

Justice for All in the Courtroom

A Lesson by Linda Weber



The Annenberg Foundation Trust at
SUNNYLANDS

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SUMMARY

The goal of the jury selection process in both civil and criminal proceedings is to seat an impartial jury. Longstanding processes and procedures are followed to ensure that a trial is fair for the two opposing parties. The Supreme Court decision in *Edmonson v. Leesville Concrete Co.* (1991), however, wasn't about a violation related to either party's constitutional rights—it was about the rights of prospective jurors. Constitutional protections apply to the rights of all private individuals in a courtroom, including prospective jurors.

Before *Edmonson*, the law only prevented race-based peremptory challenges in criminal trials. With *Edmonson*, the Court extended the prohibition to civil trials. “Racial discrimination,” Justice Anthony M. Kennedy wrote in the opinion of the Court, “has no place in the courtroom, whether the proceeding is civil or criminal.” It threatens the fairness and impartiality of the proceedings and violates equal protection principles.

In this lesson, students analyze the interplay of processes and procedures that courts use to seat an impartial jury and gain appreciation for the essential role of juries in the justice system. They also explore the responsibilities and limits placed on government by the Constitution in the context of civil and criminal trials.

NOTES AND CONSIDERATIONS

- This lesson presumes that students are familiar with the Supreme Court case of *Edmonson v. Leesville Concrete Co.* (1991), understand the court system, court-related vocabulary, and the jury selection process including voir dire and the use of peremptory challenges.
- Technology is relied on to facilitate learning and instruction.
- This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.

Snapshot of Lesson

Grades: Middle School; High School (Focus)

Subject Focus: Civics/Government

Estimated Time: 4 days

Alignment to National Standards for Civics and Government:

Grades 5-8; Grades 9-12

Materials/Equipment Needed:

- Video: A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O'Connor and Anthony M. Kennedy: The Right To Trial by an Impartial Jury available at <http://www.annenbergclassroom.org/page/conversation-impartial-jury>
- Computer with Internet connection and projector for class viewing
- Computer lab

Materials Included:

Readings and Resources

- Chapter 18: “The Right to Trial by Jury” from *Our Rights* by David J. Bodenhamer
- *Edmonson v. Leesville Concrete Co.* (1991)—background story, opinion announcement, full text
- Glossary of Jury- & Court-Related Terms
- “Constitution,” “Justice,” & “Rights” from *Understanding Democracy: A Hip Pocket Guide*
- U.S. Constitution
 - Sixth, Seventh, and Fourteenth Amendments

Student Materials

- Class-Prep Assignment
- Research: “Compare/Contrast Civil & Criminal Trials Through Jury Selection”
- Student’s Video Guide
- Activity: “A Difference of Opinion”
- “Take-Home Quiz: True/False/Opinion”

Teacher Materials

- Keys for student activities
- Teacher’s Video Guide
- Full transcript for video

National Standards for Civics and Government
Standards level detail: grades 5-8; grades 9-12

TOPICS

- Constitutional basis for juries
- Constitutional responsibilities and limits of government
- Diversity in jury selection
- Right to trial by jury
- Rights and responsibilities of private individuals
- Role of juries in the U.S. justice system

NATIONAL STANDARDS

Document: National Standards for Civics and Government (1994) Center for Civic Education
<http://www.civiced.org/index.php?page=stds>

Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - B. What are the distinctive characteristics of American society?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
 - C. How are state and local governments organized, and what do they do?
 - E. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - A. What is citizenship?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?
 - D. What are alternative ways of organizing constitutional governments?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - B. What are the distinctive characteristics of American society?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - B. How is the national government organized, and what does it do?
 - C. How are state and local governments organized, and what do they do?
 - D. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - A. What is citizenship?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at end of this lesson plan.

STUDENT OUTCOMES

Knowledge, skills, and dispositions

Students will . . .

1. Identify the constitutional grounds for jury trials.
2. Compare and contrast civil trials and criminal trials through jury selection.
3. Describe the basic process for selecting an impartial jury in federal court.
4. Consider what it means to have a representative jury in an increasingly diverse society.
5. Explain the role of *voir dire* in the jury selection process.
6. Define **peremptory challenge** and explain its role in *Edmonson v. Leesville*.
7. Consider the implications of the decision in *Edmonson v. Leesville* to justice in the United States.
8. Identify values and principles in a constitutional democracy
9. Recognize and reflect on the importance of civic dispositions

Integrated Skills

1. Information literacy skills

Students will . . .

- Analyze primary and secondary sources to gather information.
- Organize and analyze information.
- Use skimming and search skills.
- Make informed decisions.
- Use prior and background knowledge as basis for new learning.
- Use technology as a tool to support learning.

2. Media literacy skills

Students will . . .

- Read, view, and listen to information delivered via different media formats in order to make inferences and gather meaning.

3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Write in response to questions.
- Respect diverse opinions.
- Support personal opinions with facts.
- Collaborate with others to deepen understanding.

4. Study skills

- Take notes.
- Manage time and materials.

5. Thinking skills

Students will . . .

- Describe and recall information.
- Make connections between concepts and principles.
- Explain ideas or concepts.
- Draw conclusions.
- Analyze and compare opinions.
- Synthesize information.
- Evaluate and judge opinions.
- Use sound reasoning and logic.

6. Problem-solving skills

Students will . . .

- Explain the interconnections within a process that are needed to achieve desired results.
- Identify legal process for conflict resolution.
- Use sound reasoning as the basis for decisions.
- Ask meaningful questions.

7. Participation skills

Students will . . .

- Contribute to small and large group discussion.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings, and convictions.
- Show initiative and self-direction.

ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

1. Compare and contrast research activity
2. Responses to questions in the video discussion guide.
3. A Difference of Opinion
4. Take-Home Quiz: True/False/Opinion

VOCABULARY

civil trial	justice	state actors
criminal trial	peremptory challenge	summons
facts	petit jury	trial by jury
impartial	private actors	trial court
judge	private party	U.S. Constitution
juror	right	U.S. Supreme Court
jury	state	
jury trial	state action	

Refer to the “Glossary of Jury- and Court-Related Terms” included with this lesson for many of the definitions.

Resources for Definitions

FindLaw—Law Dictionary

<http://dictionary.lp.findlaw.com/>

American Bar Association

<http://www.abanet.org/publiced/glossary.html>

***Understanding Democracy, A Hip Pocket Guide*—John J. Patrick**

<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>

Federal Justice Center: Inside the Federal Courts – Definitions

<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu9&page=/federal/courts.nsf/page/D25F87B9E039E0278525682A006FDEC2?openDocument>

U.S. Courts: Commonly Used Terms

<http://www.uscourts.gov/Common/Glossary.aspx>

LESSON OVERVIEW

Goal

Students analyze the interplay of processes and procedures that courts use to seat an impartial jury and consider the role of the court in protecting the rights of all private individuals in the courtroom.

Class-Prep Assignment

Students develop background knowledge and context for the issues discussed in the video that is the focus of this lesson.

DAY 1

Compare and Contrast Civil and Criminal Trials

Students watch and listen to the video *A Call to Act: Ledbetter v. Goodyear Tire and Rubber Co.*, then discuss follow-up questions and complete activities in the video study guide.

DAY 2

Righting a Wrong

Students view the video “The Right to Trial by an Impartial Jury” to learn from the question-and answer exchange between Supreme Court Justices Sandra Day O’Connor, Stephen G. Breyer and Anthony M. Kennedy and a group of students related to the Supreme Court decision in *Edmonson v. Leesville Concrete Co.* (1991).

DAY 3

Justice for All in the Courtroom

Students analyze the reasoning of Justice Kennedy in his opinion announcement for *Edmonson v. Leesville Concrete Co.* to learn about justice, the importance of the jury, constitutional rights, and the functions and limits of government in a civil trial.

DAY 4

A Difference of Opinion

Students form their own opinions after exploring the thinking and reasoning of the dissenting opinions in *Edmonson v. Leesville* written by Justice O’Connor and Justice Antonin Scalia.

Closing Activity

Students reflect on some of the less obvious lessons they may have learned about the way a constitutional democracy works and the roles and responsibilities of citizens.

TEACHING ACTIVITIES: Day by Day

Class-Prep Assignment

Advance preparation is important for students so they have the background knowledge and understanding needed for viewing the video and completing the activities in this lesson. Provide each student with a copy of the assignment and allow time for completion before the first in-class session.

DAY 1: Compare and Contrast Civil and Criminal Trials

Overview: Students watch and listen to the video A Call to Act: Ledbetter v. Goodyear Tire and Rubber Co., then discuss follow-up questions and complete activities in the video study guide.

Goal: Analyze the impact that politically active and engaged citizens can have on the development of laws in the U.S.

Materials/Equipment Needed:

- Technology
 - Computer lab

- Readings (Included)
 - o Glossary of Jury- and Court-Related Terms
 - o Terms from Understanding Democracy, a Hip Pocket Guide: Constitution, Justice, Rights
 - o Excerpt from Chapter 18: “The Right to Trial by Jury” from *Our Rights* by David J. Bodenhamer
 - o Sixth Amendment, U.S. Constitution
 - o Seventh Amendment, U.S. Constitution
 - o Fourteenth Amendment, U.S. Constitution
 - o Background story for *Edmonson v. Leesville Concrete Co.* (1991)
 - o Full text for *Edmonson v. Leesville*

- Student Materials (Included)
 - o Research: “Compare/Contrast Civil and Criminal Trials Through Jury Selection” (1 copy per student)

- Teacher Materials (Included)
 - o Research Key: “Compare/Contrast Civil and Criminal Trials Through Jury Selection”

Procedure:

Several days before class, load the print resources included with this lesson so students may access them throughout the lesson. Review research expectations as you go over the factors in the chart. (Suggested guidelines are in the Teacher Materials section of this lesson.) Students may work individually or in groups to complete the chart. More than 1 day may be needed to complete this activity.

