February 28, 1967

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Chief, Southeastern Section

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DJ 144-1-1129
#1-063-21

Kenneth P. Frankland

Possible Intervention in Bokulich v.
Jury Commission of Greene County, Ala.
C.A. 66-562 N.D. of Alabama

Posture of the Case

On September 9, 1966, a civil action was filed in the U. S. District Court for the Northern District of Alabama alleging the systematic exclusion of Negroes from the jury roll and jury box in Greene County, Alabama. It is also alleged that Sections 4 and 21, Title 30 Code of Alabama are unconstitutional on their face and as applied to the plaintiffs and further that the all-white jury commission is unconstitutional. Section 4 permits the state court to excuse anyone who appears to the court to be unfit for jury service and Section 21 prescribes the qualifications for jury service including those pertaining to subjective standards.

The plaintiffs are a male white civil rights worker and 3 male Negroes. Defendants are the jury commission of Greene County, its individual members, the jury commission clerk, the circuit judge, the circuit solicitor, the county solicitor and the Governor. The case is brought principally under 42 U.S.C. 1983.

The relief proposed that presentment of criminal charges to the Greene County grand jury on September 19, 1967 against plaintiff Bokulich (a white SCLC worker) be stayed and that the defendants be enjoined from systematically excluding Negroes from the juries in Greene County. Judge Grooms denied the stay September 13 but the Fifth Circuit granted a temporary stay on September 15. On September 22 the plaintiffs amended

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their complaint requesting a three-judge court to hear the constitutionality of the Alabama statute and the same day Judge Grooms issued an order restraining the defendants from presenting the state prosecution until a three-judge panel hears this case. The panel was appointed September 28 and includes District Judges Grooms and Allgood, and Circuit Judge Godbold. No hearing has been set as yet.

Previous Jury Suit in Greene County

On June 11, 1964, Judge Grooms issued a declaratory judgment in Coleman v. Barton, C.A. 63-4, a jury exclusion case in Greene County. In his opinion, the Judge found that there "was no direct evidence of intentional discrimination," that the number of Negroes on a jury roll never exceeded 10% of those eligible, that 10 was the largest number present for jury duty, that 1 Negro served on a petit jury in March 1964, 3 in September 1963 and that 3 or 4 had served on grand juries. He also found that "a far higher percentage of whites meet the qualifications than Negroes" and that the commissioners had no duty to put exempt people on the rolls so that the disparity between those eligible and those selected on the rolls could be a distorted figure.

On those findings and the fact that plaintiff, Coleman (Negro) raised the same issue and requested specific relief in a state court motion for new trial on a murder conviction, the court denied injunctive relief "but without prejudice as to future injunctive relief by further application herein or in any other proceeding." The court did direct the defendants to examine the jury roll and box for compliance with the Alabama standards and declarations made by the court. This case was decided before we could intervene and there is no information in our files on whether we investigated possible intervention after the 1964 act was passed.

Possible Issues Raised in Present Case

1. May a white person raise the issue of exclusion of Negroes? Yes. This is really no problem. Case law, Ballard v. U.S. 329 U.S. 187 (1946), Rabinowitz v. U.S. 366 F. 2d 34 (5th Cir 1966) and the dismissal of the indictments in the Mississippi slayings make this a moot question. Also, there are additional Negro plaintiffs.

2. Does plaintiff Bokulich have standing in federal court to stay a state court prosecution? Yes. This is a potential issue because of the dismissal by Judge Johnson in Davis v. Jury Commission of Montgomery County (C.A. 2479-N M.D. Ala.). However, here there additional are Negro plaintiffs while there were none in Davis and more importantly Judge Groom's order of September 22 says the stay was "necessary in aid of the court's jurisdiction and to protect and effectuate its judgments." This obviously refers to his order in Coleman and the language in the order is verbatim the grounds authorized for such stays in 28 U.S.C. 2283.

3. Whether an all-white state-appointed jury commission is unconstitutional. Plaintiffs allege that the appointing state official, the governor, deliberately keeps the commission segregated and this violates the Constitution, no particular section being cited. It is doubtful that this can be proved much less whether it violates the equal protection of the law.

4. Whether Negroes are systematically excluded from juries in Greene County. Plaintiffs allege that the county is over 65% Negro and that on the venire for the fall term only 19 of 65 names are Negroes, approximately 30%. They also cite the statistical findings in the Coleman case stated above. We do not have any further information on statistics.

My view is that subsequent to the Coleman case, the Greene officials have contacted key men, including Negroes, and probably have visited the precincts as Judge Grooms suggested but have limited the number of

Negroes on the roll and any one venire to a workable percentage (in their view) by applying the subjective standards. It seems to me that the records would show a prima facie case of unconstitutional exclusion by limited inclusion and the real problem is whether the officials could effectively rebut the argument.

5. The last issue and interelated with #4 is whether the Alabama statute (Section 21, Title 30) that prospective jurors be "generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment" is unconstitutional on its face or in its application as vague and lacking objective standards as plaintiffs allege. A finding that the qualification is unconstitutional on its face, in light of the fact that Alabama law allows persons who cannot read but are freeholders or householders to be placed on the roll, would have the effect of placing many illiterate Negroes, of which there is a substantial number in Greene, on the rolls.

My understanding of our position is that some literacy requirement is probably desirable and that subjective standards may not be bad per se. However, discriminatory application thereof is objectionable. In the Lowndes case we asked the court to suspend the subjective standards tests after we had proved a strong case of discrimination. The court did not respond to that issue but stated that if the commissioners use such standards they must do so non-discriminatorily. The Department's position is evidenced by Title II of the proposed 1967 Civil Rights Act which would authorize appropriate relief to suspend such standards but only after a finding of discrimination. This is analasous to relief in the voting cases e.g. U.S. v. Louisiana. This also appears to be in line with the government position in the Rabinowitz case, wherein we took the position that the federal requirements were only minimum standards and the clerks could go beyond the simple federal literary qualification.

Recommendation

I recommend that we get ready to intervene in this case. If we prove that the defendants used the subjective standards to exclude Negroes we could seek relief suspending such standards. We have never participated in a Northern District jury case. It would appear that in view of Coleman v. Barton, the plaintiffs would have problems proving their case without our records analysis. Also this would be the first case in which we could seek judicial enforcement of jury reforms embodied in the 1967 Act.