

I. Federal Statutes and Case Law

1787

An Ordinance for the Government of the Territory of the United States North-West of the River Ohio (Northwest Ordinance of 1787), Article the Sixth

Summary of the Law: Article Six of the Northwest Ordinance of 1787 outlawed slavery and involuntary servitude north of the Ohio River, in the Northwest Territory, unless imposed as punishment for an offense for which an individual had been “duly convicted.” The Ordinance also allowed an enslaver to “reclaim[]” an enslaved person or fugitive who escaped to the Northwest Territory from one of the original states where slavery was lawful.¹

Impact of the Law: The Northwest Ordinance of 1787 prohibited slavery in the Northwest Territory, the area that eventually became the states of Ohio, Michigan, Indiana, Illinois, and Wisconsin. The Ordinance also introduced the fugitive slave law into American jurisprudence.² This provision ensured that a person enslaved in a state that permitted slavery could be captured and returned to enslavement if that person escaped to one of the states or territories in which slavery was outlawed.³

Subsequent History: In 1789, the Northwest Ordinance's fugitive slave provision was included in the United States Constitution in Article IV, Section 2, Clause 3, as the Fugitive Slave Clause. The Fugitive Slave Act of 1793 was passed to enforce the Fugitive Slave Clause.⁴

1789

U.S. Const., art IV § 2, cl. 3

Fugitive Slave Clause

Summary of the Law: The Fugitive Slave Clause, which was patterned after the fugitive slave provision in the Northwest Ordinance of 1787, was part of the Constitution that became effective in 1789.⁵ The Clause guaranteed the right to reclaim an escaped enslaved person from any territory within the United States. It specifically provided that no enslaved person shall be discharged from enslavement by escaping to a State that did not practice slavery.

It also guaranteed the right of an enslaver to reclaim the fugitive enslaved person.⁶

Impact of the Law: The Fugitive Slave Clause elevated the right to own and enslave human beings to a property right protected by the Constitution and enforceable by the federal government. The Clause authorized enslavers to pursue and reclaim any enslaved person who escaped even when they escaped to a state that prohibited slavery. States were prohibited from interfering with the right to pursue and reclaim, ensuring that a person who was enslaved in one state was enslaved everywhere in the United States.⁷

Subsequent History: Congress passed the Fugitive Slave Act of 1793 to enforce the rights granted by the Fugitive Slave Clause. The 1793 Act allowed federal judges and state magistrates to decide, without a jury trial, whether an individual was a fugitive enslaved person. Congress later passed the Fugitive Slave Act of 1850, which imposed harsh penalties for failure to enforce the Fugitive Slave laws and for assisting a fugitive.⁸

1790

The Naturalization Act of 1790 1 Stat. 103

Summary of the Law: The 1790 Act created a process for granting citizenship to immigrants who were “free white person[s]” and had resided within the jurisdiction of the United States. The residency requirement was two years and the application could be made to any common law court in any state where the person resided for at least one year. The other requirements were proof to the satisfaction of the court that the immigrant was a person of good moral character and the taking of an oath to support the Constitution of the United States. The children of the person who became a citizen who were residing in the United States and were under the age of 21 at the time the court approved the application automatically became citizens. Children of U.S. citizens born outside of the United States were deemed natural born citizens of the United States.⁹

Impact of the Law: The 1790 Act created a process to allow “free” white immigrants to become citizens of the United States. The law also granted automatic citizenship to their children. At that time, African Americans could not become American citizens.¹⁰

Subsequent History: The 1790 Act was repealed and replaced by the 1795 Act to Establish a Rule of Uniform Naturalization, which increased the length of the United States residency requirement to five years.¹¹

1793

An Act Respecting Fugitives from Justice, and Persons Escaping from the Service of Their Masters of 1793

Fugitive Slave Act of 1793

Summary of the Law: Congress enacted the Fugitive Slave Act of 1793 to enforce rights guaranteed by the Fugitive Slave Clause. The Act authorized federal judges and magistrates to hold summary proceedings to determine the status of an alleged fugitive enslaved person. In these proceedings, the alleged enslaved fugitive had no right to a jury trial. In addition to proceedings to reclaim their “property,” the 1793 Act also authorized enslavers to bring private suits in federal and state courts to recover damages from anyone who interfered with the right to reclaim or who assisted an escaped enslaved person.¹²

Impact of the Law: The 1793 Act ensured that the constitutional right of enslavers to own other human beings was enforced by the national government. A person enslaved in a “slave” state remained an enslaved person even if they escaped to a state that prohibited slavery.¹³

Subsequent History: The 1793 Act was repealed when Congress passed the Fugitive Slave Act of 1850. The 1850 Act imposed harsh penalties for those who did not enforce the law or assisted an alleged fugitive. The Fugitive Slave Acts were repealed on June 28, 1864.¹⁴

1798

An Act in Addition to the Naturalization Laws of the United States (1798) 1 Stat. 566

Summary of the Law: The 1798 Act repealed and replaced the Naturalization Act of 1795. The 1798 Act increased the citizenship residency requirement from 5 years to 14 years for those who became residents after January 29, 1795. Unlike the prior Acts, its text did not explicitly limit application for citizenship to “free white persons.” It prohibited immigrants from enemy countries from becoming citizens. It also required white immigrants residing in the United States to register with the nearest place authorized to register immigrants within 48 hours of entering the United States.¹⁵

Impact of the Law: The law was passed in conjunction with several other laws in anticipation of the United States going to war with France.¹⁶ Its immediate impact was to discourage immigration into the United States.¹⁷ It also created a registry of foreign white nationals within the United States.¹⁸

Subsequent History: The 1798 Act was repealed by The Act to Establish a Uniform Rule of Naturalization of 1802.¹⁹

1802

An Act in Addition to the Naturalization Laws of the United States 2 Stat. 153

Summary of Facts and Issues: The Act to Establish a Uniform Rule of Naturalization of 1802 repealed the 1798 Act and re-established the five-year residency requirement from the 1795 Act. Like the 1790 and the 1795 Acts, the 1802 Act explicitly limited the application for citizenship to “free white person[s].”²⁰

Impact of the Law: The 1802 Act repealed the 1798 Act. The 1802 Act explicitly restored language from the 1795 Act that only immigrants who were “free white persons” could apply for citizenship. This language preserved the constitutional understanding of citizens as white persons and the exclusion of African Americans and “Indians not taxed” from citizenship.²¹ The Act also decreased the residency requirement to apply for citizenship from 14 years to 5 years.²²

Subsequent History: The 14th Amendment granted citizenship to all persons born within the United States, including African Americans.

1820

Missouri Compromise

Summary of the Law: In 1803, France sold the Louisiana Territory to the United States. Missouri was part of the Territory and later sought admission into the Union as a “slave” state. The Missouri Compromise sought to keep the balance in the Union between enslaving and free states equal and therefore simultaneously admitted Missouri as a slave state and Maine as a non-slave state. The Compromise also prohibited slavery above the 36°30’ latitude in the rest of the Louisiana Territory.²³

Impact of the Law: The immediate impact of the Missouri Compromise was that Missouri, a territory that practiced the enslavement of human beings, and Maine, a free state, were admitted at the same time. The Compromise kept the balance between the number of states that practiced the enslavement of human beings and those that did not. It also reinforced the enslavement of human beings as a valid institution future states could adopt and still be admitted into the Union.²⁴

Subsequent History: In *Dred Scott v. Sandford* (1857) 60 U.S. 393 the U.S. Supreme Court ruled that the part of the Missouri Compromise that prohibited slavery in parts of the Louisiana Territory was unconstitutional because Congress had no authority to ban slavery from a federal territory. The Court found that a right to traffic in slavery, “like an ordinary article of merchandise and property

[was guaranteed] to the citizens of the United States, in every State that might desire it. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner.” The Constitution did not give “Congress a greater power over slave property, or which entitles property of that kind to less protection than [sic] property of any other description.”²⁵ Congress also repealed that part of the Missouri Compromise in the Kansas Nebraska Act of 1854.²⁶

The Josefa Segunda 18 U.S. 338

Summary of Facts and Issues: In 1807, the United States outlawed the importation of enslaved people into the United States. Violations of the 1807 Act²⁷ resulted in forfeiture of the vessel to the United States and any persons found on the vessel that were intended to be sold into slavery would be delivered to parties within the respective state designated to receive them. During the war between Spain and its colonies, the Josefa Segunda was seized by the United States in the Mississippi River with enslaved captives on board. The registered owners brought a claim for return of the ship and the people on board. They claimed that the ship was pirated and was only in U.S. waters because of necessity or distress. The Court held that the plaintiffs’ claims of necessity and that the ship was pirated did not meet the required level of proof. It upheld the lower court’s order finding that the vessel was forfeited and ordering the delivery of the enslaved captives to the appropriate person within Louisiana.²⁸

Impact of Ruling: The ruling affirmed the 1807 Act outlawing the importation of enslaved people into the United States. But even though the 1807 Act outlawed the importation of enslaved people, when ships were confiscated under the Act, the passengers were often sold into slavery within the United States. Thus, not only did the 1807 Act not end slavery, it created an avenue for the domestic slave trade to persist.²⁹

Subsequent History: In *United States v. Preston* (1830) 28 U.S. 57, a subsequent related proceeding, Louisiana filed a claim to the proceeds from the sale of the enslaved persons found aboard the Josefa Segunda. The United States government opposed Louisiana’s claim. The district court awarded the proceeds to Louisiana and the United States appealed. The Supreme Court reversed. It held that an 1819 law, which was passed while the first appeal was pending and prohibited the sale of enslaved persons illegally imported into the United States, applied to Louisiana’s claim. Therefore, Louisiana was not entitled to the proceeds from the sale of the enslaved captives.³⁰

1824

***The Merino* 22 U.S. 391**

Summary of Facts and Issues: Congress enacted three laws that prohibited the international slave trade. The first, the Act of 1794, prohibited the building and commissioning of vessels within the United States that would be used to procure free persons to be trafficked as slaves or would be used to traffic persons who were already held in slavery. The acts of 1800 and 1818 prohibited citizens of the United States from facilitating the slave trade by allowing their vessels to be used in service of the trade between different countries. Three American ships carrying enslaved people, the *Constitution*, the *Merino*, and the *Louisa*, were captured by American officers while traveling from Havana, Cuba to Pensacola, Florida, which at the time was under Spain's control. The *Constitution* was later seized a second time off the coast of Mobile, Alabama by a revenue officer of the United States. The United States brought an action to condemn all three of the vessels and acquire custody of the enslaved persons based on the Acts of 1794, 1800, and 1818. The district court condemned the vessels and the enslaved people found aboard the vessels to the United States.³¹

On appeal, the United States Supreme Court affirmed in part and reversed in part. As to the *Constitution*, the Court affirmed the condemnation of the vessel and the cargo onboard, not including the enslaved persons found on board. As to the enslaved persons, the enslavers were entitled to make a claim for restitution because at the time of the second seizure, the vessel was not engaged in the traffic of enslaved persons. It was being transported for the proceeding. The Court also reversed that part of order condemning the *Merino* and the *Louisa* because the information alleged only that the persons on board were being held as “slaves,” which the evidence did not prove. Instead, the evidence proved that they were being transported to be “held to service,” which the 1818 Act also prohibited. And because the evidence would support that finding, the Court remanded for the United States to amend the information to state “held to service” and for further proceedings.³²

Impact of Ruling: The Court's decision made clear that transporting people of African descent to be held to service, even if they were not to be held in slavery, violated the 1818 Act. The Court's decision also exposed a loophole in the 1800 Act, which allowed a person holding an interest in enslaved people aboard a condemned vessel to make a claim for restitution if the vessel was in the possession of a noncommissioned captor at the time it was captured by the United States. Here, the decision held that the enslavers could make a claim because at the time of the second seizure the vessel was not being used to traffic people for slavery. Eighty-four enslaved people were thus returned to slave owners by the United States government.³³

***The St. Jago de Cuba* 22 U.S. 409**

Summary of Facts and Issues: Several sailors and individuals with financial interests in an American vessel that was condemned by the United States for participating in the slave trade brought claims for wages and materials and labor used to repair the vessel. The district court held that the interest in the cargo was not forfeited and sustained the claim for wages of one seaman and claims for repairs by some of the material men. The Supreme Court reversed. The Court held that the facts that supported condemnation of the vessel also supported condemnation of the cargo. Specifically, the ship was “fitted out” for the slave trade. The Court also reversed the claims of the claimants for wages and repairs because the record did not establish that the claimants were unaware that the ship was an American ship engaging in the slave trade.³⁴

Impact of Ruling: The Supreme Court's decision made clear that no one involved in the preparation of an American vessel for the slave trade or involved in operating the vessel would receive compensation from the sale of a vessel after it has been condemned if they were placed on notice of the vessel's involvement in the slave trade. “The general policy of the law is, to discountenance every contribution, even of the minutest kind, to this traffic in our ports; and the act of engaging seamen, is an unequivocal preparatory measure for such an enterprise.”³⁵

1825

***The Antelope* 23 U.S. 66**

Summary of Facts and Issues: The Vice-Consuls of Spain and Portugal brought claims to recover enslaved persons that an American vessel pirated from ships belonging to both countries. The owner of the alleged pirate vessel also filed a claim to recover the enslaved persons, as did the United States. The United States argued that because the enslaved persons had been transported from “foreign parts by American citizens, in contravention to the laws of the United States,” based on the laws of the United States, the enslaved persons were entitled to their freedom. The lower court dismissed the claim of the owner of the American vessel and sustained the claim of the United States as to the enslaved persons found on the American vessel. The remaining enslaved persons would be divided between the Portugal and Spain. The United States appealed. The Supreme Court held that the right to restitution of the enslaved people on a vessel depended on whether the law of the country to which the vessel belonged sanctioned the slave trade. “If that law gives its sanction to the trade, restitution will be decreed; if that law prohibits it, the vessel and cargo will be condemned as good prize.” In this case, because no owner from Portugal came forward to prove ownership of any of the enslaved persons and owners from Spain were able to do so, the

enslaved people would be divided between the United States and Spain.³⁶

Impact of Ruling: The Court declared that the international slave trade does not violate either the principles of international law nor—unless proscribed by some treaty—positive international law. Accordingly, only domestic law regulates the international slave trade in the United States, and that law prohibits seizing property outside of domestic waters. Any property so seized, including enslaved people, must be returned to their owners. However, the Court also adopted a presumption that people were free unless a claimant could prove a property right in them—in other words, that they have been lawfully enslaved by the laws of a country. Because Spain permitted the slave trade, the enslaved persons pirated from Spanish ships had to be returned to the owners. The remainder were relegated to the custody of the United States, and because the United States prohibited the slave trade, those individuals would be freed and returned to Africa.³⁷