DAY 2: Righting a Wrong

Overview: After discussing the research assignment, students view the video “The Right to Trial by an Impartial Jury” to learn from the question-and-answer exchange between students and Supreme Court Justices Sandra Day O’Connor, Stephen G. Breyer and Anthony M. Kennedy related to the decision in *Edmonson v. Leesville Concrete Co.* (1991). Justice O’Connor and Justice Kennedy were sitting Justices who deliberated the case. Justice Kennedy wrote the majority opinion; Justice O’Connor filed a minority dissent.

Goal: Students consider the interplay of rights and responsibilities in the courtroom and why the Supreme Court chose to hear a complaint about the civil case of *Edmonson v. Leesville Concrete Co.*

Materials/Equipment Needed:

- **Technology**

- o Available from <http://www.annenbergclassroom.org/page/conversation-impartial-jury>
Video Segment: A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O’Connor, and Anthony M. Kennedy – “The Right to Trial by an Impartial Jury”
(Audio time 8:13; Full length with credits 9:04)

- o Computer with Internet connection and projector for class viewing

- **Student Materials (Included)**

- o “Student’s Video Guide: The Right to Trial by an Impartial Jury”

- **Teacher Materials (Included)**

- o “Teacher’s Video Guide: The Right to Trial by an Impartial Jury”

Procedure:

1. As a set-up for the video, briefly review and discuss student responses on the Compare and Contrast research activity from Day 1.
2. Distribute the “Student’s Video Guide: The Right to Trial by an Impartial Jury” to each student. Preview it with the students.
3. Show the video.
4. After the video, divide students into small groups to discuss the Think About It questions in the video guide.
5. Optional: Select questions for students to respond to in writing as a homework assignment.

DAY 3: Justice for All in the Courtroom

Overview: In this session students explore the reasoning behind the majority opinion of the Supreme Court in the civil case of *Edmonson v. Leesville Concrete Co.* (1991). In order to establish whether a constitutional violation occurred, the action in question must first be attributed to the government (state). It is the Constitution that limits the actions of the government in order to protect the rights of private individuals. Where is the government in a civil trial when private parties are in dispute?

Goal: Students analyze the reasoning of Justice Kennedy in his opinion announcement for *Edmonson v. Leesville Concrete Co.* to learn about justice, the importance of the jury, constitutional rights, and the functions and limits of government in a civil trial.

Materials/Equipment Needed:

- **Readings (Included)**

- o Transcript of the Opinion Announcement by *Justice Kennedy: Edmonson v. Leesville Concrete Co.* (1991) (1 per student)
- o Glossary of Jury- and Court-Related Terms (available for reference)

- **Student Materials**

- o Highlighters

Procedure:

1. Briefly review the purpose of the Constitution and discuss how it places limits on the government in order to protect the rights of private individuals.

2. Distribute the transcript and allow time for students to read it through carefully. As they read, students are to highlight and assign a number or numbers to key phrases in the announcement that relate to the following topics:

- #1: whom the Court views as the state actors
- #2: functions and limitations of government
- #3: jury system
- # 4: racial discrimination in the courtroom
- # 5: Constitutional rights/principles

3. Hold a class discussion for each of the 5 topics. Ask students to share highlighted quotes for each topic discussed.

Follow-Up:

Write a one-page response on one of the following:

1. Cases that are reviewed by the Supreme Court are selected at the discretion of the Justices based their national significance, matters of federal law, and the constitutional principles at stake. Why did the Court choose to hear *Edmonson v. Leesville* and what is the significance of its decision?

2. *Edmonson v. Leesville* was a civil trial. In order to claim that a constitutional violation had occurred in the conduct of the trial, the violation must be attributed to the government. Discuss the government's role, responsibilities, and limitations in a civil trial and how it relates to the rights of private individuals, according to the opinion of the Court.

DAY 4: A Difference of Opinion

Overview: In this session student explore the thinking and reasoning of the dissenting opinions in *Edmonson v. Leesville* written by Justice O’Connor and Justice Scalia, then form their own opinions. When it comes to Supreme Court deliberations, frequently there is a difference of opinion among the Justices. To decide, the Court goes by the democratic practice of majority rule. Because the voice of the minority is also important in a democracy, Justices who disagree may choose to file their dissent as part of the court record. Filed dissents present another point of view.

Goal: Students analyze the reasoning in the two filed dissents by Justice O’Connor and Justice Scalia in *Edmonson v. Leesville Concrete Co.*, then form their own opinions.

Materials/Equipment Needed:

- **Technology**
 - o Computer Lab with Internet connection
 - o Computer with Internet connection and projector for class viewing
- **Readings (Included)**
 - o Glossary of Jury- & Court-Related Terms (available for reference)
- **Student Materials (Included)**
 - o Activity: A Difference of Opinion (1 copy per student)
 - o “Take-Home Quiz: True/False/Opinion”

Procedure:

1. Build essential background knowledge:
 - o Define and discuss the Court’s application of the “state action requirement” and how it is used to determine whether a constitutional violation has occurred.

 - o Discuss the positive and negative uses of peremptory challenges.
2. Distribute student materials and review the assignment.
3. Allow time for students to complete the assignment individually, with partners, or in small groups, then reconvene as a class.
4. Ask students to share opinion (thesis) statements in round-robin fashion so all have a chance to be heard.
5. Tally student opinions on the board to record how many join with the Court’s opinion, Justice O’Connor’s dissent or Justice Scalia’s dissent.

Closing Reflection:

Students working through this lesson have the unique opportunity to see, hear, and read opinions from two Justices who disagreed when they deliberated in *Edmonson v. Leesville*. Reflect together as a class on some of the less obvious things they may have learned from the experience about the way a constitutional democracy works and the roles and responsibilities of all citizens involved. Focus on the important values and principles of a constitutional democracy that were present behind the scenes and sometimes at odds with each other. Also discuss the civic dispositions exhibited by the Justices and the students. Refer to the standards level detail in the last section of this lesson for points to discuss.

Homework: Assign the Take-Home Quiz for homework as an open-book, open-notes activity.

EXTENSION ACTIVITIES

Have more time to teach?

- 1. Find additional activities by referring to the lesson plan for the Sunnylands video that students watch for their class-prep assignment.**

Video: *Jury Selection: Edmonson v. Leesville Concrete Company*
Lesson Plan: Jury Selection on Trial
Both are available from Sunnylands Classroom at www.SunnylandsClassroom.org and Annenberg Classroom at www.AnnenbergClassroom.org.
- 2. Explore the meaning of “justice” as depicted in the architecture of the Supreme Court building.**

Interpret the meaning of the symbols in the different figures of justice and relate them to the right to trial by an impartial jury.
<http://www.supremecourt.gov/about/figuresofjustice.pdf>
- 3. Have a debate on this topic:**

Application of the state action requirement in *Edmonson v. Leesville* to determine if the Constitution had been violated in a civil case.
- 4. Participate in a mock voir dire activity.**
 - Pick the Twelve: An interactive jury game
http://www.texaslre.org/jury_game/jurygame_intro.html
 - Voir Dire: Creating the Jury
http://www.crfc.org/americanjury/voir_dire.html
- 5. Draw a political cartoon that makes a point about an aspect of a jury trial.**

Preview the cartoon gallery from the American Bar Association.
http://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/cartoons_judges.html

Use the cartoon analysis worksheet from The National Archives for planning the cartoon.
http://www.archives.gov/education/lessons/worksheets/cartoon_analysis_worksheet.pdf

RESOURCES

Edmonson v. Leesville Concrete Co. (1991)

- Video story: **Jury Selection: Edmonson v. Leesville Concrete Company** (Time 23:19)
Available from www.SunnylandsClassroom.org and www.AnnenbergClassroom.org
- United States Reports (official source of Supreme Court opinions)
<http://ftp.resource.org/courts.gov/c/US/>
- FindLaw
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=500&invol=614>
- Exploring Constitutional Conflicts: Racial Discrimination and the State Action Requirement
<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/stateaction.htm>

Teaching Strategies

- iCivics: Interactive curriculum on the Judicial Branch
<http://www.icivics.org/teachers>
- The National Archives: Teaching with Documents—Analysis Worksheets
<http://www.archives.gov/education/lessons/>
- Street Law
<http://www.streetlaw.org/en/Page.Landmark.TeachingStrategies.aspx>

Annenberg Classroom

- The Role of the Courts
<http://www.annenbergclassroom.org/page/the-role-of-the-courts>
- *Understanding Democracy, A Hip Pocket Guide*—John J. Patrick
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>
- *Our Rights* by David J. Bodenhamer
<http://www.annenbergclassroom.org/page/our-rights>
- The Annenberg Guide to the United States Constitution- What it Says, What it Means
<http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

American Bar Association

- Commission on the American Jury Project
http://www.americanbar.org/groups/justice_center/american_jury.html
- ABA Principles for Juries and Jury Trials

<http://www.americanbar.org/content/dam/aba/migrated/juryprojectstandards/principles.authcheckdam.pdf>

State Court and Jury Information

- National Center for State Courts — Information & Resources (Browse by state and topic)
<http://www.ncsc.org/Information-and-Resources.aspx>

Federal Court and Jury Information

- Supreme Court of the United States
<http://www.supremecourtus.gov>
- Jury Service in Federal Courts
<http://www.uscourts.gov/FederalCourts/JuryService.aspx>
- Inside the Federal Courts
<http://www.fjc.gov/federal/courts.nsf>
- Handbook for Trial Jurors Serving in the United States District Courts
<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/Jury/trialhandbook.pdf>
- U.S. Courts
www.uscourts.gov

More on Juries

- Sunnylands Seminars 2009
<http://sunnylandsclassroom.org>
- Race, Juries, and Justice
<http://www.justicetalking.org/ShowPage.aspx?ShowID=224>
- The American Jury: Bulwark of Democracy
<http://www.crfc.org/americanjury/>

