS DONE BY ESTABLISHING DEF IS A MEMBER OF AN IDENTIFIABLE GROUP AND THAT PROSECUTOR’S REMOVAL OF MEMBERS OF DEFENDANT’S RACE FROM JURY PANEL RAISES THE NECESSARY INFERENCE OF PURPOSEFUL DISCRIMINATION**

BATSON TEST

- **ONCE DEF MAKES A PRIMA FACIE SHOWING, BURDEN SHIFTS TO PROSECUTOR TO PROVIDE THE COURT WITH A NEUTRAL EXPLANATION FOR CHALLENGING THE BLACK JUROR(S)**

- **SELECTION PROCEDURES THAT PURPOSELY EXCLUDE BLACK PERSONS FROM JURIES UNDERMINE PUBLIC CONFIDENCE IN THE FAIRNESS OF OUR SYSTEM OF JUSTICE**

POWERS V. OHIO
499 US 400 (1991)

- **US SUPREME COURT HELD ANY DEFENDANT REGARDLESS OF WHETHER DEFENDANT SHARED SAME RACE AS EXCLUDED JUROR COULD OBJECT TO RACE-BASED EXCLUSION OF JURORS THROUGH PEREMPTORY CHALLENGES**

POWERS CONTINUED

- **ALTHOUGH AN INDIVIDUAL JUROR DOES NOT HAVE THE ABSOLUTE RIGHT TO SIT ON ANY PARTICULAR JURY, HE OR SHE DOES POSSESS THE RIGHT NOT TO BE EXCLUDED FROM A JURY BECAUSE OF RACE**

EDMONSON V. LEESVILLE

CONCRETE CO.

500 U.S. 614 (1991)

- **US SUPREME COURT HELD IN CIVIL CASES PRIVATE LITIGANT MAY NOT USE PEREMPTORY CHALLENGES TO EXCLUDE JURORS IN A MANNER THAT SUGGESTS RACIAL DISCRIMINATION**

EDMONSON CONTINUED

- **RACIAL DISCRIMINATION THOUGH DETESTED IN ALL CONTEXTS VIOLATES THE US CONSTITUTION ONLY WHEN THE DISCRIMINATION APPLIES TO STATE ACTION**
- **CONSTITUTIONAL PROTECTIONS OF INDIVIDUAL LIBERTY AND EQUAL PROTECTION APPLIES ONLY TO STATE ACTIONS BY GOVERNMENT**

EDMONSON CONTINUED

- **PEREMPTORY CHALLENGE HAVE NO SIGNIFICANCE OUTSIDE A COURT OF LAW**
- **THEIR SOLE SIGNIFICANCE IS TO ALLOW LITIGANTS TO AID A COURT OF LAW (A GOVERNMENT ENTITY) IN SELECTING AN IMPARTIAL TRIER OF THE FACTS (THE JURY)**

EDMONSON CONTINUED

- **THE EXERCISE OF A PEREMPTORY CHALLENGE BY A PRIVATE LITIGANT IN A CIVIL CASE IS (STATE) GOVERNMENTAL ACTION THUS TRIGGERING THE PROTECTIONS OF THE EQUAL PROTECTION CLAUSE AGAINST RACIAL DISCRIMINATION**

GEORGE V McCOLLUM

505 US 42 (1992)

- **PROSECUTOR HAS STANDING TO CHALLENGE A CRIMINAL DEFENDANT'S DISCRIMINATORY USE OF PEREMPTORY CHALLENGES**

J.E.B. V ALABAMA

511 US 127 (1994)

- **PATERNITY AND CHILD SUPPORT CIVIL TRIAL**
- **STATE USED 9 OF ITS 10 PEREMPTORY CHALLENGES TO REMOVE MALE JURORS**
- **ALL FEMALE JURY EMPANELED AND FOUND APPELLANT TO BE FATHER OF CHILD AND COURT ORDERED HIM TO PAY CHILD SUPPORT**