1841

***The Amistad* 40 U.S. 518**

Summary of Facts and Issues: The *L'Amistad* was a Spanish vessel that set sail from Havana, Cuba to Puerto Principe, another port on the island of Cuba, with 49 African captives and two Spanish nationals who claimed to own the captives on board. During the voyage, the African captives mutinied, killing the captain and taking control of the vessel. The vessel was captured by an American ship off the coast of Long Island. The Spanish nationals filed a claim of restitution, claiming that the Africans were their property. The Attorney General filed a claim on behalf of Spain for restitution of the Africans. The 49 Africans filed an answer claiming that they were native-born Africans who had been kidnapped. They were not slaves. The district court denied the Spanish nationals' claim. It ordered the captives to be delivered to the President of the United States so that he could return them to Africa. The Court of Appeal affirmed the decree. The Supreme Court affirmed in part and reversed in part. It agreed that neither the Spanish nationals nor Spain had a right to restitution because the 49 Africans were free persons who had been kidnapped and brought to Cuba to be sold into slavery. The Court rejected as fraudulent the documents the Spanish nationals produced to prove that the African captives had been sold to them. It reversed that part of the decree that required the African captives to be delivered to the President so that they could be returned to Africa. Because they were the ones in control of the vessel when it was captured, the African captives were not brought to the United States in violation of any of the anti-slave trade laws. They were free foreign nationals, and as such, they were entitled to an immediate release.³⁸

Impact of the Ruling: The Court's decision recognized the inherent right of human beings to be free. It also recognized the lawfulness of the mutiny because the African captives had the right to preserve their freedom and prevent their captors from selling them into slavery.³⁹ And the decision ordering the immediate release of the African captives without requiring them to be transported back to Africa also recognized their rights to be present in the United States as any other foreign national. They were eventually returned to their homeland.⁴⁰

1842

***Prigg v. Pennsylvania* 41 U.S. 539**

Summary of Facts and Issues: The petitioner filed a post-conviction petition challenging his conviction for kidnapping a woman and her children from Pennsylvania and returning them to Maryland where the woman had been enslaved. He pursued and captured the fugitive enslaved woman as the agent of the woman who claimed to own her. He was arrested and charged under a Pennsylvania law that prohibited people from kidnapping an African American and selling them into slavery or holding them as a slave. The Supreme Court held that the kidnapping statute was unconstitutional because it interfered with an enslaver's constitutionally protected right to reclaim a fugitive enslaved person from any jurisdiction within the United States where that person may be found. "The [fugitive slave] clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control or restrain. The slave is not to be discharged from service or labor, in consequence of any state law or regulation."⁴¹

Impact of Ruling: The Supreme Court's decision established that the Fugitive Slave Clause and the Fugitive Slave Act 1793 protected an enslaver's constitutional right to own another human being by affirming that an enslaver had the right to seize and reclaim an escaped enslaved person wherever that escaped person may be found. The Court's decision also affirmed that a state, even one where the enslavement of human beings was prohibited, had an obligation not to interfere with or punish an enslaver's exercise of their constitutional right to reclaim a fugitive enslaved person.⁴²

Subsequent History: Congress enacted the Fugitive Slave Act of 1850, which imposed harsh penalties for assisting an enslaved person in escaping or interfering with the right to reclaim a fugitive enslaved person. The Fugitive Slave Acts were repealed on June 28, 1864.⁴³

1848

Treaty of Guadalupe Hidalgo 1848

Summary of the Law: The Treaty, which was signed on February 2, 1848, officially ended the Mexican-American War.⁴⁴ In the Treaty, Mexico agreed to cede territory to the United States, territory which eventually became the states of California, Nevada, Utah, and New Mexico, and parts of Arizona, Colorado, Oklahoma, Kansas, and Wyoming. Mexico also agreed to relinquish claims to Texas. The Treaty recognized the Rio Grande River as the border between Mexico and the United States. Articles VIII and IX also gave Mexican citizens within the ceded territory the option of becoming American citizens.⁴⁵

Impact of the Law: The Treaty ended the war between the United States and Mexico, allowing the United States to expand its territory in the West. The Treaty offered American citizenship to Mexicans within the ceded territory.⁴⁶ African Americans who had been in the United States since its founding remained ineligible for citizenship.⁴⁷ Until 1930, people of Mexican descent in the United States were considered white for purposes of the census.⁴⁸

Subsequent History: The territory ceded by Mexico to the United States as a result of the Treaty reignited concerns about the balance between free states and enslaving states.⁴⁹ These tensions led to the enactment of two additional laws that would govern the future admission of slave and free states into the Union: 1) The Compromise of 1850, which admitted California as a free state and allowed for the admission of Utah and New Mexico without a designation as free or enslaving states; and 2) The Kansas-Nebraska Act of 1854, which allowed citizens in both territories to decide the inclusion or exclusion of slavery within their boundaries by popular vote.⁵⁰

1850

Compromise of 1850

Summary of the Law: The Compromise of 1850 consisted of five bills aimed at easing the tensions created between the Northern and Southern states by the acquisition of new territory following the Treaty of Guadalupe-Hidalgo. The five bills that made up the Compromise included a bill that required California to be accepted into the Union as a free state, a bill that required Texas to give up some of its land in exchange for a \$10 million debt assumption by the federal government, a bill that created the states of New Mexico and Utah using some of the land that Texas relinquished and that organized those states without mentioning slavery, a bill abolishing the slave trade in Washington D.C. (even though slavery continued within the jurisdiction), and an amendment to the Fugitive Slave Act that increased penalties for those who helped

enslaved people escape or interfered with the right to recapture an enslaved person.⁵¹

Impact of the Law: California was admitted as a free state and Texas's borders were reconfigured to its current boundaries.⁵² Several of the measures included in the Fugitive Slave Act of 1850 made it easier for enslavers to claim that an African American was an escaped fugitive person. The 1850 Act only required a sworn statement alleging ownership to trigger the arrest of an alleged fugitive enslaved person.⁵³ Building on the 1793 Act's denial of the right to a jury trial for an alleged fugitive in these proceedings, the 1850 Act prohibited an alleged fugitive from even testifying on their own behalf.⁵⁴ These new measures spurred an increase in the kidnapping of "free" African Americans who would then be sold into enslavement.⁵⁵ African Americans who were free had to carry papers with them to prove their status. The 1850 Act also imposed harsh penalties, including heavy fines and imprisonment for those who refused to enforce the Fugitive Slave Act or assisted an enslaved person in escaping.⁵⁶

Bennett v. Butterworth 49 U.S. 124

Summary of Facts and Issues: The plaintiff filed an action to recover four enslaved persons from the defendant. In his pleadings, the plaintiff alleged that the value of the enslaved persons was \$2,700 but at trial the jury awarded plaintiff \$1,200. Plaintiff released the judgment and defendant appealed to the Supreme Court. Plaintiff moved to dismiss on the grounds that the \$1,200 in controversy did not meet the Supreme Court's threshold for jurisdiction. The Supreme Court denied the motion to dismiss the appeal because the plaintiff's own complaint alleged the value of the slaves to be \$2,700, so he could not deprive the defendant of a writ of error where he has released the judgment of an amount below the amount in controversy threshold.⁵⁷

Impact of Ruling: The Supreme Court's decision reinforced the idea of African Americans as property. The value of the human beings was used to determine whether the Court would exercise jurisdiction over disputes involving human beings as property.⁵⁸

Randon v. Toby 52 U.S. 493

Summary of Facts and Issues: Plaintiff brought suit to recover on two promissory notes executed by the defendant. One defense the defendant raised was that the notes were executed for enslaved persons who were imported into the United States in violation of the law. And because the enslaved persons were in the United States unlawfully, he did not receive adequate consideration in exchange for the notes. The Court held that the fact that enslaved people may have been illegally imported

into the United States does not render a subsequent contract for the buying and selling of those enslaved African Americans void, especially in a slave state where color is sufficient presumptive evidence that the person is a slave. “The crime committed by those who introduced the enslaved people into the country does not attach to subsequent purchasers.”⁵⁹

Impact of the Ruling: The Court’s decision affirmed that a person may receive title to enslaved people imported into the United States in violation of the anti-slave trade laws. If the enslaved people had challenged their enslavement in court, however, the defendant likely would have had a defense against the plaintiff for want of consideration or breach of an implied warranty of title.⁶⁰

The Fugitive Slave Act of 1850

Summary of the Law: The 1850 Act repealed the 1793 Act. It eliminated the right of an alleged fugitive enslaved person to testify on their own behalf in the proceeding to determine their status.⁶¹ And it imposed “[h]eavy penalties” on federal marshals who did not enforce the law and on individuals who aided an alleged fugitive enslaved person.⁶² A person who helped an enslaved person by providing shelter and food faced six months’ imprisonment and a \$1,000 fine.⁶³ The Act also provided cash incentives for judges and magistrates to find that the person was a proven fugitive.⁶⁴

Impact of the Law: The 1850 Act sought to strengthen the rights of enslavers to reclaim fugitive enslaved persons by limiting the right of the alleged enslaved person to defend themselves during proceedings, by incentivizing judges to rule in favor of finding the person to be a fugitive, and by imposing harsh penalties on those officials who refused to enforce the law and on those who helped an enslaved person escape or avoid recapture.⁶⁵ Another significant impact of the 1850 Act was that its provisions precluding alleged fugitives from defending themselves during proceedings spurred the kidnapping and trafficking of “free” African Americans into slavery.⁶⁶ African Americans who were free had to carry papers with them to prove their status.

Subsequent History: The Fugitive Slave Acts were repealed on June 28, 1864.⁶⁷

1854

Kansas-Nebraska Act 1854

Summary of the Law: The Kansas-Nebraska Act was enacted to relieve the tension between free states and those states that practiced the enslavement of human beings by establishing rules for admitting states into the Union that

kept the balance between free states and “slave” states, and it relieved some of that tension by repealing the part of the Missouri Compromise that prohibited slavery above the 36°30’ latitude in the Louisiana Territory.⁶⁸

Impact of the Law: The Act’s requirement that Kansas would decide by popular vote whether it would be a slave or a free state led to “a migration of proslavery and antislavery factions,” to Kansas seeking to influence the decision about slavery, resulting “in a period of political chaos and bloodshed.”⁶⁹ During this period, which was known as “Bleeding Kansas,” approximately 55 people were killed.⁷⁰

Subsequent History: Eventually Kansas voted to enter the Union as a free state.⁷¹

1857

Dred Scott v. Sanford 60 U.S. 393

Summary of Facts and Issues: The plaintiff, an enslaved person, filed a petition seeking to be declared a free person because he lived in Illinois, a free state, while his enslaver was stationed there. In a second matter the plaintiff brought a claim for assault based on his new enslaver’s assault on plaintiff and plaintiff’s family. The Supreme Court held the plaintiff could not bring either claim because he was not a citizen. “[N]either the class of persons who had been imported as slaves, nor their descendants,” were included in the group of people that could become citizens of the United States. “They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect.” The plaintiff’s status as an enslaved person was determined by the laws of Missouri, not Illinois. And as an enslaved person, he could not exercise the rights of a citizen and sue in court for his freedom. The Court also held that the part of the Missouri Compromise that prohibited slavery in parts of the Louisiana territory unconstitutional because Congress did not have the authority under the Constitution to prohibit slavery in any federal territory.⁷²

Impact of the Ruling: The decision stated that African Americans were not citizens of the United States, could never become citizens, and did not have the same rights as citizens, such as bringing a claim in the courts. The Court also affirmed that the Fugitive Slave Clause protected an enslaver’s right to possess an enslaved person.⁷³ And because of the Fugitive Slave Clause, once a person was enslaved in one state, they were enslaved everywhere else in the United States.

Subsequent History: The Court's decision was superseded by the passage of the 14th Amendment in 1868, which granted citizenship and other rights to African Americans.⁷⁴

1859

***Ableman v. Booth* 62 U.S. 506**

Summary of Facts and Issues: The defendant was convicted before a commissioner of aiding and abetting an enslaved person to escape from a marshal in violation of the Fugitive Slave Act of 1850. The defendant applied to the state Supreme Court for a writ of habeas corpus on the grounds that the Fugitive Slave Act of 1850 was unconstitutional. The writ was granted the same day. Shortly after the defendant was released, he was indicted by a grand jury in the federal district court for the same act. Following a trial, the defendant was convicted and incarcerated. He filed a petition for writ of habeas corpus in the state Supreme Court. The Court issued the writ and decided that defendant's imprisonment was illegal. The United States Supreme Court reversed both of the state Supreme Court's decisions that declared the Fugitive Slave Act of 1850 unconstitutional. The United States Supreme Court explained that while a state court can issue writs of habeas corpus within its territorial jurisdiction, it cannot issue writs to the federal courts. Moreover, the United States Supreme Court, not a state court, has final authority to interpret and apply federal law.⁷⁵

Impact of the Ruling: The United States Supreme Court's decision upheld the constitutionality of the Fugitive Slave Act of 1850, including the penalties for aiding an alleged enslaved person to avoid being captured. It also affirmed that state tribunals cannot overrule federal courts on matters of federal law. This decision was one of the major cases that supported enslavers' property right in enslaved people leading up to the Civil War.

1866

Act to Protect All Persons in the United States in Their Civil Rights, and Furnish the Means of their Vindication

1866 Civil Rights Act

Summary of the Law: The 1866 Civil Rights Act guaranteed citizenship to everyone born in the United States, not subject to a foreign power, regardless of race or previous condition of slavery or involuntary servitude. It also guaranteed each citizen equal protection under the law and the same civil rights enjoyed by "white citizens." Violations of rights guaranteed by the Act were punishable by fines and imprisonment. The federal courts had

exclusive jurisdiction over actions to enforce the rights guaranteed by the Act.⁷⁶

Impact of the Law: The Act was introduced by Senator Lyman Trumbull of Illinois to guarantee equality of citizenship for African Americans. He believed the legislation was needed because "the 'abstract truths and principles' of the Thirteenth Amendment meant nothing 'unless the persons who are to be affected . . . have some means of availing themselves of their benefits.'" The Act was vetoed by President Andrew Johnson, but Congress overrode his veto. The Act's citizenship provision was the template for the 14th Amendment that was ratified two years later.⁷⁷

Subsequent History: The 1866 Civil Rights Act was incorporated into the 1870 Civil Rights Act as section 18.⁷⁸

1871

***Blyew v. United States* 80 U.S. 581**

Summary of Facts and Issues: The petitioners, two white men who murdered four members of an African American family in Kentucky, were convicted of the murder of one of the victims in federal court. One of the victims made a dying declaration identifying the killers before dying from his wounds. Another witness, a young girl who escaped the killers, also identified the defendants. Initially, the case was brought in state court, but the matter was removed to the federal court under the Civil Rights Act of 1866. The case was removed because Kentucky law prohibited African Americans from testifying against white people. Therefore, in a state proceeding, the two key witnesses would not be able to testify against petitioners. Because that law precluded the witnesses from testifying because of their race, it affected their civil rights under the 1866 Civil Rights Act. Therefore, the matter came within the federal court's jurisdiction under the Act. The petitioners objected, and following their conviction, they filed a petition.⁷⁹

The Supreme Court reversed their convictions. The Court explained that the 1866 Civil Rights Act was not so broad as to allow the federal courts to assume jurisdiction in every matter in which an African American person was involved as a witness. It only applied to matters that affected the rights declared in the 1866 Act, and serving as a witness did not meet the definition of a cause "affecting" a right guaranteed by the 1866 Civil Rights Act.⁸⁰