Readings & Resources

- Glossary of Jury- & Court-Related Terms
- “Constitution,” “Justice,” & “Rights” from *Understanding Democracy, a Hip Pocket Guide*
- Chapter 18: “The Right to Trial by Jury” from *Our Rights* by David J. Bodenhamer
- Sixth Amendment, U.S. Constitution
- Seventh Amendment, U.S. Constitution
- Fourteenth Amendment, U.S. Constitution
- Supreme Court Case: *Edmonson v. Leesville Concrete Co.*(1991)
 - o Background Story
 - o Opinion Announcement
 - o Full Text

Glossary of Jury- and Court-Related Terms

actors—those with roles and responsibilities in a courtroom (see state actor, private actor)

bench trial—a trial in which the parties agree not to have a jury trial and to leave the fact-finding to the judge who also renders the verdict. Some statutes also provide that a judge must decide the facts in certain types of cases.

case—a legal dispute or controversy involving a civil or criminal lawsuit or action brought to a court for resolution. Cases can be resolved by a court after fact-finding or resolved by agreement of the parties or some other third party such as an arbitrator or administrative judge.

certiorari —A formal request to a superior court challenging a legal decision of a lower court alleging the decision that was made.

challenge for cause —an attorney may request the judge to excuse a prospective juror during voir dire if it is revealed through questioning that the prospective juror may be prejudiced. There is no limit to the number of challenges for cause that a party may make.

civil court—courts with jurisdiction over civil matters, as opposed to criminal ones, involving disputes between individuals or between private businesses or institutions (e.g., a disagreement over the terms of a contract or over who shall bear responsibility for an automobile accident).

civil law —the body of law dealing with the private rights of individuals, as opposed to criminal law.

complaint—a written statement by the person (called the "plaintiff") starting a civil lawsuit that details the wrongs allegedly committed against that person by another person (called the "defendant").

court—an agency of government authorized to resolve legal disputes. Judges and lawyers sometimes use the term *court* to refer to the judge, as in "the court has read the pleadings."

criminal court—a court having jurisdiction over criminal cases.

criminal law—law governing the relationship between individuals and society. Deals with the enforcement of laws and the punishment of those who, by breaking laws, commit crimes.

defendant—a party at the trial level being sued in a civil case or charged with a crime in a criminal case. In a civil action, the party denying or defending itself against charges brought by a plaintiff. In a criminal action, the person accused by the government of breaking the law.

dissenting opinion—an opinion by a judge who disagrees with the result reached by the court in a case.

district court—the trial courts of general jurisdiction in the federal system.

due process—government procedures that follow principles of essential fairness.

en banc—an appellate court hearing with all the judges of the court participating.

Glossary of Jury- and Court-Related Terms

federal courts—courts established under the U.S. Constitution. The term usually refers to courts of the federal judicial branch, which include the Supreme Court of the United States, the U.S. courts of appeals, the U.S. District Courts (including U.S. bankruptcy courts), and the U.S. Court of International Trade. Congress has established other federal courts in the executive branch, such as immigration courts.

federalism—a principle of our Constitution that gives some functions to the U.S. government and leaves the other functions to the states. The functions of the U.S. (or federal) government involve the nation as a whole and include regulating commerce that affects people in more than one state, providing for the national defense, and taking care of federal lands. State and local governments perform such functions as running the schools, managing the police departments, and paving the streets.

held—express as a judgment, opinion, or belief.

judge—a governmental official with authority to preside over and decide lawsuits brought to courts.

judiciary—the branch of government created by Article III of the Constitution that has the power to interpret the Constitution and laws passed by Congress. The courts determine whether the other branches of government are operating as the Constitution requires but must work with the two other branches to ensure that its orders are obeyed.

jurisdiction—(1) the legal authority of a court to hear and decide a certain type of case; (2) the geographic area over which the court has authority to decide cases.

juror —a member of a jury or an alternate.

juror questionnaire—series of questions mailed to potential jurors used by the jury commission to determine one’s legal eligibility to serve on a federal or state jury.

jury —a certain number of citizens, selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them. A group of citizens whose duty is to weigh evidence fairly and impartially and decide the facts in a trial (see “petit jury”) or to decide whether evidence against a defendant is sufficient to file an indictment charging him or her with a crime.

jury commission—group of officials charged with the responsibility of randomly choosing the names of prospective jury members or of selecting the list of jurors for a particular term in court. In some states, they are elected and in others, they are appointed by governors or judges.

jury instructions—a judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

jury of one’s peers—Though frequently used, this phrase does not appear in the Constitution. The

Glossary of Jury- and Court-Related Terms

Sixth Amendment guarantees the right to "a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." According to the Constitution, the jury is to be representative of the community. "Peers" is used by the courts to mean that the available jurors include a broad spectrum of the population, particularly of race, national origin and gender. Jury selection may include no process that excludes those of a particular race or intentionally narrows the spectrum of possible jurors. It does not mean that women are to be tried by women, Asians by Asians, or African Americans by African Americans.

jury panel—a list of prospective jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those the clerk selects by lot.

jury pool—the body of prospective jurors summoned for jury duty.

jury selection —the process by which jurors for a particular trial are selected from the larger group of potential jurors summoned to the courthouse. Once the jurors arrive in the courtroom, the judge and lawyers ask the jurors questions for the purpose of determining whether jurors are free of bias, or prejudice, or anything might interfere with their ability to be fair and impartial.

jury summons—the paper sent to potential jurors that requires their appearance in court for possible service on a jury.

justice—the quality of being just, impartial, or fair; the principle or ideal of just dealing; the establishment or determination of rights according to law or equity; fair, just, or impartial legal process.

law —a public rule that is issued by an established authority, backed by an institutional structure and enforced by sanctions. In the United States, a federal law is typically enacted when a measure passes a majority vote in both the House of Representatives and the Senate and is then signed by the president. A measure can become law without the president's signature if it passes by a 2/3 vote in both the House and the Senate. State laws are usually created by a similar process, with legislatures and governors taking the place of Congress and the president.

lawsuit—any one of various proceedings in a court of law.

litigant—a party to a lawsuit.

majority opinion -- an opinion in a case written by one judge in which a majority of the judges on the court join.

order —a written command issued by a judge.

oral argument—in appellate cases, an opportunity for the lawyers for each side to appear before the judges to summarize their positions and answer the judges' questions.

panel— (1) in appellate cases, a group of three judges assigned to decide the case; (2) in the process of jury selection, the group of potential jurors from which the jury is chosen; (3) in criminal cases, a group of private lawyers whom the court has approved to be appointed to represent defendants unable to afford to hire lawyers.

Glossary of Jury- and Court-Related Terms

party—one of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant. On appeal, they are known as the appellant and appellee, or, in some cases involving administrative agencies, as the petitioner and respondent.

peremptory challenge—A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason. Each side has a predetermined number of peremptory challenges.

petit jury —a trial court jury to decide criminal or civil cases.

petitioner —someone who files a petition with a court seeking action or relief, including the plaintiff or appellant. When a writ of certiorari is granted by the Supreme Court, the party seeking review is called the petitioner, and the party responding is called the respondent.

plaintiff—an individual or group that institutes a legal action or claim.

plea—in a criminal case, the defendant's statement to the court that he or she is "guilty" or "not guilty" of the charges.

precedent—a court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent"- meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

prima facie case —The minimum amount of evidence a plaintiff must produce to overcome a motion to dismiss.

private actors—in a courtroom setting, individuals or entities from the private sector with no governmental authority or connections (see private party)

private party—individual or entity not holding a governmental position or not connected to the government (e.g., private citizen, private corporation, private school)

procedural justice—justice pursued through due process of law to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state.

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

prosecute—to charge a person or organization with a crime and seek to gain a criminal conviction against that person or organization.

Glossary of Jury- and Court-Related Terms

record—all the documents filed in a case and a written account of the trial proceedings.

recovery—the obtaining, getting back, or vindication of a right or property by judgment or decree; the obtaining of damages; an amount awarded by or collected as a result of a judgment or decree

remand—to send a case back to an inferior court for additional action.

respondent—the individual or group compelled to answer or defend claims or questions posed in a court by a petitioner; also, the person or group against whom a petition, such as a writ of habeas corpus seeking relief is brought, or a person or group who wins at trial and defends that outcome on appeal.

reverse—the act of an appellate court setting aside the decision of a trial court. A reversal is often accompanied by a remand to the lower court for further proceedings.

rule of law—The rule of law exists when a state’s constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution.

The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

- laws are enforced equally and impartially
- no one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- laws are made and enforced according to established procedures, not the rulers’ arbitrary will
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law
- laws are not enacted or enforced retroactively
- laws are reasonable and enforceable

sentence—a judgment of the court imposing punishment upon a defendant for criminal conduct.

settlement—an agreement between the parties to a lawsuit to resolve their differences among themselves without having a trial or before the judge or jury renders a verdict in a trial.

state action requirement—The state action requirement stems from the fact that the constitutional amendments which protect individual rights (especially the Bill of Rights and the 14th Amendment) are mostly phrased as prohibitions against government action. For example, the First Amendment states that “[c]ongress shall make no law” infringing upon the freedoms of speech and religion. Because of this requirement, it is impossible for private parties (citizens or corporations) to violate these amendments, and all lawsuits alleging constitutional violations of this type must show how the government (state or federal) was responsible for the violation of their rights. This is referred to as the state action requirement.

state actors—in a courtroom setting, those individuals or entities acting with the authority of the government (e.g., elected officials, law enforcement officers, officers of the court, or other public agencies)

Glossary of Jury- and Court-Related Terms

state court—a court established in accordance with a state constitution that has the jurisdiction to decide matters of law. State courts are courts of general jurisdiction, meaning that they can handle matters of both state and federal law. They are usually governed by rules of procedure set up by the highest court in the state.

summoned to jury service—sent a jury summons.