JEB CONTINUED

- **US SUPREME COURT HELD EQUAL PROTECTION CLAUSE PROHIBITS DISCRIMINATION IN JURY SELECTION ON BASIS OF GENDER**

PURKETT V ELEM

514 U.S. 765 (1995)

- **PROSECUTOR STRUCK 2 BLACK JURORS**
- **DEFENSE OBJECTED**
- **PROSECUTOR EXPLAINED BOTH JURORS HAD LONG CURLY SHOULDER LENGTH HAIR, MUSTACHES AND GOATEE AND WERE ONLY 2 PEOPLE ON JURY WITH FACIAL HAIR**
- **PROSECUTOR SAID DIDN'T LIKE WAY THEY LOOKED AND THEY APPEARED SUSPICIOUS**

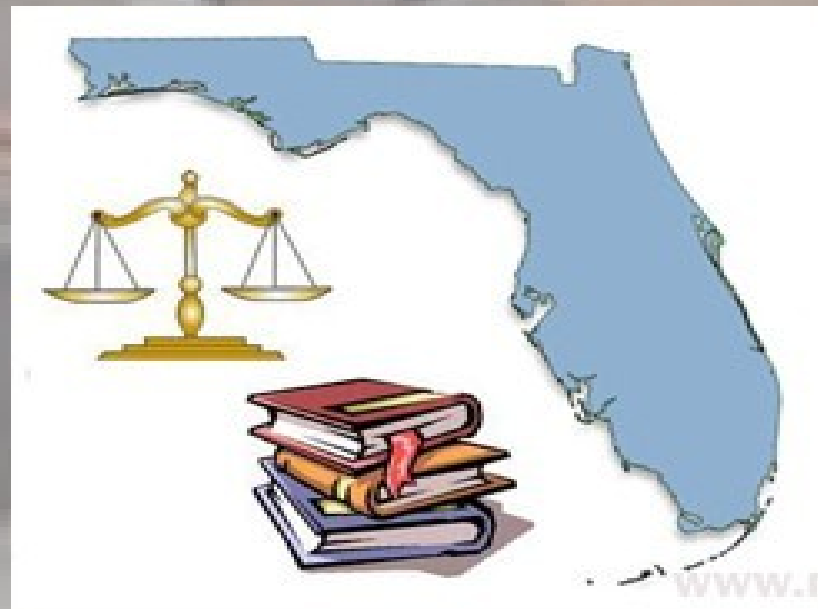
PURKETT CONTINUED

- **US SUPREME COURT UPHELD CONVICTION**
 - **PROSECUTOR'S REASONS FOR STRIKING 2 BLACK JURORS WERE RACE NEUTRAL**
 - **LONG UNKEMPT HAIR AND BEARDS WERE VALID RACE NEUTRAL REASONS FOR STRIKING 2 JURORS AS THEY ARE NOT CHARACTERISTICS PECULIAR TO ANY RACE**

PURKETT CONTINUED

- **IT IS BURDEN OF OBJECTING PARTY TO ESTABLISH THE LACK OF BELIEVABILITY OF THE PROFFERED FACIALLY RACE-NEUTRAL REASON FOR THE EXERCISE OF A PEREMPTORY CHALLENGE**
- **IMPLAUSIBLE JUSTIFICATIONS WILL PROBABLY BE FOUND TO BE PRETEXTS FOR PURPOSEFUL DISCRMINATION**

FLORIDA STATE COURT DECISIONS



STATE V. NEIL
457 So 2d 481 (FLA 1984)

- BLACK MAN CHARGED AND CONVICTED OF 2ND DEGREE MURDER**
- JURY PANEL VENIRE HAD 31 WHITE AND 4 BLACKS**
- PROSECUTOR USED 3 OF ITS PEREMPTORY CHALLENGES TO EXCLUDE 1ST 3 BLACKS**
- DEFENSE MOVED TO STRIKE ENTIRE JURY PANEL**
- TRIAL COURT DENIED AND SAID STATE NEED NOT EXPLAIN ITS PEREMPTORY CHALLENGES**