Impact of the Ruling: The dissenting opinion argued that the application of the 1866 Civil Rights Act to the circumstances of this case was necessary to declare the equality of African Americans and "to counteract those unjust and discriminating laws of some of the States" that deprived African Americans "of rights and privileges enjoyed by

white citizens.” The Court’s decision deprived a whole class of the community of the right to serve as witnesses in cases where crimes have been committed against members of their community. “[T]o refuse their evidence and their sworn complaints, is to brand them with a badge of slavery.” And “[i]t gives unrestricted license and impunity to vindictive outlaws and felons to rush upon these helpless people and kill and slay them at will, as was done in this case.”⁸¹

1875

***United States v. Cruikshank* 92 U.S. 542**

Summary of Facts and Issues: The case arose out the Colfax Massacre where at least 70 African Americans who were protecting the statehouse in Louisiana after a contentious and close gubernatorial election were murdered by a white militia.⁸² None of these underlying facts of the massacre were included in the Court’s opinion. Rather, the Court’s opinion focused only on whether the allegations in the 16-count indictment charging the defendants with depriving African Americans of their rights under the Civil Rights Act of 1870 were sufficient to sustain the defendants’ convictions. The Court found none of the allegations were sufficient for a variety of reasons. Specifically, it determined that several of the allegations failed to state an offense for which the defendants could be charged under the 1870 Civil Rights Act because the Fourteenth Amendment did not apply to actions of individuals, only the actions of states. It also found that the First Amendment and the Second Amendment were limits on the national government that did not apply to the states. Additionally, the right to vote was a right afforded by the states, not the federal government, which only guaranteed through the Fifteenth Amendment that the right to vote could not be denied based on race. With regard to the remaining allegations in the indictment, the Court determined that they were too factually vague to provide the defendants with sufficient information to prepare a defense. Therefore, they were too vague to support the convictions.⁸³

Impact of the Ruling: The Court’s decision rendered the 1870 Civil Rights Act ineffective in stopping violence against African Americans by restricting the federal courts’ authority to enforce the rights delineated in the Act. African Americans had to rely on hostile state governmental institutions to enforce and protect their civil rights. The decision also limited the Fourteenth Amendment to state actions, and held that the First, Second, Fifth, Sixth, and the Eighth Amendments only applied to the federal government. It also held that the federal government could only guarantee that the franchise was not denied based on race. States were free to regulate the franchise with facially neutral voting restrictions that were not explicitly based on race.⁸⁴ This

resulted in a variety of regulations and intimidation campaigns that severely restricted African Americans’ right to vote in southern states for decades.⁸⁵

Subsequent History: The court’s decision limiting the bill of rights to the federal government was overruled by *Gitlow v. New York* (1925) 268 U.S. 652, which held that the First Amendment applied to the states by incorporation through the Fourteenth Amendment. The Voting Rights Act of 1965 provided specific protection for African Americans against facially neutral regulations that restricted African Americans’ voting rights in southern states.

1883

***New York v. Compagnie Generale Transatlantique* 107 U.S. 59**

Summary of Facts and Issues: The City and County of New York filed suit to recover the sum of one dollar tax for each alien passenger brought into New York aboard the defendants’ vessels, on the grounds that the passengers were imports to which the tax applied. The plaintiffs argued that the tax was an inspection fee authorized under Article 1, section 9 of the U.S. Constitution. The lower court rejected the claim. The United States Supreme Court affirmed. The Court explained that the passengers on the defendants’ vessels were free human beings who immigrated to the United States. They were not enslaved people who were imported into the country. Therefore, they were not imports to which an inspection fee would apply.⁸⁶

Impact of the Ruling: The Court’s ruling made clear that the provision of U.S. Constitution, Article 1, section 9, which allowed states to pass inspection laws for imports, applied to the importation of enslaved people because they were not free human beings and were considered property. Because the passengers were free human beings and not property, New York could not impose an inspection fee on the defendants for transporting them.⁸⁷

***United States v. Harris* 106 U.S. 629**

Summary of Facts and Issues: The case arose from an incident involving a group of 20 white men in Tennessee attacking four African American men who had been arrested and charged with unspecified offenses, and killing one of the victims. In a four-count federal indictment, the 20 men were charged with depriving the African American men of their rights to equal protection under the law in violation of the Ku Klux Klan Act. Because the lower court judges had a division of opinion as to the constitutionality of the Ku Klux Klan Act, the prosecuting attorney filed a certificate of division in the U.S. Supreme Court, asking the Court to decide the issue. The Court concluded that the Ku Klux Klan Act, which regulated the

violent conduct of individuals against African Americans, was unconstitutional because there were no provisions in the Constitution that supported the enactment of the statute. Additionally, even if the Ku Klux Klan Act could be supported by the Thirteenth Amendment, because a white citizen could conceivably be prosecuted under the Act for violating the rights of another white person, it went beyond the limits of the Thirteenth Amendment's protection of only African Americans. Because it was overbroad, it was unconstitutional.⁸⁸

Impact of the Ruling: The Court invalidated one of the primary federal laws enacted to protect African Americans from violence by organizations like the Ku Klux Klan. The Court's decision affirmed the holding in *U.S. v. Cruikshank* (1875) 92 U.S. 542, that the Fourteenth Amendment did not apply to private actors, but only to state actors. The Court's decision also meant that any congressional act based on the Thirteenth Amendment had to be limited to African Americans, facially and as applied, to be constitutional. If the congressional act could be applied to acts committed against white people by other white people, it could not be constitutionally grounded in the Thirteenth Amendment.⁸⁹

1886

***Yick Wo v. Hopkins* 188 U.S. 356**

Summary of Facts and Issues: The City and County of San Francisco arrested and imprisoned two of its Chinese residents for violating ordinances that regulated where laundry facilities could be located. One ordinance required laundry operators to obtain permission from the board of supervisors if the laundry facility was located in a building constructed of wood.

The petitioners were charged with violating this ordinance, convicted, and imprisoned. One filed a petition for writ of error asking the Court to determine whether he had been denied his rights under the Constitution. The Court held that the ordinance under which the petitioner was prosecuted violated the Equal Protection Clause of the Fourteenth Amendment because in actual operation it was directed “so exclusively against a particular class of persons as to warrant and require the conclusion that” it amounted to a practical denial of that equal protection of the laws secured by the Fourteenth Amendment. The violation of the Equal Protection Clause required the petitioners' immediate release.⁹⁰

Impact of the Ruling: The Supreme Court's unanimous decision applied the Equal Protection Clause to invalidate a facially neutral law that was being applied in a racially discriminatory manner.⁹¹

1900

***Carter v. Texas* 177 U.S. 442**

Summary of Facts and Issues: An African American man was indicted by grand jury for the murder of an African American woman. Before he was arraigned, the defendant filed a motion to quash the indictment on the grounds that although African Americans constituted about 25 percent of the voters in the county, the grand jury that returned his indictment was composed exclusively of white people. The defendant sought to introduce witnesses to verify his claims, but the trial court denied his motion. The Supreme Court held that a motion to quash the indictment was the proper vehicle to challenge the grand jury indictment based on the exclusion of African Americans. The defendant duly alleged that African Americans were excluded from the grand jury based on race and the court refused to hear any evidence on the subject. The defendant had no opportunity to challenge the racial makeup of the grand jury before he was indicted, and therefore the defendant's conviction was reversed.⁹²

Impact of the Ruling: The Court reaffirmed the prior ruling under *Strauder v. Virginia* (1879) 100 U.S. 303 that a state's systematic exclusion of African Americans from a grand jury violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Where the grand jury was impaneled before the crime was committed, a motion to quash the indictment before the defendant is arraigned is a proper mode of presenting the constitutional objection.⁹³

1903

***Brownfield v. South Carolina* 189 U.S. 426**

Summary of Facts and Issues: The defendant filed a habeas petition seeking to overturn his conviction on the grounds that the grand jury that returned his indictment was all white and that all African Americans were excluded, violating his right to equal protection. Defendant noted that in a community where 80 percent of the registered voters were African American, no African American served on the grand jury. The Court denied defendant's petition because the record did not support the African American defendant's allegation that African Americans were intentionally excluded from the jury pool.⁹⁴

Impact of the Ruling: The Court's decision did not address the defendant's claim regarding the number of African American voters in the county compared to the number of white voters. The Court seemed to require an offer of proof of the actual exclusion of African Americans from the grand jury to accompany the motion to quash and the challenge to the lower court's refusal to hear that evidence, in order for a defendant to establish

a violation of equal protection. The Court's ruling is an example of judicial restraint and a strict reading of the record and procedural requirements in order to bring discrimination claims.

1904

***Rogers v. Alabama* 192 U.S. 226**

Summary of Facts and Issues: The petitioner, who was indicted for murder, filed a motion to quash the indictment because all African Americans had been excluded from the grand jury that indicted him. The jury commissioners appointed to select the grand jury excluded all African Americans on the grounds that they lacked the right to serve as electors in the state of Alabama by the provisions of the new Constitution of Alabama, and therefore could not serve as grand jurors. The Supreme Court applied its prior decision in *Carter v. Texas* (1900) 177 U.S. 442, which it admonished the state court for not applying, and held that the exclusion of African Americans from a grand jury violates the Equal Protection Clause. It also noted that whether a citizen could serve as a grand juror was not dependent on their qualification as an elector. The petitioner's conviction was reversed.⁹⁵

Impact of the Ruling: The Court reaffirmed its prior ruling in *Carter v. Texas* (1900) 177 U.S. 442, commenting that the State of Alabama should have done so too. In this case, as in *Carter* (decided four years earlier), the Court held that a challenge to a criminal indictment based on racial discrimination could be raised in a motion to quash that indictment.

1906

***Martin v. Texas* 200 U.S. 316**

Summary of Facts and Issues: An African American man accused of murder moved to quash a trial panel on the grounds that all African American jurors had been excluded from his trial jury because of their race. The Court ruled that while the Fourteenth Amendment prohibits state officials, including court administrators, from excluding potential jurors from trial or grand juries solely because of their race, Martin did not provide sufficient specific evidence of a policy of discriminatory exclusion. Evidence that there were no African Americans on the jury was insufficient evidence of affirmative systemic exclusion.⁹⁶

Impact of Ruling: This decision affirmed the right of racial minorities to challenge discriminatory practices in impaneling a jury. However, the Court's requirement of a showing of specific evidence of discriminatory intent set a high bar for a criminal defendant to reach, a standard that was eased in later decisions.

Subsequent History: In *Batson v. Kentucky* (1986) 476 U.S. 79, the Court provided a number of rules regarding whether strikes of racial minority members from trial jury panels are discriminatory, including whether a prosecutor has exercised peremptory challenges to remove members of the defendant's race on account of their race.⁹⁷

1908

***Battle v. United States* 209 U.S. 36**

Summary of Facts and Issues: The petitioner was convicted of murder. He argued that the trial court erred when it interrupted his counsel in making an argument that was based on race. The Supreme Court held that there was no error. In the interests of the administration of justice, judges may interrupt counsel when their argument makes an appeal to racial prejudice.⁹⁸

Impact of the Ruling: Courts have the general discretion to regulate trials to ensure justice. Where an attorney expressly denigrates the testimony of witnesses on the basis of their race, using a racist epithet, the trial judge has discretion to admonish the attorney.

***Ex Parte Young* 209 U.S. 123**

Summary of Facts and Issues: *Ex Parte Young* arose out of a dispute among shareholders in a railway company, the railway company, the attorney general of Minnesota, members of the Warehouse and Railway Commission, and shippers of freight. Two shareholders challenged a new Minnesota law that reduced the shipping rates that railroads could charge for freight. The shareholders claimed that the new rates were unconstitutional and obtained a federal injunction forbidding enforcement of the new rates. Young appeared in the federal court and objected on eleventh Amendment grounds. While the federal injunction was in place, Young, the Attorney General for Minnesota, initiated an enforcement action in state court, seeking a writ of mandamus to publish and enforce the new rates. The state court issued an alternative writ. Upon notification of the state court action, the federal court held Young in contempt and imprisoned him. Young filed a petition for writ of habeas corpus on grounds that Minnesota's sovereign immunity applied and the suit against him was improper based on the Eleventh Amendment. The Supreme Court disagreed. Where a state official uses the name of the state to enforce an unconstitutional act that injures a complainant, and if the act that violates the federal Constitution, the state official is subject to suit in their individual capacity. "The state has no power to impart to him any immunity..."⁹⁹

Impact of the Ruling: If government officials attempt to enforce an unconstitutional law, sovereign immunity

does not protect them from being sued in their individual capacity for harms they cause.¹⁰⁰

1909

***Thomas v. Texas* 212 U.S. 278**

Summary of Facts and Issues: Thomas, an African American man, was convicted of murder and sentenced to death. He contested the conviction on the basis that, although there were African American members of the jury pool, the commissioners did not pull their names and excluded them from the jury. The Supreme Court upheld the conviction on the bases that there had been no intentional discrimination against, or exclusion of, African Americans from the grand jury indicting, and the trial jury convicting, Thomas, since there was an African American grand juror and there were African American members of the trial jury pool. The Court held that petitioner's argument that African American members of the jury pool were not given equal consideration as white members of the jury pool is not sufficient evidence of discrimination.¹⁰¹

Impact of Ruling: The Court reaffirmed that there is no right to a grand or trial jury that includes people of the defendant's race, and that there must be some evidence that the jury commissioners engaged in affirmative discriminatory acts.