Supreme Court of the United States—the highest court in the judicial branch of the U.S. government; the court of last resort. It is the only court specifically established by the Constitution in Article III. Congress is given the power to establish the other lower federal courts. Currently, the Supreme Court sits in Washington, D.C., and has nine Justices.

tort—a civil wrong for which a remedy may be obtained, usually in the form of damages; as breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction.

trial—the proceeding at which parties in a civil case, or the government and the defense in a criminal case, produce evidence for consideration by a fact finder in court. The fact finder, who may be a judge or a jury, applies the law to the facts as it finds them and decides whether the defendant is guilty in a criminal case or which party should win in a civil case.

trial court—court in which trials take place at the local or district level.

trial by jury—a trial in which the issues of fact are to be determined by the verdict of the jury.

trial jury —see “petit jury.”

U.S. District Court—a federal court with general trial jurisdiction. It is the court in which the parties in a lawsuit file motions, petitions, and other documents and take part in pretrial and other types of status conferences. If there is a trial, it takes place in the district court. Also referred to as a *trial court*.

verdict—a petit jury’s or a judge’s decision on the factual issues in a case.

voir dire—(“to speak the truth”) the act or process of questioning prospective jurors to determine which are qualified (as free of bias) and suited for service on a jury

witness -- a person called upon by either side in a lawsuit to give testimony before the court.

writ of certiorari -- an order by a court requiring that the lower court produce the records of a particular case tried so that the reviewing court can inspect the proceedings and determine whether there have been any irregularities. Almost all parties seeking review of their cases in the U.S. Supreme Court file a petition for a writ of certiorari. The Court issues a limited number of writs, thus indicating the few cases it is willing to hear among the many in which parties request review.

Glossary of Jury- and Court-Related Terms

Sources for Definitions:

- **FindLaw – Law Dictionary**
<http://dictionary.lp.findlaw.com/>
- **American Bar Association**
<http://www.abanet.org/publiced/glossary.html>
- **Federal Judicial Center: Inside the Federal Courts – Definitions**
<http://www.fjc.gov/federal/courts.nsf>
- **Glossary of Legal Terms: United States Courts**
<http://www.uscourts.gov/Common/Glossary.aspx>
- **Justice Learning – Democracy Glossary**
<http://services.justicetalking.org/dg/>
- **Legal Information Institute: Cornell University Law School**
<http://topics.law.cornell.edu/wex>
- **Merriam-Webster’s Dictionary of Law**
<http://dictionary.getlegal.com/listing/j/3>
- **Understanding Democracy, A Hip Pocket Guide—John J. Patrick**
<http://sunnylandsclassroom.org/Asset.aspx?id=1116>

Constitution

A constitution is the basic law and general plan of government or a people within a country. The purposes, powers, and limitations of government are prescribed in the constitution. It thus sets forth the way a people is governed or ruled.

A constitution is the supreme law of a country. Laws later enacted by the government must conform to the provisions of the constitution. All institutions, groups, and individuals within the community are expected to obey the supreme law of the constitution.

A constitution is a framework for organizing and conducting the government of a country, but it is not a blueprint for the day-to-day operations of the government. The Constitution of the United States of America, for example, is less than 7,500 words long. It does not specify the details of how to run the government. The officials who carry out the business of the constitutional government supply the details, but these specifics must fit the general framework set forth in the U.S. Constitution.

A defining attribute of a democratic constitution is its granting and limiting of powers to the government in order to guarantee national safety and unity as well as individuals' right to liberty. It sets forth generally what the constitutional government is and is not permitted to do. There cannot be an authentic democracy unless the powers of government are limited constitutionally to protect the people against tyranny of any kind.

Constitutions vary in length, design, and complexity, but all of them have at least seven common attributes: (1) a statement of the purposes of government, usually in a preamble; (2) specification of the structure of government; (3) enumeration, distribution, and limitation of powers among the legislative, executive, and judicial functions of government; (4) provisions about citizenship; (5) guarantees of human rights; (6) means of electing and appointing government officials; and (7) procedures for amendment.

Most countries of the world today have a constitution that is written in a single document. A very few countries, such as Israel, New Zealand, and the United Kingdom, have “unwritten”

constitutions. These so-called unwritten constitutions are composed of various fundamental legislative acts, court decisions, and customs, which have never been collected or summarized in a single document. However, as long as an unwritten constitution really limits and guides the actions of the government to provide the rule of law, then the conditions of constitutional government are fulfilled.

The Constitution of the United States, written in 1787 and ratified by the required nine states in 1788, is the oldest written constitution in use among the countries of the world today. However, the constitution of the state of Massachusetts was written and ratified in 1780 and, although extensively amended, is still operational, which makes it the world's oldest written constitution in use today. Most of the world's working constitutions have existed only since 1960, and many of the world's democracies have adopted their constitutions since 1990.

SEE ALSO Constitutionalism; Democracy, Representative and Constitutional; Government, Constitutional and Limited

Justice

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to “establish Justice.” And, in the 51st paper of *The Federalist*, James Madison proclaims, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” So, what is justice? And how is it pursued in a constitutional democracy?

Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally.

By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others. The racial segregation laws that prevailed in some parts of the United States until the mid-1960s, for example, denied justice to African American people. America’s greatest civil rights leader, Martin Luther King Jr., said that racial segregation laws were “unjust laws” because they prevented black Americans from enjoying the same rights and opportunities as other citizens of the United States. When he opposed unjust racial segregation laws, King asserted that the worth and dignity of each person must be respected equally because each one is equally a member of the human species. Thus, any action by the government or groups of citizens that violated the worth and dignity of any person, as did the racial segregation laws, was unjust and should not be tolerated. King and his followers, therefore, protested these laws and eventually brought about their demise.

Another example of justice is *procedural justice*. It is pursued through *due process of law* to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state. For example, the 5th Amendment of the U.S. Constitution says that no person shall “be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” The 4th, 5th, and 6th Amendments include several guarantees of fair procedures for anyone accused of criminal behavior, including “the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

Distributive justice, another type of justice pursued in every constitutional democracy, pertains to the government’s enactment of laws to distribute benefits to the people under its authority. Distributive justice certainly is achieved when equals receive the same allocation of benefits. For example, public programs that provide social security or medical care to all elderly and retired persons are examples of distributive justice in a constitutional democracy. Public schools, which all children have an equal opportunity to attend, are another example.

When the government of a constitutional democracy protects individuals’ rights to liberty, order, and safety, individuals can freely use their talents to produce wealth and enjoy the results of their labor. Thus, they are able to provide for their basic human needs and to satisfy many, if not all, of their wants. But some per-

sons in every democracy are unable for various reasons to care adequately for themselves. Therefore, the government provides programs to distribute such basic benefits for disadvantaged persons as medical care, housing, food, and other necessities. These public programs for needy persons are examples of distributive justice in a constitutional democracy.

In the various democracies of our world, people debate the extent and kind of distributive justice there should be to meet adequately the social and economic needs of all the people. Should the regulatory power of government be increased greatly so that it can bring about greater social and economic equality through redistribution of resources?

Countries that provide extensive social and economic benefits through the redistribution of resources are known as social democracies or welfare states. The consequences of distributive justice in a social democracy, such as Sweden, are to diminish greatly unequal social and economic conditions and to move toward parity in general standards of living among the people. However, the achievement of this kind of social justice requires a substantial increase in the power of government to regulate the society and economy. Thus, as social and economic equality increase through government intervention in the lives of individuals, there is a decrease in personal and private rights to freedom. People in democracies throughout the world debate whether justice is generally served or denied by big public programs that extensively redistribute resources in order to equalize standards of living among the people.

SEE ALSO Equality; Liberalism; Liberty; Rule of Law; Social Democracy

Rights

The constitution of a democracy guarantees the rights of the people. A right is a person's justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

In addition to political rights, the constitutions of democracies throughout the world protect the rights of people accused of crimes from arbitrary or abusive treatment by the government. Individuals are guaranteed due process of law in their dealings with the government. Today, constitutional democracies protect the personal and private rights of all individuals under their authority. These rights include

- freedom of conscience or belief
- free exercise of religion
- privacy in one's home or place of work from unwarranted or unreasonable intrusions by the government
- ownership and use of private property for personal benefit
- general freedom of expression by individuals, so long as they do not interfere with or impede unjustly the freedom or well-being of others in the community

A turning point in the history of constitutionally protected rights was the founding of the United States of America in the late 18th century. The United States was born with a Declaration

of Independence that proclaimed as a self-evident truth that every member of the human species was equal in possession of “certain unalienable rights” among which are the rights to “Life, Liberty, and the Pursuit of Happiness.”

The founders declared that the primary reason for establishing a government is “to secure these rights.” And, if governments would act legitimately to protect the rights of individuals, then they must derive “their just Powers from the Consent of the Governed.” Further, if the government established by the people fails to protect their rights and acts abusively against them, then “it is the Right of the People to alter or to abolish it, and to institute new Government” that will succeed in fulfilling its reason for existence—the protection of individual rights

Ideas expressed in the Declaration of Independence about rights and government were derived from the writings of political philosophers of the European Enlightenment, especially those of the Englishman John Locke. Enlightenment philosophers stressed that rights belonged equally and naturally to each person because of their equal membership in the human species. According to Locke, for example, persons should not believe that the government granted their rights, or that they should be grateful to the government for them. Instead, they should expect government to protect these equally possessed rights, which existed prior to the establishment of civil society and government. Thus, the rights of individuals, based on the natural equality of human nature, were called *natural rights*.

This Declaration of Independence, based on this natural rights philosophy, explained to the world that Americans severed their legal relationship with the United Kingdom because the mother country had violated the rights of the people in her North American colonies. As a result, the Americans declared they would independently form their own free government to protect their natural rights. In 1787, the Americans framed a constitution to “secure the Blessings of Liberty” and fulfill the primary purpose of any good government as expressed in the Declaration of Independence, the protection of natural rights, and they ratified this Constitution in 1788.