NEIL CONTINUED

- **UNLIKE SWAIN CASE DECIDED BY US SUPREME COURT ON EQUAL PROTECTION ANALYSIS, FLA. SUP. COURT DECISION IN THIS CASE REVERSED CONVICTION ON BASIS OF FLORIDA CONSTITUTION'S GUARANTEE OF A RIGHT TO AN IMPARTIAL JURY (ART. I, SECT. 16)**
- **NEIL DECISION SET STAGE FOR US SUPREME COURT DECISION IN BATSON**

NEIL CONTINUED

- **DECISION SET GUIDELINES IN STATE OF FLORIDA TO INSURE PEREMPTORY STRIKES COULD NOT BE USED IN A DISCRMINATORY MANNER TO EXCLUDE SPECIFIC RACIAL GROUPS FROM JURIES**

STATE V. SLAPPY

522 So. 2d 18 (FLA. 1988)

- ISSUE IS NOT WHETHER SEVERAL JURORS WERE EXCUSED BECAUSE OF THEIR RACE, BUT WHETHER ANY JUROR HAD BEEN SO EXCUSED INDEPENDENT OF ANY OTHER
- NO “PATTERN” OF DISCRMINATION NEED BE ESTABLISHED BY OBJECTING PARTY

SLAPPY CONTINUED

- **HELD: A JUDGE CAN NOT MERELY ACCEPT THE REASONS PROFFERED BY PROSECUTOR AT FACE VALUE**
- **JUDGE MUST EVALUATE THE REASONS AND DETERMINE IF THEY ARE FAIR AND REASONABLE AND NOT PRETEXTUAL**

JEFFERSON V STATE
595 So.2d 38 (FLA 1992)

- **TRIAL COURTS COULD REMEDY THE DISCRIMINATORY USE OF PEREMPTORY CHALLENGES BY DISALLOWING THE PEREMPTORY STRIKE AND FORCE SEATING THE JUROR**
- **IT IS UNNECESSARY AS NEIL DECISION HELD TO STRIKE THE ENTIRE JURY PANEL AND START OVER WITH A NEW PANEL**

MELBOURNE V STATE

679 So.2d 759(1996)

- **HELD: IN CONSIDERING THE PROSECUTOR'S EXPLANATION FOR STRIKING JUROR, FOCUS OF JUDGE IS NOT ON REASONABLENESS OF EXPLANATION BUT RATHER ON ITS GENUINENESS**
- **FLA CONSTITUTION DOES NOT REQUIRE THAT AN EXPLANATION BE BOTH NONRACIAL AND REASONABLE, ONLY THAT IT BE NONRACIAL**

MELBOURNE CONTINUED

- **REASONABLENESS IS SIMPLY ONE FACTOR A COURT MAY CONSIDER IN ASSESSING THE REAL REASON WHY A JUROR IS STRICKEN**
- **COURT RECEDES FROM SLAPPY DECISION TO EXTENT THAT CASE REQUIRED A “REASONABLE” RATHER THAN A GENUINE NONRACIAL BASIS FOR A PEREMPTORY STRIKE**

- **DECISIONS THAT HAVE ADDRESSED WHAT CONSTITUTES A “DISTINCT RACIAL GROUP” OR A “COGNIZABLE GROUP”**
 - **HISPANICS, STATE V ALEN, 616 So.2d 452 (FLA 1993)**
 - **AMERICAN INDIANS, TENNIE V STATE, 593 So.2d 1199 (FLA 2ND DCA 1992)**
 - **JEWS, JOSEPH V STATE 636 So. 2d 777**
 - **WHITE JURORS, ROME V STATE, 627 So.2d.45 (FLA 1ST DCA 1993) (HEAVIER BURDEN REQUIRED TO ESTABLISH RACIAL DISCRIMINATION WHEN DEALING WITH THE MAJORITY RACE)**
 - **GENDER, ABSHIRE V STATE, 642 So.2d 542 (FLA 1994)**

A blurred background of a modern office environment. The scene shows several rows of desks with grey office chairs. The desks are made of light-colored wood, and the chairs are a neutral grey color. The background is out of focus, showing more desks and chairs receding into the distance. The overall lighting is soft and even.

THE END