1910

***Franklin v. South Carolina* 218 U.S. 161**

Summary of Facts and Issues: South Carolina passed a statute giving the right to jury commissioners to select electors of "good moral character" that they deem qualified to serve as jurors. Defendant was convicted of murder and challenged the indictment on the basis that the statute served to create a biased grand jury. The Court held that a state's action to create new criteria for impaneling juries does not violate the U.S. Constitution, even if the effect is to render different groups of people eligible for jury service, so long as the statute is race-neutral.¹⁰²

Impact of Ruling: The Court upheld South Carolina's change in juror qualifications, which granted large discretion to exclude people who were previously eligible to serve on grand juries, continuing its trend of upholding statutes that could have a discriminatory impact on racial minorities, so long as the statute was race-neutral on its face.¹⁰³

1923

***Moore v. Dempsey* 261 U.S. 86**

Summary of Facts and Issues: A group of white men attacked and fired upon African American churchgoers in Arkansas; in the aftermath of the shooting, several African

Americans and a white man were killed. Five African American men were charged with the white man's murder. The Governor appointed a committee to investigate the incident; the committee identified and indicted five African American men for the murder of the white man. The Committee also issued inflammatory statements, describing the incident as a "deliberately planned insurrection" by African Americans for the purpose of killing white people. Shortly after the men's arrest, a mob marched to the jail for the purpose of lynching them; they were only prevented from doing so by federal troops. The committee stated that the men were not lynched only because "the law would be carried out." Witnesses later said that the committee called African American witnesses and tortured them until they would "say what was wanted." The torture of these witnesses provided the "evidence" needed for all-white juries to indict and convict the defendants, after a forty-five minute trial and less than five minutes of jury deliberation. The trial was surrounded by a mob; according to the Court, "no jurymen could have voted for an acquittal and continued to live in Phillips County."¹⁰⁴

Impact of Ruling: The Supreme Court held that since the trial was so influenced by the mob, the defendants were deprived of their due process rights under the Fifth Amendment to the U.S. Constitution, which ensures that the procedure used to convict the defendant satisfies the demands of justice. The Court pointed out that a state court's conviction is not entitled to conclusive weight if a defendant's constitutional rights are being violated in the execution of a trial.¹⁰⁵

1931

***Aldridge v. United States* 283 U.S. 308**

Summary of Facts and Issues: An African American man was convicted and sentenced to death for murdering a white police officer. The trial court refused to ask prospective jurors during voir dire whether any of them might be prejudiced against the defendant because of his race.¹⁰⁶

Impact of Ruling: The U.S. Supreme Court overturned the conviction because the trial judge failed to cover the subject of racial prejudice during voir dire. The Court held that such an inquiry should have been made relating to racial prejudice during the examination of potential jurors, but noted the trial judge has broad discretion to determine which specific questions to ask.¹⁰⁷

Subsequent History: In *Rosales-Lopez v. United States* (1981) 451 U.S. 182, the Court limited when an inquiry into racial or ethnic prejudice is required in crimes involving interracial violence.¹⁰⁸

1932

***Powell v. Alabama* 287 U.S. 45**

Summary of Facts and Issues: Nine African American boys, described as “young, ignorant, and illiterate,” were convicted and sentenced to death for allegedly raping two white women on a freight train to Scottsboro, Alabama. The defendants were tried in a total of three trials that were completed in a single day. The Alabama court did not inquire or provide them with time to secure counsel, and counsel was not secured until the morning of the trial.¹⁰⁹

Impact of Ruling: The U.S. Supreme Court reversed the convictions of the boys and remanded the cases for further proceedings. The Court held that their due process rights under the Fourteenth Amendment had been violated because the defendants were not given reasonable time and “a fair opportunity to secure counsel of [their] choice.”¹¹⁰

Subsequent History: A series of retrials followed *Powell*. Two of the boys were reconvicted and sentenced to death in late 1933.¹¹¹ The Court again overturned the two verdicts in *Norris v. Alabama*, concluding that the systematic exclusion of African American men from the jury denied them a fair trial.¹¹² After *Norris*, four of the defendants were again retried and reconvicted, while another four were released after the charges against them were dropped in 1937.¹¹³ The unfair treatment of the African American men in this case helped spur the Civil Rights Movement.¹¹⁴

1935

***Norris v. Alabama* 294 U.S. 587**

Summary of Facts and Issues: Norris was one of eight African American boys indicted and convicted of rape. The Supreme Court affirmed the principles it had previously reached in *Carter v. Texas* (1900) 177 U.S. 442, holding that systematic exclusion of African Americans from jury service solely on the basis of their race violates a criminal defendant’s equal protection rights. The Court held that the evidence showed that the application of the state statute listing juror qualifications had served to exclude African Americans from jury service for a number of years.¹¹⁵

Impact of Ruling: The Court affirmed its prior rulings that if a criminal defendant is able to present a prima facie case that members of his race were systematically excluded from the jury pool on the basis of their race, his Constitutional rights were violated, absent a compelling showing of evidence from the state. The Court additionally ruled that federal courts had jurisdiction to review violations of defendant’s constitutional rights in state court.¹¹⁶

Subsequent History: The Court, in *Hernandez v. New York* (1991) 500 U.S. 352, 353–354, later distinguished its holding by clarifying that a state court is entitled to deference when a defendant brings a challenge to prosecutors’ peremptory dismissal of jurors under *Batson v. Kentucky* (1986) 476 U.S. 79, and that a defendant is not entitled to “independent” appellate review of a state trial court’s denial of a *Batson* claim.

1936

***Brown v. Mississippi* 297 U.S. 278**

Summary of Facts and Issues: Petitioners were three African American men who were indicted for murder. The defendants testified that the police officers, through brutal torture, extracted false confessions that they were responsible for the murder. Other than the false confessions, there was no other evidence that would have supported a conviction for the murder. Still, the trial court allowed the confessions to be received into evidence and submitted the case to the jury. The petitioners were convicted and sentenced to death. They filed a petition in the United States Supreme Court. The Court agreed that the use of the confessions obtained through torture to secure the petitioners’ convictions and sentence was a clear denial of due process. “The due process clause requires ‘that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.’ It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners...”¹¹⁷

Impact of the Ruling: The Court’s decision reaffirmed that the fundamental requirement for all trials is fairness or due process.

1940

***Chambers v. Florida* 309 U.S. 227**

Summary of Facts and Issues: After an elderly white man was murdered, law enforcement officers employed dragnet tactics and detained between 25 and 40 African American men living in that community. “For five days petitioners were subjected to interrogations culminating in Saturday’s ... all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt.” Eventually they “broke” and confessed. Three of the petitioners pleaded guilty and one was convicted at trial based on the confession. All four were sentenced to death. On review the United States Supreme Court reversed their convictions. The Court explained that the process the officers put the petitioners through were “lawless” and violated due process. “Due process of law,

preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death.”¹¹⁸

Impact of the Ruling: The Court’s decision reinforced that all states must adhere to due process principles when securing convictions.¹¹⁹

1942

***Ward v. Texas* 316 U.S. 547**

Summary of Facts and Issues: Petitioner, an African American man, was indicted for the murder of a white man. During the first trial, the jury did not reach a verdict. During the second trial, the petitioner was convicted of murder without malice. Petitioner contended that his confession was coerced, alleging that it was signed “only after he had been arrested without a warrant, taken from his home town, driven for three days from county to county, placed in a jail more than 100 miles from his home, questioned continuously, and beaten, whipped and burned by the officer to whom the confession was finally made.” The Supreme Court reversed his conviction, holding that the use of confessions obtained under circumstances where the defendant was threatened with mob violence, moved to various counties, isolated, and questioned continuously is a denial of due process.¹²⁰

Impact of the Ruling: The Court’s decision reaffirmed that the Court would not uphold convictions based on confessions that were coerced. The petitioner in *Ward* was arrested by officers without a warrant, in a county where they did not have authority to make an arrest. These actions, combined with the coercive techniques, denied due process and required reversal.¹²¹

1945

***Akins v. Texas* 325 U.S. 398**

Summary of Facts and Issues: Petitioner, an African American man, was convicted of murder and sentenced to death by a nearly entirely white jury in Dallas County, Texas. At the time, Dallas County’s population was 15 ½ percent African American, yet only one African American sat on the 12-person grand jury, from a grand jury panel list of 16 people. Petitioner challenged the conviction on equal protection and due process grounds, claiming that jury commissioners arbitrarily and purposefully limited the number of African Americans on juries. The Court reviewed statements by jury commissioners, determined that the commissioners followed the Court’s previous decisions, and held that “purposeful discrimination is not sustained by a showing that on a single grand jury the number of members of one race is less than that race’s proportion of the eligible individuals.”¹²²

Impact of Ruling: In its ruling, the Court emphasized that a defendant challenging jury composition must show that there was a purpose to discriminate, which can be proven by historical or systematic exclusion, and that a single instance of disproportionality in a jury is not sufficient to establish a due process violation.¹²³

1948

***Haley v. Ohio* 332 U.S. 596**

Summary of Facts and Issues: A 15-year-old African American boy was arrested for a robbery that resulted in the death of the store owner, and interrogated for five hours by five or six police officers in relays, during which time he was not able to communicate with counsel or his mother. After being shown the confessions of two other suspects, he himself confessed and he was convicted. The Supreme Court reversed the lower court’s conviction, explaining: “The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.”¹²⁴

Impact of the Ruling: The Court emphasized that *Haley* was a continuation of the principle in *Chambers v. State of Florida* (1940) 309 U.S. 227 and other coerced confession cases. The Court noted it would not uphold convictions where the circumstances of the confession indicated that the confession was not freely and voluntarily given, explaining that “the Fourteenth Amendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them.”¹²⁵

***Moore v. New York* 333 U.S. 565**

Summary of Facts and Issues: Several African American defendants convicted of murder by a special jury challenged New York’s special jury selection process, which impaneled only the “best” or most intelligent of potential jurors. Prosecutors impaneled 150 jury members; none were African American. The Court upheld the conviction, determining that defendants’ counsel was present at the jury selection stage and that the names were drawn without objection. The Court concluded that African Americans comprised less than two percent of the population of the county at that time, and that there was no evidence of systemic, intentional, and deliberate exclusion of African Americans from jury duty. As a result, the judgement was affirmed.¹²⁶

Impact of Ruling: The dissent highlighted that the jury comprised neither a jury of the defendants' peers nor a fair cross-section of their community. Although the jury process of only selecting the "best" jurors was race-neutral, its application had a systemic impact of excluding African American jurors.¹²⁷

1950

***Cassell v. Texas* 339 U.S. 282**

Summary of Facts and Issues: An African American man convicted by an all-white jury challenged his conviction, alleging that Dallas County jury commissioners, for 21 consecutive jury lists, had consistently limited African Americans selected to serve on grand juries. The commissioners claimed that they did not know any African Americans who qualified for jury service, at the same time admitting that they chose jury members only from those with whom they were personally acquainted. The Court overturned the conviction on the basis of unlawful, systematic exclusion of African Americans from juries, holding that African Americans are denied the equal protection of the laws when indicted by a grand jury from which African Americans as a race have been intentionally excluded.¹²⁸

Impact of Ruling: The Court held that a practice of only selecting jurors who are personally known by the jury selectors violates the Fourteenth Amendment, and that jury commissioners have an obligation to familiarize themselves fairly with the qualifications of eligible jurors of the county without regard to race or color.¹²⁹

1953

***Brown v. Allen* 344 U.S. 443**

Summary of Facts and Issues: Several African American men convicted of various capital offenses in different cases asserted a range of claims as to the exclusion of African Americans from their juries and the extraction of confessions from the accused. One petitioner, Brown, alleged discrimination in the selection of grand and trial jurors, which were based on tax records. Brown contended that no more than one or two African Americans had served on a grand jury panel and that no more than five had served on a trial jury in the county. Another petitioner, Speller, likewise challenged his conviction on the grounds of racial exclusion of potential jurors. In Speller's case, the names of potential jurors were placed in a box, with a dot next to African American jurors' names, and the county had had no African American jurors in any recent case, including Speller's.¹³⁰

Impact of Ruling: The Court held that the petitioners did not provide sufficient evidence of systematic discrimination; a mere showing of disproportionality was not sufficient to merit a granting of a writ of habeas corpus. The tax lists, in the case of Brown, were the most comprehensive lists of names available; in Speller's case, a child drew the names of the potential jurors, in public, convincing the Court that no discrimination had occurred.¹³¹

***Avery v. State of Georgia* 345 U.S. 559**

Summary of Facts and Issues: Petitioner, an African American man, was convicted of rape and sentenced to death in Fulton County, Georgia, by an all-white jury. He challenged the jury selection process, which involved pulling slips of paper out of a box; the names of potential white jurors were written on white slips and the names of African American potential jurors on yellow slips, to be selected by the judge and sent to the clerk for processing.¹³²

Impact of Ruling: The Supreme Court did not find racial discrimination in the selection of the slips, but in the process itself; the fact that not a single African American was chosen presents a prima facie case of discrimination, and the use of different colored slips made it easier to discriminate. The Court ruled that once a defendant establishes a prima facie case of discrimination, it is the state's burden to present sufficient evidence to dispel the prima facie case, regardless of whether the defendant has proven a particular act of discrimination by a particular person.¹³³

1961

***Monroe v. Pape* 365 U.S. 167**

Summary of Facts and Issues: Thirteen Chicago police officers broke into the African American petitioners' home early in the morning without a warrant. After forcing the petitioners to stand naked in one room while they ransacked the home, officers took one of the petitioners to the police station where he was interrogated for 10 hours about a murder. He was then released without charges. The petitioners filed an action under 42 U.S.C. section 1983 against the police officers and the City of Chicago for violating their rights under the color of law. The lower court dismissed the City and the police officers. The petitioners appealed. The United States Supreme Court reversed in part and affirmed in part. Specifically, it held that the police officers acted under color of law when they entered the petitioners' home and conducted an unreasonable search and seizure and they could be held individually liable under section 1983. Accordingly, it reversed that aspect of the lower court's decision. It affirmed the part of the decision dismissing the City of Chicago because a municipality could not be liable under section 1983.¹³⁴

Impact of the Ruling: The Court examined the legislative history of section 1983 to conclude that in passing the statute, Congress intended to permit citizens to sue officials who violate their constitutional rights. The same could not be said for municipalities, however, because municipalities are not “persons” within the meaning of the statute.¹³⁵

Subsequent History: *Monroe v. Pape*’s holding that municipalities are immune from liability under section 1983 was overruled by *Monell v. Dep’t of Soc. Servs. of City of New York* (1978) 436 U.S. 658, 701.

***Mapp v Ohio* 367 U.S. 643**

Summary of Facts and Issues: This case arises out of a search that was conducted without a warrant. Three police officers arrived at appellant’s residence based on information that “a person [was] hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home.” When the officers demanded entrance, they were refused. They returned later and forcefully entered the home without a warrant and searched it, where they found obscene materials. Petitioner was arrested and later convicted.¹³⁶

The United States Supreme Court reversed the conviction. The Court held that the right to privacy embodied in the Fourth Amendment is enforceable against the states, and because it is enforceable in the same manner as other basic rights secured by the Due Process Clause, the exclusionary rule applies to violations of that right. “Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.”¹³⁷

Impact of Ruling: The Court held that the exclusionary rule applied to state violations of the right to privacy. The Fourth Amendment’s right of privacy is enforceable against the states through the Due Process Clause of the Fourteenth Amendment. The exclusionary rule, which applies to the federal government’s violation of the right to privacy, also applies to violations of the right by the state.¹³⁸

1964

***Bouie v. City of Columbia* 378 U.S. 347**

Summary of Facts and Issues: This case arose out of a “sit-in” demonstration at Eckerd’s Drug Store in Columbia, South Carolina. The petitioners, two African American college students, took seats in the restaurant

at Eckerd’s and waited to be served. After they were seated, an employee who did not speak to them put up a “no trespassing” sign. Petitioners continued sitting at the booth, and the store manager called the police to remove them. After the police arrived, the petitioners were asked to leave again. When they refused to leave they were arrested and later convicted of trespass. After the state court affirmed their convictions, they sought review in the Supreme Court on the grounds that their convictions violated due process and equal protection. The Supreme Court reversed their convictions on due process grounds, finding they did not have fair warning that the conduct for which they were convicted was rendered criminal by a South Carolina statute.¹³⁹

Impact of the Ruling: The Court’s decision affirmed that due process requires fair warning of conduct that is a crime.¹⁴⁰

1966

***Davis v. North Carolina* 384 U.S. 737**

Summary of Facts and Issues: Petitioner, an African American, was tried and convicted on a charge of rape-murder. The prosecution offered a written confession and testimony regarding an oral confession made to law enforcement into evidence at trial. Petitioner’s counsel objected on the ground that the confessions were not freely and voluntarily given. After hearing testimony, the trial judge ruled that the confessions were voluntarily made and admitted them into evidence. The jury returned a verdict of guilty without a recommendation for life imprisonment, and petitioner was sentenced to death.¹⁴¹

The Supreme Court reversed his conviction. The confessions were the end product of coercive influences, including a 16-day detention during which he was not advised of any rights and subjected to repeated interrogations while isolated from everyone but the police. Due process required the reversal of his conviction.¹⁴²