In 1789, the U.S. Congress proposed constitutional amendments to express explicitly the rights of individuals that the government was bound to secure; in 1791, the requisite number of states ratified 10 of these amendments, which became part of the U.S. Constitution. Thus, the American Bill of Rights was born. Since then, the American Bill of Rights has been an example and inspiration to people throughout the world who wish to enjoy liberty and equality in a constitutional democracy.

Following the tragedies of World War II, which involved gross abuses by some governments and their armies—Nazi Germany and imperial Japan, for example—against millions of individuals and peoples of the world, there was a worldwide movement in favor of the idea of human rights. The United Nations, an organization of the world’s nation-states established after World War II in order to promote international peace and justice, became a leader in the promotion of human rights throughout the world. In 1948, this international body issued the United Nations Universal Declaration of Human Rights, which is a statement of the rights every human being should have in order to achieve a minimally acceptable quality of life.

Its first article says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 2 continues, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The remainder of the document details the human rights that ideally should be enjoyed by each person in the world.

Since 1948, the United Nations has issued several other documents on human rights, such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The UN documents are statements of ideals about human rights intended to guide the actions of the world’s nation-states, but the United Nations cannot enforce them in the way that a sovereign nation-state can compel

obedience to laws within its territory. Thus, practical protection for human rights is possible today only through the governmental institutions of the world's independent nation-states. The quality of the protection of human rights varies significantly from country to country. It depends upon what the nation's constitution says about rights and the capacity of the government to enforce the rights guaranteed in its constitution.

There is general international agreement that there are two basic categories of human rights. First, there are rights pertaining to what should not be done to any human being. Second, there are rights pertaining to what should be done for every human being. The first category of human rights involves constitutional guarantees that prohibit the government from depriving people of some political or personal rights. For example, the government cannot constitutionally take away someone's right to participate freely and independently in an election or to freely practice a particular religion. The second category of human rights requires positive action by the government to provide someone with a social or economic right that otherwise would not be available to her or him. Thus, the government may be expected to provide opportunities for individuals to go to school or to receive healthcare benefits.

The constitutions of many democracies specify certain social and economic rights that the government is expected to provide. In other democracies, for example the United States, programs that provide social and economic rights or entitlements, such as social security benefits for elderly persons and medical care for indigent persons, are established through legislation that is permitted but not required by the constitution.

SEE ALSO Equality; Justice; Liberalism; Liberty; Social Democracy

The Constitution of the United States

Sixth Amendment

Sixth Amendment - The Text

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Sixth Amendment - The Meaning

Right to a Jury Trial: In a criminal case, the government prosecutes or charges a defendant with a violation of the criminal law and begins proceedings (bail hearings, arraignments and trials) to prove that charge beyond a reasonable doubt.

The Sixth Amendment provides many protections and rights to a person accused of a crime. One right is to have his or her case heard by an impartial jury—independent people from the surrounding community who are willing to decide the case based only on the evidence. In some cases where there has been a significant amount of news coverage, the Supreme Court has ruled that jury members may be picked from another location in order to ensure that the jurors are impartial.

When choosing a jury, both prosecutors and defense attorneys may object to certain people being included. Some of these objections, called challenges, are for cause (the potential juror has said or done something that shows he or she may not act fairly). Others are peremptory (no real reason need be given, but one side does not want to have that person serve). Lawyers cannot use peremptory challenges to keep people off a jury because of race or gender.

Right to a Speedy Trial: This right is considered one of the most important in the Constitution. Without it, criminal defendants could be held indefinitely under a cloud of unproven criminal accusations. The right to a speedy trial also is crucial to assuring that a criminal defendant receives a fair trial. If too much time elapses between the alleged crime and the trial, witnesses may die or leave the area, their memories may fade, and physical evidence may be lost.

The Public Trial Guarantee: Like the right to a speedy trial, the right to a public trial serves the interests of both criminal defendants and the public. Defendants are protected from secret proceedings that might encourage abuse of the justice system, and the public is kept informed about how the criminal justice system works. Like most constitutional protections, however, the right to a public trial is not absolute. A criminal defendant may voluntarily give up (waive) his or her right to a public proceeding or the judge may limit public access in certain circumstances. For example, a judge might order a closed hearing to prevent intimidation of a witness or to keep order in the courtroom.

The Constitution of the United States

Sixth Amendment

Right to Be Informed of Criminal Charges: The Sixth Amendment right to “be informed of the nature and cause of the accusation” is another protection meant to ensure that the accused receives a fair trial. A speedy, public trial that is heard by an impartial jury is meaningless if a defendant is left in the dark about exactly the crime with which he or she is charged.

Right to Be Confronted by Adverse Witnesses: The so-called confrontation clause prevents prosecutors from relying on witnesses’ out-of-court statements to make their case. Rather, it requires that prosecutors put their witnesses on the stand, under oath. As the U.S. Supreme Court explained in its 1970 opinion, *California v. Green*, the defendant’s ability to confront a hostile witness in person puts pressure on the witness to tell the truth, allows the defendant’s counsel to cross-examine the witness (which may reveal him or her to be unreliable), and gives the jury an up-close view of the witness, so that they can decide for themselves if the witness is believable.

There are exceptions to the confrontation clause, of course. If a knowledgeable witness is unavailable at the time of trial, for example, a previous statement will be allowed into evidence, so long as the witness made it under conditions that were similar to those at trial (for example, if the statement was made under oath). Defendants also may be prevented from confronting witnesses against them when the well-being of the witness is at issue. For example, child witnesses may be allowed to testify in the judge’s chambers rather than in open court.

Right to Assistance of Counsel: The Sixth Amendment guarantees a criminal defendant the right to have an attorney defend him or her at trial. That right is not dependent on the defendant’s ability to pay an attorney; if a defendant cannot afford a lawyer, the government is required to provide one. The right to counsel is more than just the right to have an attorney physically present at criminal proceedings. The assistance provided by the attorney must be effective. This does not mean that the defendant has a right to an attorney who will win his or her case. A defendant can receive effective assistance of counsel and still be convicted and sent to jail.

However, if an attorney’s performance is not up to reasonable standards for the profession or if the attorney’s ability to put on a full defense is hindered by the prosecutor’s misconduct, then the defendant may be able to challenge his or her conviction. This provision does not guarantee the right to an attorney in most civil cases.

Source: Justice Learning’s Guide to the Constitution: What it says. What it means.
<http://www.justicelearning.org/>

The Constitution of the United States

Seventh Amendment

Seventh Amendment - The Text

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Seventh Amendment - The Meaning

The Seventh Amendment extends the right to a jury trial to federal civil cases such as car accidents, disputes between corporations for breach of contract, or most discrimination or employment disputes. In civil cases, the person bringing the lawsuit (the plaintiff) seeks money damages or a court order preventing the person being sued (the defendant) from engaging in certain conduct. To win, the plaintiff must prove his or her case by “a preponderance of the evidence,” that is by over fifty percent of the proof.

Although the Seventh Amendment itself says that it is limited to “suits at common law,” meaning cases that triggered the right to a jury under English law, the amendment has been found to apply in lawsuits that are similar to the old common law cases. For example, the right to a jury trial applies to cases brought under federal statutes that prohibit race or gender discrimination in housing or employment. But importantly, the Seventh Amendment guarantees the right to a jury trial only in federal court, not in state court.

Source: Justice Learning’s Guide to the Constitution: What it says. What it means.
<http://www.justicelearning.org/>

The Constitution of the United States

Fourteenth Amendment

Fourteenth Amendment - The Text

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fourteenth Amendment - The Meaning

Because many states continued to pass laws that restricted the rights of former slaves, on June 13, 1866, Congress passed and sent to the states for ratification, Amendment XIV. Ratified on July 9, 1868, the amendment granted U.S. citizenship to former slaves and specifically changed the rule in Article 1, Section 2 that slaves be counted only as three-fifths of a person for purposes of representation in Congress. It also contained three new limits on state power: a state shall not

The Constitution of the United States

Fourteenth Amendment

violate a citizen's privileges or immunities; shall not deprive any person of life, liberty, or property without due process of law; and must guarantee all persons equal protection of the laws.

These limitations on state power dramatically expanded the protections of the Constitution. Prior to the adoption of the Fourteenth Amendment, the protections in the Bill of Rights limited only the actions of the federal government, unless the provision specifically stated otherwise. The Supreme Court, in what is called "the doctrine of incorporation" has since interpreted the Fourteenth Amendment to apply most provisions in the Bill of Rights against state and local governments as well. This has meant that the Fourteenth Amendment has been used more frequently in modern court cases than any other constitutional provision.

Guaranteed Rights of Citizenship to all Persons Born or Naturalized: The right of citizenship in the Fourteenth Amendment was intended to overturn the case of *Dred Scott v. Sanford*, a decision that had long been considered as one of the Supreme Court's worst mistakes. *Dred Scott*, born into slavery, argued that he should be granted freedom from the family that claimed ownership over him because he had lived in free states and thus had become a citizen of the United States before returning to Missouri, a state where slavery was sanctioned.

Chief Justice Taney, denying *Scott's* appeal, held that African Americans were not citizens, and therefore were "not included, and were not intended to be included, under the word citizens." By specifically granting citizenship to all persons born or naturalized, the Fourteenth Amendment has not only guaranteed citizenship to former slaves but to most children born within the United States, even if the child's parents are not and cannot become citizens.

Amendment XIV, however, limited the broad grant of citizenship to those "subject to U.S. jurisdiction." As a result, Native Americans, who were governed by tribal law, were not guaranteed citizenship by this amendment. Many Native Americans became citizens by a variety of means such as marriage, treaties, or military service. But with the passage of the Indian Citizenship Act of 1924, Congress granted the rights of citizenship to all Native Americans.