Impact of the Ruling: Because of the non-retroactivity of *Miranda v. Arizona*, the Court relied on the Due Process Clause of the Fourteenth Amendment and its voluntariness standard to find that the interrogation of defendant, who was an impoverished African American with a third or fourth grade education, was unconstitutional. The case established that *Miranda* did not alter due process concerns of voluntariness. Therefore, common police interrogation tactics, which often relied on the accused not knowing their rights, would continue to be reviewed under the Fourteenth Amendment.¹⁴³

1967

***Whitus v. Georgia* 385 U.S. 545**

Summary of Facts and Issues: The defendants, African American men convicted of murder by all-white juries, filed petitions for writs of habeas corpus challenging the compositions of the grand and trial juries. In selecting the jurors, the jury commissioners had followed Georgia law, in which the grand and trial jury lists were pulled from county tax digests, which were segregated by race and chosen by court employees, as well as from personal acquaintances of the commissioners. Twenty-seven percent of the taxpayers of the county were African American, of whom zero were selected for the trial jury and one of whom was selected for the grand jury.¹⁴⁴

Impact of Ruling: The Court followed its ruling in *Avery v. State of Georgia* (1953) 345 U.S. 559, finding a racially segregated jury selection system based on tax rolls to be an unconstitutional violation of the defendants' Fourteenth Amendment rights. This system, combined with the selection of personal acquaintances of the commissioners, provided an opportunity for discrimination, regardless of the intent of the commissioners, or the race-neutrality of the face of the law. The Court also affirmed that a defendant has the burden to provide the existence of purposeful discrimination; once a prima facie case has been made, the burden shifts to the prosecution.¹⁴⁵

***Sims v. Georgia* 389 U.S. 404**

Summary of Facts and Issues: Petitioner, an African American man, was convicted of rape and sentenced to death by an all-white jury. Police had detained him for more than eight hours, depriving him of food and refusing access to counsel. The Court affirmed the holding in *Whitus v. Georgia* (1967) 385 U.S. 545 that confessions produced by violence or threats of violence are involuntary and cannot be used against the person giving them. Additionally, the Court ruled that defendant's equal protection rights were violated where jury commissioners selected jurors they personally knew from county tax rolls that separate taxpayers by race, and the percentage of African Americans on the tax digests were much higher than on the jury lists.¹⁴⁶

Impact of Ruling: The Court again affirmed that a purportedly race-neutral system of jury selection that relies on personal acquaintances can violate the Fourteenth Amendment.¹⁴⁷

1968

***Terry v. Ohio* 392 U.S. 1**

Summary of Facts and Issues: A police officer conducted a "stop and frisk" of two men who they suspected planned a robbery. The officers had neither a warrant nor probable cause, but merely observed the men "casing" a location. Petitioner Terry argued that the "stop and frisk" was a violation of his Fourth Amendment right protecting him against unconstitutional searches and seizures.¹⁴⁸

Impact of Ruling: The U.S. Supreme Court held that police can conduct a "stop and frisk" without a warrant as long as they have reasonable suspicion that a person committed a crime and may be armed. This ruling created a new category of government searches and seizures based on "reasonable suspicion" that remain constitutional under the Fourth Amendment.¹⁴⁹

Subsequent History: In *Minnesota v. Dickerson* (1993) 508 U.S. 366, 376-377, the Court expanded the holding in *Terry* and held that officers may confiscate nonthreatening contraband detected during a *Terry* pat-down search, so long as it did not exceed the bounds of *Terry* (i.e., the protective search may not go beyond what is necessary to determine whether the person is armed.)

1970

***Sibron v. New York* 392 U.S. 40**

Summary of Facts and Issues: This case considers two separate situations that involved the constitutionality of New York State's "stop and frisk" practice. The appellants were convicted of crimes in state court on the basis of evidence seized from their persons by police officers. The Court of Appeals of New York held that the evidence was properly admitted, on the ground that the searches that uncovered it were authorized by the statute.¹⁵⁰

Impact of the Ruling: In one appellant's case, the Court refused to permit the search of a drug suspect who police had no reason to believe was armed and dangerous. "The police officer is not entitled to seize and search every person he sees on the street or of whom he makes inquiries." The Court provided guidelines for law enforcement to follow in order to search and arrest suspects. The Court found that the officer's search was not reasonably limited in scope to accomplish the only goal that justified the search: protecting the officer by disarming a potentially dangerous person. As a result, the search violated the Fourth Amendment. By contrast, in the other appellant's case, the court noted the officer properly considered furtive actions and flight, as well as specific knowledge relating the suspect to the evidence of crime in the decision to make an arrest. The search was thus reasonable because it was properly incident to a lawful arrest.¹⁵¹

***Carter v. Jury Commission of Greene County* 396 U.S. 320**

Summary of Facts and Issues: A group of African American citizens of Greene County, Alabama, filed a class action against the governor and county officials, alleging that they were wrongfully excluded from the jury rolls because of their race. Under Alabama's juror-selection statutes, the governor appointed a three-member commission for each county; the commission employed a clerk, who was charged with obtaining the name of every citizen of the county between the ages of 21 and 65. The commission then prepared a jury roll containing the names of all citizens "generally reputed to be honest and intelligent and...esteemed in the community for their integrity, good character and sound judgment."¹⁵² In this case, the clerk did not gather all of the names of potentially eligible jurors, but relied on the previous year's roll, adding new names from suggestions from the commissioners. While the county population was 75 percent African American, only seven percent of the names on the jury list were of African American citizens.

Impact of Ruling: The Supreme Court noted that this was its first case in which African American plaintiffs sought affirmative relief from a discriminatory jury system, rather than a criminal defendant seeking relief from a conviction. The Court held that Alabama's jury system was valid, even though the application of the law resulted in the exclusion of African American jurors. However, the Court upheld the lower court's order regarding the administration of the juror selection statute, requiring that the county compile a new jury roll composed of all eligible citizens of the county.¹⁵³

***Evans v. Abney* 396 U.S. 435**

Summary of Facts and Issues: A public park in Macon, Georgia, was open to white residents only based on the provisions of a testamentary trust. In *Evans v. Newton* (1966) 382 U.S. 296, the Court had held that the city could not continue to operate the park in a segregated manner without violating the Fourteenth Amendment; therefore, the trust failed and the property returned to its heirs. African American citizens who sought to integrate the park appealed this holding, arguing that closing the park violated their Fourteenth Amendment right to equal protection under the law.

Impact of Ruling: The U.S. Supreme Court upheld the closing of the park. In reaching this decision, the Court distinguished the facts from its landmark holding in *Shelley v. Kraemer* (1948) 334 U.S. 1, where it ruled that it was unconstitutional for a court to enforce a racially discriminatory land covenant. In *Evans*, the Court applied race-neutral principles and said the destruction

of the park was constitutional because it eliminated all discrimination against African Americans and the loss applied equally to white and African American citizens in Macon.¹⁵⁴

1971

***Bivens v. Six Unknown Named Fed. Narcotics Agents* 403 U.S. 388**

Summary of Facts and Issues: Six Federal Bureau of Narcotics agents entered and searched Bivens' home and arrested him without a warrant. The agents then booked him and subjected him to a visual strip search. In addition to the allegations of Fourth Amendment violations, Bivens, an African American man, sued each of the agents for damages for humiliation and mental suffering. The agents argued they were immune from suit via government privilege because they acted under federal authority.

Impact of Ruling: The Court held that Bivens did have a private right of action for money damages against federal officers for Fourth Amendment violations, recoverable upon proof of his injuries.¹⁵⁵ This case maintains federal court access for private citizens to file claims against federal government officials for some constitutional violations.¹⁵⁶

Subsequent History: The Court initially extended *Bivens* to allow plaintiffs to bring actions against federal officers for Fifth and Eighth Amendment violations.¹⁵⁷ In recent years, the Court limited *Bivens* by holding that it cannot apply in new contexts.¹⁵⁸

1972

***Adams v. Williams* 407 U.S. 143**

Summary of Facts and Issues: Relying on an informant's tip that Williams was illegally carrying a gun and narcotics, a police officer approached Williams' car and reached in when Williams rolled down his window and removed a gun from his waistband. The officer then arrested Williams and searched his car, finding drugs. Williams was convicted and after the Supreme Court of Connecticut affirmed, Williams challenged the conviction on the ground that the state was imprisoning him unlawfully based on evidence that should not have been admitted at trial.

Impact of Ruling: The U.S. Supreme Court held that a police officer may conduct a search based on an informant's tip alone.¹⁵⁹ This allows officers to exercise discretion when determining whether the suspicion is sufficient or reliable.¹⁶⁰

Subsequent History: The Court used the reasoning in *Williams* to justify its holding in *Illinois v. Wardlow* (2000) 528 U.S. 119. In *Wardlow*, a person fled when they saw a police officer in a high crime area, and the Court found the police's subsequent stop and search was reasonable based upon the person's suspicious behavior, even if they had acted out of intimidation or fear.¹⁶¹

Alexander v. Louisiana 405 U.S. 625

Summary of Facts and Issues: Defendant, who was convicted of rape and sentenced to life in prison, challenged the selection method used to form the grand jury. The grand jury pool of 20 had one African American, but the grand jury itself was all white. In forming the grand jury, the jury commissioners collected from potential jury members approximately 7,000 questionnaires, which contained a space to indicate the race of the recipient, and later excluded many because they were deemed not qualified or exempted from service. They then relied on the remaining 2,000 questionnaires to randomly select 400 people to serve on the grand jury. Of those selected, only 27, or 7 percent, were African American; the parish population was 21 percent African American at the time.

Impact of Ruling: The Court held that, while there is no numbers-based standard for determining systematic exclusions of African Americans from juries, there was unfair racial discrimination in this grand jury process. The racial designation on the questionnaires provided a clear and easy opportunity for discrimination; even if the defendant could not point to a specific instance of discrimination, the opportunity is sufficient to establish a Fourteenth Amendment violation.¹⁶²

Peters v. Kiff 407 U.S. 493

Summary of Facts and Issues: Peters, a white man convicted of burglary, challenged the systematic exclusion of African Americans from the juries that indicted and convicted him. The state argued that Peters was not entitled to a reversal of his conviction because he did not provide affirmative evidence of actual harm.

Impact of Ruling: In a case of first impression, the Court ruled that a white defendant could challenge the systematic exclusion of African American jurors. The fact that the juries were illegally constituted was sufficient to establish a Fourteenth Amendment violation. This decision benefitted African American defendants as well, by strengthening the principle that a jury must be composed of a representative cross section of the community, and that any defendant is harmed by the systematic exclusion of jurors of any race on the basis of their race, regardless of whether they have demonstrated actual harm resulting from the exclusion.¹⁶³

Subsequent History: In *Hobby v. United States* (1984) 468 U.S. 339, 350, the Court held that, assuming discrimination entered into the selection of federal grand jury foremen, such discrimination did not warrant the reversal of the conviction of, and dismissal of the indictment against, a white male bringing a claim under the due process clause.

1973

Ham v. South Carolina 409 U.S. 524

Summary of Facts and Issues: Defendant Ham, who was convicted of the possession of marijuana, challenged his conviction because the trial judge refused to examine jurors on voir dire as to their racial prejudices. His counsel had asked the judge to ask potential jurors two questions regarding their racial biases, a question related to possible prejudice against beards (Ham was bearded), and a fourth question regarding publicity about drugs; the judge refused to ask any of the questions. Ham's defense was that the state was targeting him for his civil rights activities.

Impact of Ruling: The Court held that the Fourteenth Amendment and circumstances of this case required the judge to interrogate the jurors on the subject of racial prejudice. The Fourteenth Amendment ensures essential demands of fairness; the Court found that to advance this fairness, the trial court, while not required to ask the specific questions of defendant's counsel, must at least make an inquiry, since the defendant relied on an argument that he was racially profiled.¹⁶⁴

Subsequent History: The Court soon clarified that the *Ham* decision would be construed narrowly. In *Ristaino v. Ross* (1976) 424 U.S. 589, 597, the Court held that the Constitution did not always entitle a defendant to have questions posed during voir dire on the issue of racial bias; this entitlement materialized in *Ham* because "[r]acial issues . . . were inextricably bound up with the conduct of the trial."

Davis v. United States 411 U.S. 233

Summary of Facts and Issues: Davis, an African American federal prisoner, was convicted by an all-white jury. He made an untimely challenge to the composition of the grand jury under a federal habeas corpus proceeding, arguing that the unconstitutional discrimination precludes the timeliness requirement.

Impact of Ruling: The Court found that a motion to dismiss a conviction on the basis of exclusion of qualified African American jurors, brought three years after the conviction, should be denied as untimely. The Court held that an allegation of deprivation of constitutional rights was not

sufficient to overcome an explicit timeliness waiver contained in the Federal Rules of Civil Procedure.¹⁶⁵

***Tollett v. Henderson* 411 U.S. 258**

Summary of Facts and Issues: Defendant was indicted by an all-white jury for murder and pleaded guilty on advice of his counsel, receiving a sentence of 99 years in prison. Years later, he petitioned for habeas corpus, claiming that his confession had been coerced and that he had ineffective assistance of counsel.

Impact of Ruling: The Court held that state prisoners cannot make a separate claim of discrimination in grand jury selection when they had already pleaded guilty with their lawyers' advice. However, they could challenge their guilty plea if they could prove that their counsel gave them advice outside of the range of competence demanded of attorneys in criminal cases. The Court remanded the habeas petition to the lower court to determine whether counsel's advice was within the range of competence.¹⁶⁶

1975

***Johnson v. Mississippi* 421 U.S. 213**

Summary of Facts and Issues: Six African American men boycotting businesses in Mississippi for racial discrimination in employment were arrested and charged with conspiracy to bring about a boycott. The petitioners sought to remove the case to federal court, arguing that the underlying charges were unconstitutional and in violation of the Civil Rights Act of 1968, which protected their right to participate and encourage participation in boycotts.

Impact of Ruling: The U.S. Supreme Court found that the Civil Rights Act of 1968 did not apply to state prosecutions, but only crimes of racial violence: petitioners did not have a right to be free from arrest and prosecution for federally protected conduct. Since there was no federal statutory authority, petitioners could not bring the case in federal court.¹⁶⁷

1976

***Ristaino v. Ross* 424 U.S. 589**

Summary of Facts and Issues: An African American man, Ross, was tried for crimes against a white man. During voir dire, the trial court was mandated by statute to inquire generally into prejudice but the trial court judge refused. Ross appealed, alleging his federal constitutional rights were violated because he was denied the opportunity to inquire about racial prejudice.

Impact of Ruling: The U.S. Supreme Court held that questioning potential jury members during voir dire about

racial prejudice is not required under the Constitution and can be made on a case-by-case determination.¹⁶⁸

Subsequent History: The Court later held that defendants in interracial capital cases are entitled to question jurors about potential racial bias.¹⁶⁹

***Francis v. Henderson* 425 U.S. 536**

Summary of Facts and Issues: An African American man convicted of felony murder filed a habeas corpus petition in federal court six years after his conviction, alleging his trial was unconstitutional because African American jurors were excluded from the grand jury that indicted him.

Impact of Ruling: The U.S. Supreme Court denied the petition for relief and upheld the rule set out in *Davis v. United States* (1973) 411 U.S. 233, which required a showing of "cause" explaining the petitioner's failure to challenge the constitutionality of the jury before trial, and a showing of actual prejudice, in federal collateral proceedings.¹⁷⁰

1977

***Manson v. Brathwaite* 432 U.S. 98**

Summary of Facts and Issues: The defendant, an African American man, challenged under the Sixth and Fourteenth Amendments the admissibility of a police officer's testimony that identified him as the culpable party.

Impact of Ruling: The U.S. Supreme Court held the officer's identification was reliable, even though a suggestive identification procedure was used. *Brathwaite* established the following factors for the court to consider to regulate the fairness and reliability of eyewitness testimony: (1) the witness' opportunity to view the perpetrator at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the accused; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. These factors are to be weighed against "the corrupting effect of the suggestive identification itself."¹⁷¹

1979

***Rose v. Mitchell* 443 U.S. 545**

Summary of Facts and Issues: Criminal defendants challenged, through a habeas corpus petition, racial discrimination in the selection of the foreman of the grand jury that indicted them, but not the racial composition of the trial jury. In support of their argument, defendants presented evidence that there had not been an African American foreman of a grand jury in the county.

Impact of Ruling: The court held that if a state defendant is convicted, but the grand jury indicting them was

selected based on race, the conviction can be overturned, even if the trial was fair and the person was convicted by a legitimate trial jury, and that these claims can be made in a federal habeas petition. Ultimately, the Court ruled that the defendants did not present sufficient evidence of racial discrimination in the selection of the grand jury foreman and denied the petition.¹⁷²

1980

***United States v. Mendenhall* 446 U.S. 544**

Summary of Facts and Issues: Drug Enforcement Agency agents, who were white, approached the defendant, an African American woman, on a suspicion that she was unlawfully carrying narcotics. After some questioning, the agents asked her to accompany them to their office for further questioning and she complied. After being told she had the right to decline a search, the defendant consented to a search of her person and handbag. The agents then conducted the search and found narcotics in her possession. The defendant appealed her conviction on drug charges, on the ground that she never consented to the search.

Impact of Ruling: The U.S. Supreme Court upheld the conviction and found that the woman was legally searched because she voluntarily went to the agents' office and was not under duress or coercion based on the totality of the circumstances. The Court found that race had not been a decisive factor in whether the defendant freely consented to accompanying them to their office. Since a "reasonable person" would have believed they were free to walk away when first approached by the officers, the defendant's liberty and privacy had not been restricted in violation of the Fourth Amendment.¹⁷³

Subsequent History: In *California v. Hodari D.* (1991) 499 U.S. 621, the Court applied the objective reasonable person standard from *Mendenhall* and elaborated that a show of authority was not enough to determine that a seizure had occurred, noting that "*Mendenhall* establishes that the test for existence of a 'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person."¹⁷⁴

1984

***Palmore v. Sidoti* 466 U.S. 429**

Summary of Facts and Issues: A white father sought custody of his child after the white mother married an African American man. The trial court granted the father custody, claiming that the child could experience a

damaging impact from living in a racially mixed household. The mother appealed.

Impact of Ruling: The U.S. Supreme Court held that the effects of racial prejudice cannot be considered during a custody proceeding because it violates the Equal Protection Clause.¹⁷⁵

1986

***Batson v. Kentucky* 476 U.S. 79**

Summary of Facts and Issues: During the criminal trial of an African American man, a prosecutor used his peremptory challenges to dismiss all African American jurors in the jury pool. After his conviction, the defendant appealed, arguing that the prosecutor's actions violated his Sixth and Fourteenth Amendment rights.

Impact of Ruling: The U.S. Supreme Court ruled that the Equal Protection Clause prohibits prosecutors from challenging potential jurors solely on account of race, or based on the assumption that African American jurors would, as a group, be unable to impartially consider the government's case against an African American defendant.¹⁷⁶

Subsequent History: The Court applied *Batson* in *Hernandez v. New York* (1991) 500 U.S. 352, and ruled that petitioners must show discriminatory intent, not just impact, to demonstrate that prosecutors violated the Equal Protection Clause when using a peremptory challenge.¹⁷⁷

1987

***Anderson v. Creighton* 483 U.S. 635**

Summary of Facts and Issues: Respondents filed a case in state court against a Federal Bureau of Investigation (FBI) agent for damages after he conducted a warrantless search of their home. The FBI agent removed the case to federal court and argued that their Fourth Amendment civil liability claim was barred by qualified immunity.

Impact of Ruling: The U.S. Supreme Court held that the FBI agent was protected by qualified immunity because a reasonable officer would have believed the search was justified. This ruling expanded the scope of qualified immunity to protect officials who conduct unlawful warrantless searches but reasonably believe their actions are legal.¹⁷⁸

1988

***Felder v. Casey* 487 U.S. 131**

Summary of Facts and Issues: In Milwaukee, a group of white police officers questioned an African American man, Felder. The questioning turned hostile and the police beat Felder. Nine months later, Felder brought a lawsuit

against the officers pursuant to 42 U.S.C. section 1983, alleging their conduct was racially motivated and violated his federal civil rights. The officers argued that a state law requiring a 120-day notice of the claim barred Felder from bringing the action.

Impact of Ruling: The U.S. Supreme Court ruled in favor of Felder and found that federal law preempted the Wisconsin notice-of claim law, allowing him to file in state court.¹⁷⁹ In the Prison Litigation Reform Act of 1995, Congress amended 42 U.S.C. section 1997e(a) to require persons in prison to exhaust such administrative remedies as are available before filing a section 1983 action suing over prison conditions. Therefore, *Felder* is no longer good law on the question of exhaustion with respect to section 1983 lawsuits filed by persons in prison.

1991

***Powers v. Ohio* 499 U.S. 400**

Summary of Facts and Issues: Powers, a white defendant, objected under *Batson v. Kentucky* (1967) 467 U.S. 79, when the state used peremptory challenges to remove seven African American potential jurors from his trial jury.

Impact of Ruling: The Court held that a defendant has a right to be tried by a jury that was selected by non-discriminatory criteria. Although the holding in *Batson* emphasized the common racial identity of the defendant and the dismissed prospective juror, the Court in this case held that the defendant's race was irrelevant to his standing to object to the discriminatory use of preemptory challenges. The Equal Protection Clause prohibits a prosecutor from using their peremptory challenges to exclude otherwise qualified and unbiased potential jurors solely because of their race.¹⁸⁰

II. State Statutes and Case Law

1879

Former Cal. Const., art. 1, § 18

Summary of Provisions: "Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State."¹⁸¹

Subsequent History: Section 18 was repealed November 5, 1974. Article 1, section 6, enacted in 1974, is similar to this original provision and provides that "Slavery is prohibited. Involuntary servitude is prohibited except to punish crime."¹⁸²

1850

An Act Regulating Marriages, Ch. 140, § 3 (April 22, 1850)

Summary of Provisions: "All marriages of white persons with negroes or mulattoes are declared to be illegal and void."¹⁸³

An Act Concerning Crimes and Punishments, Ch. 99, Third Division ("Who may be a witness in criminal cases"), § 14 (April 16, 1850)

Summary of Provisions: "No black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part or more of Negro blood shall be deemed a mulatto, and every person who shall have one half of Indian blood shall be deemed an Indian."¹⁸⁴

1851

Act for regulating proceedings in the Court practice of the Courts of the State of California, § 394, Ch. 3 (April 15, 1851)

Summary of Provisions: "...persons having one-half or more of negro blood, shall not be witnesses in an action or proceeding, to which a white person is a party."

1852

California Fugitive Slave Law, Book 33

Summary of Provisions: "When a person held to labor in any State or Territory of the United States under the laws thereof, shall escape into this state, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, or shall have the right to obtain a warrant of arrest for such fugitive..."

***In re Perkins* 2 Cal. 424**

Summary of Facts and Issues: Petitioners were slaves who were brought to California when it was a free state, before its admission into the United States. They argued that the California Constitution prohibited slavery and that because they were brought into a free state, they were free and should not be returned to their master in Mississippi.

Impact of Ruling: The Court held that the master's property right was established by the slaves' residence,

which was in Mississippi, which established their status as slaves. The Court further held that California's fugitive slave law applied and required that they be returned to their master.¹⁸⁵

1854

***People v. Hall* 4 Cal. 399**

Summary of Facts and Issues: A free white man was convicted of murder through the testimony of a Chinese-American witnesses. The California Supreme Court reversed his conviction, holding that the 1850 state law that prohibited “Black or Mulatto person[s], or Indian[s]” from giving evidence in favor or, or against, a white man, applied to Chinese persons as well.¹⁸⁶

Impact of Ruling: The California Supreme Court ruled the testimony was inadmissible and the witness incompetent, and that Chinese-Americans were included in the statute since the intention of the Legislature is clear, and if the Legislature would have known of the specific minority they would have included it by name, and because the specific words used in the statute are generic terms used to exclude all races other than white.¹⁸⁷

Subsequent History: In *People v. Elyea* (1859) 14 Cal. 144, 146, the California Supreme Court noted that “we cannot presume that all persons having tawny skins and dark complexions are within the principle of [Hall],” and that the statute itself made it impossible to adopt any rule of exclusion based solely on color; other factors such as birthplace and parentage of a witness may be needed. In that case, the witness whose testimony was sought to be excluded was from Turkey, whose population was mostly Caucasian. In *People v. Howard* (1860) 17 Cal. 63, 64, while accepting the district attorney’s argument that some crimes will go unpunished, the Court held that pursuant to statute, even as an “injured party,” African American and “mulatto” persons are incompetent witnesses against white individuals. In posthumously admitting applicants to the California State Bar, who were previously barred by the federal Chinese Exclusion Act, the Court in *In re Chang* (2015) 60 Cal.4th 1169, 1172, 1175, found that denial violated equal protection and cited *Hall* as an example of previously upheld discriminatory laws and government action.

1858

***In re Archy* 9 Cal. 147**

Summary of Facts and Issues: A Mississippi citizen petitioned the Court for the recovery of his property, a 19-year old African-American enslaved person; and argued that the Eighteenth section of the Constitution of California, that “neither slavery nor involuntary servitude except for

the punishment of crimes shall ever be tolerated in this State,” could not be applied to a non-California citizen, that Mississippi law should apply, and that the constitutional declaration was not enough without a Penal Code, remedies, or legislative action giving life to the proclamation.

Impact of Ruling: The Court disagreed that the constitutional bar needed anything more to be effective; however, it also supported a citizen's federal right to travel between states with one's own property, applied Mississippi law under the law of comity based on the length of time of the non-citizen in the state, and because this was the first case to come under this section, exempted plaintiff from a rigid enforcement – although the court stated that, going forward, it would enforce the rule strictly.

Subsequent History: Decided during the same term, in *Pleasants v. North B. & M. R. Co.* (1868) 34 Cal. 586, 589, the Court reiterated the holding, requiring proof of special damages, malice, ill will, or wanton or violent conduct by defendant, in addition to statements such as “we don't take colored people in the cars.”

1948

***Hughes v. Superior Court* 32 Cal.2d 850**

Summary of Facts and Issues: Petitioners picketed a store, arguing that the store should have clerks more representative of the racial makeup of its customers (i.e., that there should be more African American store clerks). A preliminary injunction was subsequently issued, ordering them to stop picketing for that specific purpose. The petitioners were then found in contempt of court for willfully violating the preliminary injunction and sought to annul the judgment. The petitioners argued that the right to picket peacefully and truthfully is one of organized labor's lawful means of advertising its grievances to the public, and as such, is guaranteed by the Free Speech Clause of the Constitution.

Impact of Ruling: The California Supreme Court affirmed the lower court's injunction, stating that if the store yielded to the demand of its petitioners, its resultant hiring policy would have constituted, as to a proportion of its employees, “a closed shop and a closed union in favor of the Negro race [. . .] because race and color are inherent qualities which no degree of striving or of other qualifications for a particular job could meet, those persons who are born with such qualities constitute, among themselves, a closed union which others cannot join.”¹⁸⁸ Specifically, the Court held that the injunction in the case is limited to enjoining picketing for a specifically designated unlawful purpose: arbitrary discrimination in favor of African Americans, based on race alone.¹⁸⁹

1975

***Murgia v. Municipal Court* 15 Cal.3d 286**

Summary of Facts and Issues: The defendants sought a writ of mandate challenging the trial court's ruling that denied all discovery on discriminatory prosecution issues. Defendants were members of the United Farm Workers Union (UFW) and alleged that local law enforcement were utilizing penal statutes discriminatorily against non-whites. They sought discovery to defend themselves against criminal prosecution emanating from picketing and organizational activities of the UFW.

Impact of Ruling: The California Supreme Court held that the equal protection clauses of the federal and California Constitutions safeguard individuals from intentional and purposeful invidious discrimination in enforcement of all laws, including penal statutes, and a defendant may raise such a claim of discrimination as a ground for dismissal of a criminal prosecution. The trial court erred in barring defendants' right to access to discover information relevant to their claim of intentional and purposeful, invidious discrimination. The "plausible justification" standard held sway in California until 1990. Penal Code section 1054, subdivision (e) took effect in 1990, and it prohibited any discovery in a criminal case that was not expressly mandated by statute or required by the United States Constitution.

1978

***People v. Wheeler* 22 Cal.3d 258**

Summary of Facts and Issues: Defendants were two African American men convicted by an all-white jury of murdering a white grocery store owner in the course of a robbery. Although there were a number of African American people summoned to hear the case, called to the jury box, questioned on voir dire, and passed for cause, the prosecutor proceeded to strike every single African American from the jury by means of their peremptory challenges. The defendants' motions for mistrial were denied by the trial court.

Impact of Ruling: The California Supreme Court held that the use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community. The Court further held that the trial court made a prejudicial error by not requiring the prosecutor to respond to the defendants' allegation of discrimination and in denying the defendants' motion for a mistrial without a rebuttal showing by the prosecutor that the challenges were each predicated on grounds of specific bias.

1979

***People v. Allen* 23 Cal.3d 286**

Summary of Facts and Issue: Defendants were African American men were life prisoners who were convicted of fatally stabbing a white correctional officer and sentenced to death. Although the pool from which the jury was selected included a broad cross-section of racial and ethnic groups, the prosecutor used their peremptory challenges to exclude all 14 African Americans who were tentatively seated as either a regular or alternate juror. .

Impact of Ruling: As the Court in *Wheeler* established, peremptory challenges may not be used based on race alone. In this case, the prosecutor used peremptory challenges to remove 14 African American potential jury members from different genders, and economic backgrounds, leaving race as the only other commonality. The Court affirmed the state's commitment to diverse juries, finding that the trial court erred in rejecting defendants' objections to the jury selection process and erred in permitting the case to be tried by a jury from which African American prospective jurors had been unconstitutionally excluded.