Privileges and Immunities: Within five years of its adoption, the privileges and immunities clause of the Fourteenth Amendment was interpreted very narrowly by the U.S. Supreme Court. In *In Re Slaughter-House Cases*, the Court rejected the argument that the provision gave the federal government broad power to enforce civil rights, finding that to do so would infringe on a power that had and should belong to the states. The Court found that the only privileges protected by the clause are those "which owe their existence to the Federal Government, its National character, its Constitution, or its laws," all of which are already protected from state interference by the supremacy clause in Article VI. Subsequent cases have recognized several federal privileges such as the right to travel from state to state, the right to petition Congress for a redress of grievances, the right to vote for national officers, and so forth, but other efforts to broaden the meaning of this clause have been rejected.

Procedural Due Process: The Fourteenth Amendment's due process clause has been interpreted by the courts to provide the same "protection against arbitrary state legislation, affecting life, liberty and property, as is offered by the Fifth Amendment." This has meant that state laws that

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take away a person's property or otherwise jeopardize their life or liberty must afford persons a fair and impartial way to challenge that action.

For example, the due process clause has ensured that people on welfare are able to challenge the loss of their benefits at an administrative hearing, and has meant that parents who are accused of child abuse, or the mentally ill who are being committed will have the opportunity to contest the state's allegations in a court hearing. Often thought of as a provision that guarantees fairness, the due process clause requires government to use even-handed procedures, so that it is less likely to act in an arbitrary way.

Substantive Due Process: The Supreme Court has found that the Fourteenth Amendment's due process clause protects individuals from arbitrary state laws or actions that interfere with fundamental liberties. More than offering a process of fairness, courts have found that the Fourteenth Amendment prohibits states from harming an individual's ability to fully participate in society. Liberty, the Court held in *Meyer v. Nebraska*, "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Although the Supreme Court usually presumes that state legislation, particularly economic regulation, is valid since it is the product of a democratic process, the Court has held that substantive due process will provide some protections for parents' rights to care for their children, a woman's ability to use contraception and to have an abortion; and other significant freedoms.

Equal Protection of the Laws: Although the Declaration of Independence declared that all men were created equal, many persons living in our early republic, including Native Americans, African-American slaves and women were denied fundamental rights and liberties such as the right to vote, own property and freely travel. The passage of Amendment XIV—particularly the equal protection clause—along with the power of Congress to enforce it, incorporated the Declaration's ideal into the Constitution. The equal protection clause limits the ability of states to discriminate against people based on their race, national origin, gender, or other status. For example the clause has been used to guarantee voting rights, school integration, the rights of women and minorities to equal employment opportunities and the rights of immigrants to attend public school. The extensive history of litigation under the equal protection clause in fact mirrors the struggle for civil rights of all Americans.

Apportionment and Reapportionment: Article I, Section 2 had initially provided that the number of districts in the House of Representatives would be divided among the states according to a formula in which only three-fifths of the total number of slaves in slave-owning states were counted in the state's population. Amendment XIV, Section 2 eliminated the three-fifths rule, specifically stating that representation to the House is to be divided among the states according to their respective numbers, counting all persons in each state (except Native Americans who

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were not taxed). The provision also punished states that did not let all males over the age of 21 vote by reducing their population for purposes of representation in Congress.

With the adoption of the Nineteenth Amendment in 1920, the right to vote in federal elections was extended to women. Eighteen- to twenty-one-year-olds became voters in 1971, with the adoption of Amendment XXVI. But language in this section has been used to support the constitutionality of state laws than deny felons the right to vote. Both Sections 3 and 4 of the Fourteenth Amendment affected persons who waged war against the Union during the Civil War and the obligations of those states who had been part of the Confederacy. Amendment XIV, Section 3 prohibits any person who had gone to war against the union or given aid and comfort to the nation's enemies from running for federal or state office, unless Congress by a two-thirds vote specifically permitted it.

Amendment XIV, Section 4 allowed the federal and state governments to refuse to pay war debts of the Confederate army as well as any claims made by slave owners for their losses when slaves were freed. Lastly, Amendment XIV, Section 5 gives Congress the power to enforce all the provisions within the whole amendment. This gives Congress the power to pass laws that protect civil rights, such as the Civil Rights Act of 1964 or the Americans with Disabilities Act of 1990.

Source: Justice Learning's Guide to the Constitution: What it says. What it means.
<http://www.justicelearning.org/>

Background Story Excerpted from *Edmonson v. Leesville Concrete Co.* (1991)

Source: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=500&invol=614>

Thaddeus Donald Edmonson, a construction worker, was injured in a job-site accident at Fort Polk, Louisiana, a federal enclave. Edmonson sued Leesville Concrete Company for negligence in the United States District Court for the Western District of Louisiana, claiming that a Leesville employee permitted one of the company's trucks to roll backward and pin him against some construction equipment. Edmonson invoked his Seventh Amendment right to a trial by jury.

During *voir dire*, Leesville used two of its three peremptory challenges authorized by statute to remove black persons from the prospective jury. Citing our decision in *Batson v. Kentucky*, 476 U.S. 79 (1986), Edmonson, who is [500 U.S. 614, 617] himself black, requested that the District Court require Leesville to articulate a race-neutral explanation for striking the two jurors. The District Court denied the request on the ground that *Batson* does not apply in civil proceedings. As impaneled, the jury included 11 white persons and 1 black person. The jury rendered a verdict for Edmonson, assessing his total damages at \$90,000. It also attributed 80% of the fault to Edmonson's contributory negligence, however, and awarded him the sum of \$18,000.

Audio Transcript of Opinion Announcement by Justice Kennedy
Edmonson v. Leesville Concrete Co. (1991)

Justice Kennedy: The second opinion I have to announce for the court is *Edmonson v. Leesville Concrete Company*, No. 89-7743.

This case comes to us on certiorari to the United States Court of Appeals for the Fifth Circuit.

It concerns peremptory challenges to prospective jurors in civil cases.

Petitioner Edmonson was a construction worker.

He sued Leesville Concrete Company for injuries he suffered in a job-site accident.

During *voir dire* in the United States District Court, the company used two of its three peremptory challenges to remove black persons from the prospective jury.

Citing our decision in *Batson v. Kentucky*, Edmonson, who is himself black, asked the District Court to require Leesville to articulate a race-neutral explanation for its peremptory strikes of these black jurors.

The court denied the request, holding that *Batson*, which is a criminal case, does not apply in civil proceedings.

The jury finally chosen had 11 white persons and 1 black person.

It found Leesville liable, but it awarded Edmonson only a fraction of the damages he had suffered because it found that Edmonson's own negligence had contributed to the accident.

A divided en banc panel of the Fifth Circuit affirmed the District Court's judgment holding that a private litigant in a civil case may exercise peremptory challenges without accountability for alleged racial classifications.

We granted certiorari and we now reverse the Court of Appeals.

Earlier this term in *Powers v. Ohio*, we reaffirmed our holding in *Batson v. Kentucky* that a prosecutor's exclusion of prospective jurors on the basis of race violates the equal protection clause of the Constitution.

Although *Powers* and *Batson* both involved racial discrimination in the context of criminal trials, discrimination in the context of civil proceedings is no less offensive to the dignity of persons and the integrity of the courts.

Should a government lawyer in a civil action exclude jurors on the basis of race, there could be no question that the exclusion would violate equal protection principles.

The question before us here is whether the exercise of peremptory challenge by a private litigant and a private lawyer can be considered state action for the purposes of applying the equal protection clause. We hold that it is state action.

Audio Transcript of Opinion Announcement by Justice Kennedy
Edmonson v. Leesville Concrete Co. (1991)

Most actions by private litigants, and, including the initial decision whether to sue at all, are without the requisite governmental character to be deemed state action.

That cannot be said of peremptory challenges.

When private litigants participate in the selection of jurors, they serve an important function within the government and act with its substantial assistance.

Without the overt significant participation of the government, the peremptory challenge system as well as the jury trial system of which it is a part simply could not exist.

Peremptory challenges are authorized by statute of common law and have no purpose other than to facilitate the trial of the case.

The jurors who were excluded act solely under the government's direction, which summons potential jurors from their employment or other pursuits, assigns them to venire panels, and pays them for their services.

The court oversees *voir dire* and provides litigants with information regarding prospective jurors, and it is the court that must inform a prospective juror that he or she has been excused from the service.

The peremptory challenge also is used to perform a function that is governmental in nature, and that function is the selection of a jury.

A jury is a quintessential governmental body.

We have been consistent in holding that private parties may become state actors when they are entrusted with making governmental decisions.

Finally, we note that the injury caused by discrimination is made more severe because the government permits it to occur within the courthouse itself.

Few places provide a more real expression of the constitutional authority of the government than a courtroom, where the law itself unfolds. Permitting racial exclusion in this official form compounds the racial insult inherent in judging a citizen by the color of his or her skin.

Permitting litigants to use peremptory challenges may contribute to the wide acceptance of the jury system and of its verdicts.

But if race stereotypes are the price for the peremptory challenge system, that price is too high to meet the standard of the Constitution.

Other means exist for litigants to satisfy themselves of an impartial jury without using skin color as a test.

Audio Transcript of Opinion Announcement by Justice Kennedy *Edmonson v. Leesville Concrete Co. (1991)*

If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of racial stereotypes retards that progress and causes continued harm.

Whether the race generality employed by the litigants to challenge a potential juror derives from open hostility or from some hidden and inarticulated fear, neither motive entitles the litigant to cause injury to the excused juror.

The decision of the Fifth Circuit is reversed.

Justice O'Connor has filed a dissenting opinion in which the Chief Justice and Justice Scalia have joined.

Justice Scalia has also filed a separate dissenting opinion.

Audio Source: The Oyez Project, *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991) available at: http://www.oyez.org/cases/1990-1999/1990/1990_89_7743

Note: An audio transcript for this opinion announcement was downloaded from Oyez on July 1, 2010. After significant informational and grammatical errors were found in the text, it was corrected and rewritten for this lesson. However, insignificant differences may remain due to lack of clarity in the audio.

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500 U.S. 614

111 S.Ct. 2077

114 L.Ed.2d 660

Thaddeus Donald EDMONSON, Petitioner
v.
LEESVILLE CONCRETE COMPANY, INC.