***People v. Bower* 24 Cal.3d 638**

Summary of Facts and Issues: Officers noticed Defendant Bower, a white man, in the presence of African American men at night in a predominantly African American residential area. The officers stopped Bower and a search of his person revealed a concealed weapon, and Bower was convicted for being a felon in possession of a concealable firearm. At trial, one officer testified that he had "never observed a white person in the projects or around the projects on foot in the hours of darkness or for innocent purposes" to justify the stop and search.¹⁹⁰

Impact of Ruling: The California Supreme Court reversed Bower's conviction because his detention was not justified and the subsequent search was illegal. The court held that the motion to suppress should have been granted and determined that a white man in the presence of African American men in a predominantly African American neighborhood was not a valid reason to be detained. The Supreme Court further held that the other circumstances relied on by the officer in attempt to justify the detention were not in fact relied on by the officer, and in any event, were insufficient additional circumstances to warrant the intrusion.¹⁹¹ Pre-Proposition 8 California decisions such as *Bower* held that the lack of subjective suspicion may render a detention unlawful, requiring the suppression of evidence flowing from the detention, but following Proposition 8 the analysis of such evidentiary issues must be conducted under federal law.¹⁹²

1983

***People v. Hall* 35 Cal.3d 161**

Summary of Facts and Issues: An African American defendant was convicted of aggravated assault and false imprisonment of a white woman after a jury retrial. The first jury trial was declared a mistrial after the lone African American juror did not join the remainder of the jury in voting for guilty verdicts. During the voir dire of jury at the retrial, the prosecutor used peremptory challenges to excuse at least four African American jurors. On two occasions, the defendant asked that the prosecutor be required to make a showing that no systematic exclusion of African American people was underway if any further peremptory challenges were used to exclude African American jurors, but the prosecutor declined and the court deferred the rulings. After a facially neutral explanation was eventually provided by the prosecutor, the judge accepted it and expressed a view that systematic exclusion of a class of potential jurors occurs only when the prosecutor expressly states an intent to exclude all members of a class. Defendant's motion for a new trial was denied, he was convicted and subsequently appealed.

Impact of Ruling: The California Supreme Court reversed the conviction, concluding that the trial court failed to exercise its judgment to determine whether the prosecutor's use of peremptory challenges was for reasons relevant to the case before it or reflected a constitutionally impermissible group bias. It is imperative, if the constitutional guarantee is to have real meaning, that once a prima facie case of group bias appears, the allegedly offending party is required to come forward with explanation to the court that demonstrates other bases for the challenges *and* that the court satisfies itself that the explanation is genuine. The Supreme Court explained that the record itself showed that the trial court made no serious attempt to evaluate the prosecutor's explanation, and the disparate treatment of excusing so many African American jurors demanded further inquiry on the part of the trial court.¹⁹³

1985

***People v. Motton* 39 Cal.3d 596**

Summary of Facts and Issues: Defendant appealed from a conviction for second-degree murder. During jury selection, defense counsel objected that the prosecutor was exercising his peremptory challenges to exclude African Americans from the jury. Seven out of the thirteen of the prosecutor's peremptory challenges were directed against African American people, leaving only one African American person on the jury. The trial court found that no prima facie case had been established and did not require the prosecutor to justify his challenges.

Impact of Ruling: The California Supreme Court found that the trial court committed reversible error per se in finding that the defendant did not present a prima facie showing and in failing to require the prosecutor to justify his challenges. The court also held that African American people generally, and African American women specifically, are considered members of a "cognizable" group and that "[w]here Blacks comprise a significant portion of the population – particularly in Alameda County where blacks comprise the majority population in some areas – black women are a vital part of that 'ideal cross section of the community' that should be represented on jury panels."¹⁹⁴

1987

***People v. Snow* 44 Cal.3d 216**

Summary of Facts and Issues: An African American man appealed his conviction of first-degree murder of a white victim. During voir dire, the defense attorney on multiple occasions objected to the prosecutor's repeated use of peremptory challenges to exclude African American people from jury, stating that it was a "systematic exclusion" of African American jurors. In response, the prosecutor denied any of his exclusions were based on race stating he had his reasons and argued that the defense systematically excluded all white persons, but not one non-white had been excluded by them. Although the trial judge twice commented that the prosecution appeared to be using his peremptories improperly, he declined to require the prosecutor to explain his reasons. Ultimately, six African American people were excluded by the prosecutor and the final jury had two African American jurors.

Impact of Ruling: The Supreme Court held that the trial court's failure to require the prosecutor to explain his peremptory challenges of African American potential jurors was reversible. Citing to *People v. Wheeler* and other similar cases, the court held that the prosecutor was in error in assuming that defense counsel's supposed wrongful exclusion of white people in some manner justified his own exclusion of African American persons. The court further held that just because there were two African American people left on the jury, did not mean that there was not a pattern of unlawful discrimination short of total exclusion, as the fact that two African American jurors were left was not a conclusive factor that discrimination did not occur. In a case where the trial judge himself expressed serious suspicions that the prosecutor was using some of his peremptory challenges to exclude African American people, the trial judge was obligated to conduct further inquiry of the prosecutor on the record.

1988***People v. Wright* 45 Cal.3d 1126**

Summary of Facts and Issues: Defendant was convicted of armed robbery after a group of men in stocking masks armed with handguns robbed a warehouse. The sole evidence against him at trial was eyewitness identification. The trial court declined to give four of the five special jury instructions that defendant requested on eyewitness identification. While he was convicted of all charges by the jury, the jury was unable to reach a verdict as to his co-defendant.

Impact of Ruling: The California Supreme Court held that the trial correctly declined to give four of the five requested jury instructions. Although the trial court erred in failing to give an instruction listing the factors the jury could consider in evaluating eyewitness identifications, the Court found the error harmless. Justice Mosk, in the dissent, discussed studies that show significant impairment in white witnesses' attempts to recognize African American faces. Justice Mosk also disagreed with the majority's conclusion that the error in refusing to give a correct instruction on the factors affecting the eyewitness identifications was harmless.¹⁹⁵

1989***People v. Johnson* 47 Cal.3d 1194**

Summary of Facts and Issues: Defendant Johnson challenged his murder and robbery convictions on various grounds including (1) that the granting of hardship exclusions because of the projected length of the trial tended to systematically exclude poor persons in a disproportionate manner denying a fair cross-sectional jury; and (2) the trial court erred in denying his *Wheeler* motion that the prosecutor used his peremptory challenges to exclude various African American, Jewish, and Asian jurors.

Impact of Ruling: The California Supreme Court affirmed the judgment of the trial court in its entirety. The Court held that the granting of hardship exclusions because of the projected length of the trial did not tend to systematically exclude poor persons in a disproportionate manner, as persons with low income do not constitute a cognizable class. The Court also found that the defendant's *Wheeler* motion was properly denied: the prosecutor's peremptory challenges to African American jurors were not improper because they were based on individual evaluations of each juror's bias (e.g., an African American juror seemed to be prejudiced against police officers and another African American juror discussed how police officers treated African American people differently).¹⁹⁶

1991***People v. Fuentes* 54 Cal.3d 707**

Summary of Facts and Issues: Defendant was convicted of murder and other crimes and sentenced to death after a jury retrial. During jury selection for the retrial, the prosecutor used 14 of their 19 peremptory challenges to exclude potential African American jurors and alternates. The defendant made several objections to the prosecutor's exclusion of African American people, but the trial court postponed hearing the prosecutor's explanation for exclusion until the end of jury selection, and even though the court found some of the prosecutor's excuses "totally unreasonable," or "very spurious," there were "some good reasons" and ultimately decided that the prosecutor had not improperly excluded the prospective African American jurors.¹⁹⁷

Impact of Ruling: The California Supreme Court held that defendant's constitutional right to trial by a jury drawn from a representative cross-section of the community was violated by the trial court's failure to carefully evaluate the prosecutor's explanations for peremptory challenges to African American prospective jurors, which it must do in order to determine whether the challenges reflected a constitutionally impermissible group bias. While the trial court took the first step in the evaluation process by determining "which of the myriad justifications cited by the prosecutor were sham and which were bona fide," the trial court "failed to take the next, necessary step of asking whether the asserted reasons actually applied to the particular jurors whom the prosecutor challenged."¹⁹⁸

1994***People v. Turner* 8 Cal.4th 137**

Summary of Facts and Issues: Turner, an African American defendant, was convicted of murdering two white people after a jury retrial. After the first trial, Turner's conviction was reversed for a *Wheeler* error. In the second trial, Turner challenged the trial court's failure to grant his motion to recuse the same prosecutor in the first trial whose failure to adequately explain his use of peremptory challenges to African American prospective jurors caused the reversal in the first trial, making the defendant unable to receive a fair trial if the jury is not drawn from a representative cross-section of the community. The defendant further cited to *People v. Fuentes* (discussed above), in which the same prosecutor was counsel of record, and in which 10 of the 14 prosecution peremptory challenges were against African American people. The defendant also challenged the trial court's ruling that the defendant did not make a prima facie showing of group bias in the prosecutor's use of peremptory challenges to

excuse three African American jurors, and that regardless the prosecutor provided adequate race-neutral reasons for excusing them.

Impact of Ruling: The California Supreme Court held that the trial court acted within its discretion in denying the motion to recuse, finding that just because the prosecutor made a mistake at prior trial, does not mean he should be subject to recusal at any subsequent trial. The trial court was within its discretion in impliedly concluding that the lack of adequate explanation in the first trial by the prosecutor did not mean he possessed “a vendetta against Black defendants and Black jurors.”¹⁹⁹ Furthermore, the Court’s ruling in *People v. Fuentes* preceded the ruling in this case, the basis for which was the trial court’s failure, not the prosecutor’s misconduct, to determine whether the prosecutor asserted reasons actually applied to the particular jurors challenged.

2013

***People v. Harris* 57 Cal.4th 804**

Summary of Facts and Issues: Defendant was convicted of murder and other charges and was sentenced to death. He challenged the outcome on multiple bases. Among them, was (1) that the trial court violated his right to a fair trial by limiting race-related questions in the jury questionnaire and during voir dire; (2) that the trial court erred by denying his motion to allow counsel to conduct voir dire of each prospective juror individually and separately from the other prospective jurors because the cross-racial nature of the case was likely to evoke racial biases; and (3) the prosecution unjustly removed prospective African American jurors using their peremptory challenges.

Impact of Ruling: As to the above bases, the California Supreme Court found that (1) in light of the nine questions the trial court permitted on racial bias and rejection of five other racial bias questions which were duplicative, collateral or phrased in a biased or non-neutral manner, the defense’s opportunity to explore possible racial bias was sufficient; (2) the trial court did not abuse its discretion in denying defendant’s request for individual sequestered voir dire—such sequestering is not constitutionally required even in a capital case and any sensitive matters, such as examining a juror’s possible racial biases privately, could have been requested by the defendant; and (3) the defendant had not made a prima facie showing that the two challenges were based on race; the challenge of one or two jurors can rarely suggest a pattern of impermissible exclusion, only three of the 69

prospective jurors were African American, and one of the two excused personally knew eight of the witnesses and indicated in his questionnaire that he would be biased.²⁰⁰

***People v. Mai* 57 Cal. 4th 986**

Summary of Facts and Issues: Defendant Hung Thanh Mai was convicted of murder of a police officer and was sentenced to death. One of his various challenges was that his right to a jury drawn from a representative cross-section of the community was violated when the trial court erroneously denied his *Wheeler* objection to the prosecutor’s use of peremptory challenges to excuse the only three African American jurors of the jury pool for racially discriminatory reasons.

Impact of Ruling: The California Supreme Court concluded that substantial evidence supported the race-neutral reasons given by the prosecutor for his excusal of the three prospective jurors. The Court further noted that while considering the *Batson/Wheeler* motion, the court asked for the relevant juror questionnaires, and presumably reviewed them. As such, it appeared to the Court that there was no reason to conclude that the trial court had failed to consider all the factors bearing on the prosecutor’s credibility, the court’s own observation of the relevant jurors’ voir dire, its experience as a trial lawyer and judge in the community, and the common practices of the prosecutor’s office and the individual prosecutor himself.²⁰¹

2020

California Proposition 16 - Repeal Proposition 209 Affirmative Action Amendment

Summary of Proposition: Proposition 16 would have allowed state and local entities to consider race, sex, color, ethnicity, and national origin in public education, public employment, and public contracting to the extent allowed under federal law. It would have repealed Proposition 209, which added section 31 of article 1 to the California Constitution in 1996, and which generally banned the consideration of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting in California, subject to some exceptions.

Result of Proposition Vote: Rejected, which resulted in keeping Prop. 209.

Impact of Law: This constitutional amendment to repeal Proposition 209 was rejected by California voters on November 3, 2020.

Endnotes

¹[An Ordinance for the Government of the Territory of the United States North-West of the River Ohio](#) (Jul. 13, 1787) National Archives Catalog (as of May 18, 2023).

²See Knipprath, [July 13, 1787: Northwest Ordinance Provides a Process for Forming New States – Constituting America](#), Constituting America (as of May 18, 2023).

³Andreadis, [The First Fugitive Slave Law in America](#) (May 26, 2020) Harriet Beecher Stowe House (as of May 18, 2023).

⁴ *Ibid.*

⁵ See *ibid.*

⁶ U.S. Const. art. IV, § 2, cl. 3.

⁷Kaczorowski, [Tragic Irony of American Federalism: National Sovereignty versus State Sovereignty in Slavery and in Freedom, The Federalism in the 21st Century: Historical Perspectives](#), (1997) 45 U. Kan. L.Rev. 1015, 1025 (hereinafter Tragic Irony of American Federalism).

⁸ The Editors of Encyclopaedia Britannica, [Fugitive Slave Acts](#) (October 21, 2022) Britannica (hereinafter Fugitive Slave Acts) (as of May 18, 2023).

⁹ [Naturalization Act of 1790](#), Pub. L. 1-3 (Mar. 26, 1790) 1 Stat. 103.

¹⁰ *Ibid.*

¹¹ [Naturalization Act of 1795](#), Pub. L. 3-20 (Jan. 29, 1795) 1 Stat. 414.

¹² [Tragic Irony of American Federalism](#), *supra*, at pp. 1025-1027; [Fugitive Slave Acts](#), *supra*.

¹³ [Tragic Irony of American Federalism](#), *supra*, at p. 1025.

¹⁴ [Fugitive Slave Acts](#), *supra*.

¹⁵ [Naturalization Act of 1798](#), Pub. L. 5-54 (June 18, 1798) 1 Stat. 566.

¹⁶ [Alien and Sedition Acts \(1798\)](#) (November 30, 2022) National Archives (as of May 20, 2023).

¹⁷ See *ibid.*

¹⁸ [Naturalization Act of 1798](#), Pub. L. 5-54, *supra*.

¹⁹ [Naturalization Act of 1802](#), Pub. L. 7-28 (Apr. 14, 1802) 2 Stat. 153.

²⁰ *Ibid.*

²¹ See U.S. Const. art. I, § 2, cl. 3.

²² *Ibid.*

²³ [Missouri Compromise \(1820\)](#) (Jun. 16, 2021), National Archives (as of May 19, 2023).

²⁴ See *ibid.*

²⁵ *Dred Scott v. Sandford* (1857) 60 U.S. 393, 451-452.

²⁶ [Kansas Nebraska Act \(1854\)](#) (May 10, 2022) National Archives (as of May 19, 2023).

²⁷ The 1807 Act is sometimes referenced as the 1808 Act because, although it was passed in 1807, it became effective in 1808

²⁸ *The Josefa Segunda* (1820) 18 U.S. 338, 352-353, 359.

²⁹ See [The Slave Trade](#) (Jan. 7, 2022) National Archives (as of May 17, 2023).