No. 89-7743.

Argued Jan. 15, 1991.

Decided June 3, 1991.

Syllabus

Petitioner Edmonson sued respondent Leesville Concrete Co. in the District Court, alleging that Leesville's negligence had caused him personal injury. During *voir dire*, Leesville used two of its three peremptory challenges authorized by statute to remove black persons from the prospective jury. Citing *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, Edmonson, who is black, requested that the court require Leesville to articulate a race-neutral explanation for the peremptory strikes. The court refused on the ground that *Batson* does not apply in civil proceedings, and the impaneled jury, which consisted of 11 white persons and 1 black, rendered a verdict unfavorable to Edmonson. The Court of Appeals affirmed, holding that a private litigant in a civil case can exercise peremptory challenges without accountability for alleged racial classifications.

Held: A private litigant in a civil case may not use peremptory challenges to exclude jurors on account of race. Pp. 618-619.

(a) Race-based exclusion of potential jurors in a civil case violates the excluded persons' equal protection rights. Cf., e.g., *Powers v. Ohio*, 499 U.S. ----, ----, 111 S.Ct. 1364, ----, 113 L.Ed.2d 411. Although the conduct of private parties lies beyond the Constitution's scope in most instances, Leesville's exercise of peremptory challenges was pursuant to a course of state action and is therefore subject to constitutional requirements under the analytical framework set forth in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939-942, 102 S.Ct. 2744, 2754-2756, 73 L.Ed.2d 482. First, the claimed constitutional deprivation results from the exercise of a right or privilege having its source in state authority, since Leesville would not have been able to engage in the alleged discriminatory acts without 28 U.S.C. § 1870, which authorizes the use of peremptory challenges in civil cases. Second, Leesville must in all fairness be deemed a government actor in its use of peremptory challenges. Leesville has made extensive use of government procedures with the overt, significant assistance of the government, see, e.g., *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486, 108 S.Ct. 1340, 1345, 99 L.Ed.2d 565, in that peremptory challenges have no utility outside the jury trial system, which is created and governed by an elaborate set of statutory provisions and administered solely by government officials, including the trial judge, himself a state actor, who

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exercises substantial control over *voir dire* and effects the final and practical denial of the excluded individual's opportunity to serve on the petit jury by discharging him or her. Moreover, the action in question involves the performance of a traditional governmental function, see, *e.g.*, *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152, since the peremptory challenge is used in selecting the jury, an entity that is a quintessential governmental body having no attributes of a private actor. Furthermore, the injury allegedly caused by Leesville's use of peremptory challenges is aggravated in a unique way by the incidents of governmental authority, see *Shelley v. Kramer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, since the courtroom is a real expression of the government's constitutional authority, and racial exclusion within its confines compounds the racial insult inherent in judging a citizen by the color of his or her skin. Pp. 618–628.

(b) A private civil litigant may raise the equal protection claim of a person whom the opposing party has excluded from jury service on account of race. Just as in the criminal context, see *Powers, supra*, all three of the requirements for third-party standing are satisfied in the civil context. First, there is no reason to believe that the daunting barriers to suit by an excluded criminal juror, see *id.*, at ----, 111 S.Ct., at ----, would be any less imposing simply because the person was excluded from civil jury service. Second, the relation between the excluded venireperson and the litigant challenging the exclusion is just as close in the civil as it is in the criminal context. See *id.*, at ----. Third, a civil litigant can demonstrate that he or she has suffered a concrete, redressable injury from the exclusion of jurors on account of race, in that racial discrimination in jury selection casts doubt on the integrity of the judicial process and places the fairness of the proceeding in doubt. See *id.*, at ----, 111 S.Ct., at ----. Pp. 628–631.

(c) The case is remanded for a determination whether Edmonson has established a prima facie case of racial discrimination under the approach set forth in *Batson, supra*, 476 U.S., at 96–97, 106 S.Ct. at 1722–23, such that Leesville would be required to offer race-neutral explanations for its peremptory challenges. P. 631.

895 F.2d 218 (CA1990), reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, STEVENS, and SOUTER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C.J., and SCALIA, J., joined. SCALIA, J., filed a dissenting opinion.

James B. Doyle, Lake Charles, La., for petitioner.

John S. Baker, Jr., Baton Rouge, La., for respondent.

Justice KENNEDY delivered the opinion of the Court.

1 We must decide in the case before us whether a private litigant in a civil case may use peremptory challenges to exclude jurors on account of their race. Recognizing the impropriety of racial bias in the courtroom, we hold the race-based exclusion violates the equal protection rights of the challenged jurors. This civil case originated in a United States District Court, and we apply the equal protection component of the Fifth Amendment's Due Process Clause. See *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).

2 * Thaddeus Donald Edmonson, a construction worker, was injured in a job-site
« up accident at Fort Polk, Louisiana, a federal enclave. Edmonson sued Leesville
Concrete Company for negligence in the United States District Court for the
Western District of Louisiana, claiming that a Leesville employee permitted one of
the company's trucks to roll backward and pin him against some construction
equipment. Edmonson invoked his Seventh Amendment right to a trial by jury.

3 During *voir dire*, Leesville used two of its three peremptory challenges
authorized by statute to remove black persons from the prospective jury. Citing our
decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986),
Edmonson, who is himself black, requested that the District Court require Leesville
to articulate a race-neutral explanation for striking the two jurors. The District
Court denied the request on the ground that *Batson* does not apply in civil
proceedings. As impaneled, the jury included 11 white persons and 1 black person.
The jury rendered a verdict for Edmonson, assessing his total damages at \$90,000.
It also attributed 80% of the fault to Edmonson's contributory negligence, however,
and awarded him the sum of \$18,000.

4 Edmonson appealed, and a divided panel of the Court of Appeals for the Fifth
Circuit reversed, holding that our opinion in *Batson* applies to a private attorney
representing a private litigant and that peremptory challenges may not be used in a
civil trial for the purpose of excluding jurors on the basis of race. 860 F.2d 1308
(1989). The Court of Appeals panel held that private parties become state actors
when they exercise peremptory challenges and that to limit *Batson* to criminal cases
"would betray *Batson* § fundamental principle [that] the state's use, toleration, and
approval of peremptory challenges based on race violates the equal protection
clause." *Id.*, at 1314. The panel remanded to the trial court to consider whether
Edmonson had established a prima facie case of racial discrimination under
Batson.

5 The full court then ordered rehearing en banc. A divided en banc panel affirmed
the judgment of the District Court, holding that a private litigant in a civil case can
exercise peremptory challenges without accountability for alleged racial
classifications. 895 F.2d 218 (CA5 1990). The court concluded that the use of
peremptories by private litigants does not constitute state action and, as a result,
does not implicate constitutional guarantees. The dissent reiterated the arguments
of the vacated panel opinion. The courts of appeals have divided on the issue. See
Dunham v. Frank's Nursery & Crafts, Inc., 919 F.2d 1281 (CA7 1990) (private
litigant may not use peremptory challenges to exclude venirepersons on account of
race); *Fludd v. Dykes*, 863 F.2d 822 (CA11 1989) (same). Cf. *Dias v. Sky Chefs, Inc.*,
919 F.2d 1370 (CA9 1990) (corporation may not raise a *Batson*-type objection in a
civil trial); *United States v. De Gross*, 913 F.2d 1417 (CA9 1990) (government may
raise a *Batson*-type objection in a criminal case), reh'g en banc ordered, 930 F.2d
695 (1991); *Reynolds v. Little Rock*, 893 F.2d 1004 (CA8 1990) (when government
is involved in civil litigation, it may not use its peremptory challenges in a racially
discriminatory manner). We granted certiorari, 498 U.S. ----, 111 S.Ct. 41, 112
L.Ed.2d 18 (1990), and now reverse the Court of Appeals.

II

A.

In *Powers v. Ohio*, 499 U.S. ----, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), we held
that a criminal defendant, regardless of his or her race, may object to a prosecutor's
race-based exclusion of persons from the petit jury. Our conclusion rested on a two-
part analysis. First, following our opinions in *Batson* and in *Carter v. Jury*

6 *Commission of Greene County*, 396 U.S. 320, 90 S.Ct. 518, 24 L.Ed.2d 549 (1970),
« up we made clear that a prosecutor's race-based peremptory challenge violates the
equal protection rights of those excluded from jury service. 499 U.S., at ----, 111
S.Ct., at ----. Second, we relied on well-established rules of third-party standing to
hold that a defendant may raise the excluded jurors' equal protection rights. *Id.*, at -
---, 111 S.Ct., at ----.

7 *Powers* relied upon over a century of jurisprudence dedicated to the elimination
of race prejudice within the jury selection process. See, e.g., *Batson*, *supra*, 476
U.S., at 84, 106 S.Ct., at 1716; *Swain v. Alabama*, 380 U.S. 202, 203-204, 85 S.Ct.
824, 826-827, 13 L.Ed.2d 759 (1965); *Carter*, *supra*, 396 U.S., at 329-330, 90 S.Ct.,
at 523-524; *Neal v. Delaware*, 103 U.S. 370, 386, 26 L.Ed. 567 (1881); *Strauder v.*
West Virginia, 100 U.S. 303, 25 L.Ed. 664 (1880). While these decisions were for
the most part directed at discrimination by a prosecutor or other government
officials in the context of criminal proceedings, we have not intimated that race
discrimination is permissible in civil proceedings. See *Thiel v. Southern Pacific Co.*,
328 U.S. 217, 220-221, 66 S.Ct. 984, 985-986, 90 L.Ed. 1181 (1946). Indeed,
discrimination on the basis of race in selecting a jury in a civil proceeding harms the
excluded juror no less than discrimination in a criminal trial. See *id.*, at 220, 66
S.Ct., at 985-86. In either case, race is the sole reason for denying the excluded
venireperson the honor and privilege of participating in our system of justice.