³⁰ *United States v. Preston* (1830) 28 U.S. 57, 60, 66-67.

³¹ *The Merino* (1824) 22 U.S. 391, 394-395, 403-405.

³² *Id.* at pp. 405-408.

³³ See *id.* at pp. 404-408.

³⁴ *The St. Jago de Cuba* (1824) 22 U.S. 409, 410-411, 413, 418-420.

³⁵ *Id.* at p. 415.

³⁶ *The Antelope* (1825) 23 U.S. 66, 67-69, 118, 132-133.

³⁷ See *id.* at pp. 118, 132-133.

³⁸ *The Amistad* (1841) 40 U.S. 518, 587-598.

³⁹ See *id.* at pp. 593-594.

⁴⁰ [The Amistad Case](#) (Aug. 15, 2016) National Archives (as of May 17, 2023).

⁴¹ *Prigg v. Pennsylvania* (1842) 41 U.S. 539, 608-610, 612-613, 625-626.

⁴² *Id.* at pp. 614-615.

⁴³ [Fugitive Slave Acts](#), *supra*.

⁴⁴ Treaty of Peace, Friendship, Limits, and Settlement Between The United States of America and The United Mexican States Concluded at Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922.

⁴⁵ [Treaty of Guadalupe Hidalgo \(1848\)](#) (Sep. 20, 2022) National Archives (as of May 18, 2023).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Pratt et al., [Measuring Race and Ethnicity Across the Decades](#) (Sep. 4, 2015) United States Census Bureau (as of May 17, 2023).

⁴⁹ Urofsky, [Compromise of 1850](#) (April 28, 2023) Britannica (as of May 31, 2023).

⁵⁰ The Kansas Nebraska Act (May 30, 1854) 10 Stat. 277; [Kansas-Nebraska Act \(1854\)](#) (May 10, 2022), National Archives (as of May 19, 2023); Urofsky, [Compromise of 1850](#), *supra*.

⁵¹ Urofsky, [Compromise of 1850](#), *supra*.

⁵² *Ibid.*

⁵³ Edwards and Lash, [The Fugitive Slave Act of 1850](#), National Constitution Center (hereinafter The Fugitive Slave Act of 1850) (as of May 17, 2023).

⁵⁴ *Ibid.*

⁵⁵ Smith, [Bounty Hunters and Kidnapping](#), Encyclopedia.com (as of May 15, 2023); [The Fugitive Slave Act of 1850](#), *supra*.

⁵⁶ [Fugitive Slave Acts](#), *supra*; [The Fugitive Slave Act of 1850](#), *supra*.

⁵⁷ *Bennett v. Butterworth* (1850) 49 U.S. 124, 127-130.

⁵⁸ *Ibid.*

⁵⁹ *Randon v. Toby* (1850) 52 U.S. 493, 493, 520-521.

⁶⁰ *Id.* at pp. 520-521.

⁶¹ [Fugitive Slave Acts](#), *supra*.

⁶² *Ibid.*

⁶³ [The Fugitive Slave Act of 1850](#), *supra*.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Smith, [Bounty Hunters and Kidnapping](#), *supra*; [The Fugitive Slave Act of 1850](#), *supra*.

⁶⁷ [Fugitive Slave Acts](#), *supra*.

⁶⁸ [Kansas Nebraska Act \(1854\)](#) (May 10, 2022) National Archives (as of May 19, 2023).

⁶⁹ The Editors of Encyclopaedia Britannica, [Kansas-Nebraska Act](#) (April 18, 2023) Britannica (as of May 19, 2023).

⁷⁰ History.com Editors, [Bleeding Kansas](#) (October 27, 2009), History (as of May 17, 2023).

⁷¹ *Ibid.*

⁷² *Dred Scott v. Sandford* (1857) 60 U.S. 393, 393, 397-398, 407, 422, 451-452.

⁷³ *Id.*

⁷⁴ U.S. Const., Amend. XIV.

⁷⁵ *Ableman v. Booth* (1858) 62 U.S. 506, 507-511, 517, 523-526.

⁷⁶ [Civil Rights Act of 1866](#) (April 9, 1866) 14 Stat. 27.

⁷⁷ Guelzo and Miller, [Civil Rights Act of 1866, “An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication,”](#) National Constitution Center (as of May 17, 2023).

⁷⁸ [Civil Rights Act of 1870](#) (May 31, 1870) 16 Stat. 140.

⁷⁹ *Blyew v. United States* (1871) 80 U.S. 581, 582-585.

⁸⁰ *Id.* at pp. 592-595.

⁸¹ *See id.* at pp. 596, 599.

⁸² Silverbrook, [The Ku Klux Klan and Violence at the Polls](#), Bill of Rights Institute (as of May 17, 2023).

⁸³ *United States v. Cruikshank* (1875) 92 U.S. 542, 552-559.

⁸⁴ *Ibid.*

⁸⁵ *See* Silverbrook, [The Ku Klux Klan and Violence at the Polls](#), *supra*.

⁸⁶ *New York v. Compagnie Generale Transatlantique* (1883) 107 U.S. 59, 59-63.

⁸⁷ *Id.* at pp. 61-62.

⁸⁸ *United States v. Harris* (1883) 106 U.S. 629, 629-633, 640-641.

⁸⁹ *Id.* at pp. 638-641.

⁹⁰ *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 356-357, 365, 368, 373-374.

⁹¹ *Id.* at pp. 373-374.

⁹² *Carter v. Texas* (1900) 177 U.S. 442, 443, 447-449.

⁹³ *Id.* at p. 447.

⁹⁴ *Brownfield v. South Carolina* (1903) 189 U.S. 426, 427-429.

⁹⁵ *Rogers v. Alabama* (1904) 192 U.S. 226, 229-231.

⁹⁶ *Martin v. Texas* (1906) 200 U.S. 316, 318-321.

⁹⁷ *Batson v. Kentucky* (1986) 476 U.S. 79, 96.

⁹⁸ *Battle v. United States* (1908) 209 U.S. 36, 36-37, 39.

⁹⁹ *Ex Parte Young* (1908) 209 U.S. 123, 159-160, 169-173.

¹⁰⁰ *Ibid.*

¹⁰¹ *Thomas v. Texas* (1909) 212 U.S. 278, 278, 281-283.

¹⁰² *Franklin v. South Carolina* (1910) 218 U.S. 161, 162, 165-168.

¹⁰³ *Id.* at pp. 167-168.

¹⁰⁴ *Moore v. Dempsey* (1923) 261 U.S. 86, 87-91.

¹⁰⁵ *Id.* at pp. 91-92.

¹⁰⁶ *Aldridge v. United States* (1931) 283 U.S. 308, 309, 311.

¹⁰⁷ *Id.* at pp. 310-311, 315.

¹⁰⁸ *Rosales-Lopez v. United States* (1981) 451 U.S. 182, 189-190.

¹⁰⁹ *Powell v. Alabama* (1932) 287 U.S. 45, 49-52, 56-58.

¹¹⁰ *Id.* at pp. 53, 65, 71, 73.

¹¹¹ Cose, [The Saga of the Scottsboro Boys](#) (July 27, 2020) ACLU (as of May 20, 2023).

¹¹² *Norris v. Alabama* (1935) 294 U.S. 587, 597-599.

¹¹³ George, [Who Were the Scottsboro Nine?](#) (March 23, 2021) Smithsonian Magazine (as of May 20, 2023).

¹¹⁴ Bellamy, [The Scottsboro Boys Injustice in Alabama](#) (2014) National Archives (as of May 20, 2023).

¹¹⁵ *Norris v. Alabama*, *supra*, 294 U.S. at pp. 588-591

¹¹⁶ *Id.* at pp. 589-590, 598.

¹¹⁷ *Brown v. Mississippi* (1936) 297 U.S. 278, 279, 286-287.

¹¹⁸ *Chambers v. Florida* (1940) 309 U.S. 227, 229, 235, 237-241.

¹¹⁹ *Id.* at pp. 240-241.

¹²⁰ *Ward v. Texas* (1942) 316 U.S. 547, 547-549, 555.

¹²¹ *Ibid.*

¹²² *Akins v. State of Texas*, *supra*, 325 U.S. 398, 403, 406-407.

¹²³ *Id.* at pp. 403.

¹²⁴ *Haley v. Ohio*, *supra*, 332 U.S. 596, 600-601.

¹²⁵ *Id.* at p. 601.

¹²⁶ *Moore v. New York*, *supra*, 333 U.S. 565, 567-570.

¹²⁷ *Id.* at 565, 567-570.

¹²⁸ *Cassell v. Texas*, *supra*, 339 U.S. 282, 283, 286-290.

¹²⁹ *Ibid.*

¹³⁰ *Brown v. Allen*, *supra*, 344 U.S. 443, 446-447, 466-477, 478-481, 485-487.

¹³¹ *Ibid.*

¹³² *Avery v. State of Georgia*, *supra*, 345 U.S. 559, 560-562.

¹³³ *Id.* at pp. 560-562.

¹³⁴ *Monroe v. Pape*, *supra*, 365 U.S. 167, 169-170, 172, 191-192.

¹³⁵ *Id.* at pp. 172, 191.

¹³⁶ *Mapp v. Ohio*, *supra*, 367 U.S. 643, 644-645.

¹³⁷ *Id.* at p. 660.

¹³⁸ *Id.* at p. 655.

¹³⁹ *Bouie v. City of Columbia*, *supra*, 378 U.S. 347, 347-355.

¹⁴⁰ *Id.* at p. 363.

¹⁴¹ *Davis v. North Carolina*, *supra*, 384 U.S. 737, 738, 740, 752-753.

¹⁴² *Id.* at pp. 740, 752-753.

¹⁴³ *Id.* at pp. 740, 745-747.

¹⁴⁴ *Whitus v. Georgia*, *supra*, 385 U.S. 545, 550-552.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Sims v. Georgia*, *supra*, 389 U.S. at pp. 406-408.

¹⁴⁷ *Id.* at pp. 407-408.

¹⁴⁸ *Terry v. Ohio*, *supra*, 392 U.S. at pp. 5-8.

¹⁴⁹ *Id.* at pp. 15, 30-31.

¹⁵⁰ *Sibron v. New York*, *supra*, 392 U.S. 40, 64.

¹⁵¹ *Id.* at pp. 64-67.

¹⁵² *Carter v. Jury Commission of Greene County*, *supra*, 396 U.S. 320, 323.

¹⁵³ *Id.* at pp. 321-324, 327, 329, 336-337, 339-340.

¹⁵⁴ *Evans v. Abney*, *supra*, 396 U.S. 435, 436, 438-440, 445.

¹⁵⁵ *Bivens*, *supra*, 403 U.S. at pp. 389-390, 397.

¹⁵⁶ See Chapter 11, An Unjust Legal System, *supra*.

¹⁵⁷ *Davis v. Passman* (1979) 442 U.S. 228; *Carlson v. Green* (1980) 446 U.S. 14.

¹⁵⁸ *Ziglar v. Abbasi* (2017) 582 U.S. 120; *Hernandez v. Mesa* (2020) __ U.S. __ [140 S.Ct. 735, 206 L.Ed.2d 29].

¹⁵⁹ *Adams v. Williams* (1972) 407 U.S. 143, 145, 147.

¹⁶⁰ See Chapter 8, Pathologizing the African American Family, for some of the effects of the “War on Drugs.”

¹⁶¹ *Illinois v. Wardlow* (2000) 528 U.S. 119, 125.

¹⁶² *Alexander v. Louisiana* (1972) 405 U.S. 625-628, 630.

¹⁶³ *Peters v. Kiff*, *supra*, 407 U.S. at pp. 495, 497-499, 503.

¹⁶⁴ *Ham v. South Carolina*, *supra*, 409 U.S. at pp. 525-528.

¹⁶⁵ *Davis v. United States*, *supra*, 411 U.S. at pp. 234, 239-240.

¹⁶⁶ *Tollett v. Henderson*, *supra*, 411 U.S. at pp. 259, 266-267, 269.

¹⁶⁷ *Johnson v. Mississippi*, *supra*, 421 U.S. at pp. 223, 225-227.

¹⁶⁸ *Ristaino v. Ross*, *supra*, 424 U.S. at pp. 593, 597-598.

¹⁶⁹ *Turner v. Murray* (1986) 476 U.S. 28, 36-37.

¹⁷⁰ *Francis v. Henderson*, *supra*, 425 U.S. at p. 542.

¹⁷¹ *Manson v. Brathwaite*, *supra*, 432 U.S. at p. 114.

¹⁷² *Rose v. Mitchell*, *supra*, 443 U.S. at pp. 547, 563-564, 566-567, 574.

¹⁷³ *United States v. Mendenhall*, *supra*, 446 U.S. at pp. 544-545, 547, 554, 558.

¹⁷⁴ *California v. Hodari D.*, *supra*, 499 U.S. at p. 628.

¹⁷⁵ *Palmore v. Sidoti*, *supra*, 466 U.S. at pp. 430-431, 434.

¹⁷⁶ *Batson v. Kentucky*, *supra*, 476 U.S. at p. 89.

¹⁷⁷ *Hernandez v. New York*, *supra*, 500 U.S. at pp. 359, 362-363.

¹⁷⁸ *Anderson v. Creighton*, *supra*, 483 U.S. at pp. 637, 641.

¹⁷⁹ *Felder v. Casey*, *supra*, 487 U.S. at pp. 134-136, 153.

¹⁸⁰ *Powers v. Ohio*, *supra*, 499 U.S. at pp. 402-403, 409, 416.

¹⁸¹ [Constitution of the State of California Adopted and Ratified in 1879.](#)

¹⁸² [Cal Const., art. I, sec. 6.](#)

¹⁸³ [Chap 40 An Act Regulating Marriages](#), p. 424.

¹⁸⁴ [Chap 99 An Act Concerning Crimes and Punishments](#), p. 230.

¹⁸⁵ *In re Perkins*, *supra*, 2 Cal. at p. 447.

¹⁸⁶ *People v. Hall*, *supra*, 4 Cal. 399.

¹⁸⁷ *Id.* at pp. 403-404.

¹⁸⁸ *Hughes v. Superior Court* (1948) 32 Cal.2d 850, 856.

¹⁸⁹ *Ibid.*

¹⁹⁰ *People v. Bower*, *supra*, 24 Cal.3d at p. 642.

¹⁹¹ *Id.* at p. 644-645.

¹⁹² *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733.

¹⁹³ *People v. Hall*, *supra*, 35 Cal.3d at pp. 168-169.

¹⁹⁴ *People v. Motton* (1985) 39 Cal.3d at pp. 605-606.

¹⁹⁵ *People v. Wright*, *supra*, 45 Cal.3d at pp. 1132, 1158.

¹⁹⁶ *People v. Johnson*, *supra*, 47 Cal.3d at pp. 1214-1218.

¹⁹⁷ *People v. Fuentes*, *supra*, 54 Cal.3d at p. 713.

¹⁹⁸ *Id.* at pp. 720-721.

¹⁹⁹ *People v. Turner*, *supra*, 8 Cal.4th at p. 163.

²⁰⁰ *People v. Harris*, *supra*, 57 Cal.4th at pp. 831-836.

²⁰¹ *People v. Mai*, *supra*, 57 Cal. 4th at pp. 1050-1054.