8 That an act violates the Constitution when committed by a government official,
however, does not answer the question whether the same act offends constitutional
guarantees if committed by a private litigant or his attorney. The Constitution's
protections of individual liberty and equal protection apply in general only to action
by the government. *National Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179,
191, 109 S.Ct. 454, 461, 102 L.Ed.2d 469 (1988). Racial discrimination, though
invidious in all contexts, violates the Constitution only when it may be attributed to
state action. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172, 92 S.Ct. 1965, 1971, 32
L.Ed.2d 627 (1972). Thus, the legality of the exclusion at issue here turns on the
extent to which a litigant in a civil case may be subject to the Constitution's
restrictions.

9 The Constitution structures the National Government, confines its actions, and,
in regard to certain individual liberties and other specified matters, confines the
actions of the States. With a few exceptions, such as the provisions of the Thirteenth
Amendment, constitutional guarantees of individual liberty and equal protection do
not apply to the actions of private entities. *Tarkanian*, *supra*, 488 U.S., at 191, 109
S.Ct., at 461; *Flagg Bros, Inc. v. Brooks*, 436 U.S. 149, 156, 98 S.Ct. 1729, 1733, 56
L.Ed.2d 185 (1978). This fundamental limitation on the scope of constitutional
guarantees "preserves an area of individual freedom by limiting the reach of federal
law" and "avoids imposing on the State, its agencies or officials, responsibility for
conduct for which they cannot fairly be blamed." *Lugar v. Edmondson Oil Co.*, 457
U.S. 922, 936-937, 102 S.Ct. 2744, 2753, 73 L.Ed.2d 482 (1982). One great object of
the Constitution is to permit citizens to structure their private relations as they
choose subject only to the constraints of statutory or decisional law.

To implement these principles, courts must consider from time to time where the
governmental sphere ends and the private sphere begins. Although the conduct of
private parties lies beyond the Constitution's scope in most instances, governmental
authority may dominate an activity to such an extent that its participants must be
deemed to act with the authority of the government and, as a result, be subject to
constitutional constraints. This is the jurisprudence of state action, which explores
the "essential dichotomy" between the private sphere and the public sphere, with all

10 its attendant constitutional obligations. *Moose Lodge, supra*, 407 U.S., at 172, 92
S.Ct., at 1971.

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11 We begin our discussion within the framework for state action analysis set forth
in *Lugar, supra*, 457 U.S., at 937, 102 S.Ct., at 2753-54. There we considered the
state action question in the context of a due process challenge to a State's procedure
allowing private parties to obtain prejudgment attachments. We asked first whether
the claimed constitutional deprivation resulted from the exercise of a right or
privilege having its source in state authority, 457 U.S., at 939-941, 102 S.Ct., at 2754
-2756; and second, whether the private party charged with the deprivation could be
described in all fairness as a state actor, *id.*, at 941-942, 102 S.Ct., at 2755-2756.

12 There can be no question that the first part of the *Lugar* inquiry is satisfied here.
By their very nature, peremptory challenges have no significance outside a court of
law. Their sole purpose is to permit litigants to assist the government in the
selection of an impartial trier of fact. While we have recognized the value of
peremptory challenges in this regard, particularly in the criminal context, see
Batson, 476 U.S., at 98-99, 106 S.Ct., at 1723-1724, there is no constitutional
obligation to allow them. *Ross v. Oklahoma*, 487 U.S. 81, 88, 108 S.Ct. 2273, 2278,
101 L.Ed.2d 80 (1988); *Stilson v. United States*, 250 U.S. 583, 586, 40 S.Ct. 28, 29-
30, 63 L.Ed. 1154 (1919). Peremptory challenges are permitted only when the
government, by statute or decisional law, deems it appropriate to allow parties to
exclude a given number of persons who otherwise would satisfy the requirements
for service on the petit jury.

13 Legislative authorizations, as well as limitations, for the use of peremptory
challenges date as far back as the founding of the Republic; and the common-law
origins of peremptories predate that. See *Holland v. Illinois*, 493 U.S. 474, 481, 110
S.Ct. 803, ----, 107 L.Ed.2d 905 (1990); *Swain*, 380 U.S., at 212-217, 85 S.Ct., at 831
-834. Today in most jurisdictions, statutes or rules make a limited number of
peremptory challenges available to parties in both civil and criminal proceedings. In
the case before us, the challenges were exercised under a federal statute that
provides, *inter alia*:

14 "In civil cases, each party shall be entitled to three peremptory challenges.
Several defendants or several plaintiffs may be considered as a single party for the
purposes of making challenges, or the court may allow additional peremptory
challenges and permit them to be exercised separately or jointly." 28 U.S.C. § 1870.

15 Without this authorization, granted by an Act of Congress itself, Leesville would
not have been able to engage in the alleged discriminatory acts.

Given that the statutory authorization for the challenges exercised in this case is
clear, the remainder of our state action analysis centers around the second part of
the *Lugar* test, whether a private litigant in all fairness must be deemed a
government actor in the use of peremptory challenges. Although we have
recognized that this aspect of the analysis is often a factbound inquiry, see *Lugar*,
supra, 457 U.S., at 939, 102 S.Ct., at 2754-55, our cases disclose certain principles
of general application. Our precedents establish that, in determining whether a
particular action or course of conduct is governmental in character, it is relevant to
examine the following: the extent to which the actor relies on governmental
assistance and benefits, see *Tulsa Professional Collection Services, Inc. v. Pope*,
485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988); *Burton v. Wilmington
Parking Authority*, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961); whether the
actor is performing a traditional governmental function, see *Terry v. Adams*, 345
U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953); *Marsh v. Alabama*, 326 U.S. 501, 66

16 S.Ct. 276, 90 L.Ed. 265 (1946); cf. *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522, 544-545, 107 S.Ct. 2971, 2985-2986, 97 L.Ed.2d 427 (1987); and whether the injury caused is aggravated in a unique way by the incidents of governmental authority, see *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). Based on our application of these three principles to the circumstances here, we hold that the exercise of peremptory challenges by the defendant in the District Court was pursuant to a course of state action.

17 Although private use of state-sanctioned private remedies or procedures does not rise, by itself, to the level of state action, *Tulsa Professional, supra*, 485 U.S., at 485, 108 S.Ct., at 1344-45, our cases have found state action when private parties make extensive use of state procedures with "the overt, significant assistance of state officials." 485 U.S., at 486, 108 S.Ct., at 1345; see *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969). It cannot be disputed that, without the overt, significant participation of the government, the peremptory challenge system, as well as the jury trial system of which it is a part, simply could not exist. As discussed above, peremptory challenges have no utility outside the jury system, a system which the government alone administers. In the federal system, Congress has established the qualifications for jury service, see 28 U.S.C. § 1865, and has outlined the procedures by which jurors are selected. To this end, each district court in the federal system must adopt a plan for locating and summoning to the court eligible prospective jurors. 28 U.S.C. § 1863; see, e.g., *Jury Plan for the United States District Court for the Western District of Louisiana* (on file with Administrative Office of United States Courts). This plan, as with all other trial court procedures, must implement statutory policies of random juror selection from a fair cross section of the community, 28 U.S.C. § 1861, and non-exclusion on account of race, color, religion, sex, national origin, or economic status, 18 U.S.C. § 243; 28 U.S.C. § 1862. Statutes prescribe many of the details of the jury plan, 28 U.S.C. § 1863, defining the jury wheel, § 1863(b)(4), voter lists, §§ 1863(b)(2), 1869 (c), and jury commissions, § 1863(b)(1). A statute also authorizes the establishment of procedures for assignment to grand and petit juries, § 1863(b)(8), and for lawful excuse from jury service, §§ 1863(b)(5), (6).

18 At the outset of the selection process, prospective jurors must complete jury qualification forms as prescribed by the Administrative Office of the United States Courts. See 28 U.S.C. § 1864. Failure to do so may result in fines and imprisonment, as might a willful misrepresentation of a material fact in answering a question on the form. *Ibid.* In a typical case, counsel receive these forms and rely on them when exercising their peremptory strikes. See G. Bermant, *Jury Selection Procedures in United States District Courts* 7-8, (Federal Judicial Center 1982). The Clerk of the United States District Court, a federal official, summons potential jurors from their employment or other pursuits. They are required to travel to a United States courthouse, where they must report to juror lounges, assembly rooms, and courtrooms at the direction of the court and its officers. Whether or not they are selected for a jury panel, summoned jurors receive a per diem fixed by statute for their service. 28 U.S.C. § 1871.

The trial judge exercises substantial control over *voir dire* in the federal system. See Fed.Rule Civ.Proc. 47. The judge determines the range of information that may be discovered about a prospective juror, and so affects the exercise of both challenges for cause and peremptory challenges. In some cases, judges may even conduct the entire *voir dire* by themselves, a common practice in the District Court where the instant case was tried. See Louisiana Rules of Court, Local Rule W.D.La. 13.02 (1990). The judge oversees the exclusion of jurors for cause, in this way determining which jurors remain eligible for the exercise of peremptory strikes. In

19 cases involving multiple parties, the trial judge decides how peremptory challenges
« up shall be allocated among them. 28 U.S.C. § 1870. When a lawyer exercises a
peremptory challenge, the judge advises the juror he or she has been excused.

20 As we have outlined here, a private party could not exercise its peremptory
challenges absent the overt, significant assistance of the court. The government
summons jurors, constrains their freedom of movement, and subjects them to
public scrutiny and examination. The party who exercises a challenge invokes the
formal authority of the court, which must discharge the prospective juror, thus
effecting the "final and practical denial" of the excluded individual's opportunity to
serve on the petit jury. *Virginia v. Rives*, 100 U.S. 313, 322, 25 L.Ed. 667 (1880).
Without the direct and indispensable participation of the judge, who beyond all
question is a state actor, the peremptory challenge system would serve no purpose.
By enforcing a discriminatory peremptory challenge, the court "has not only made
itself a party to the [biased act], but has elected to place its power, property and
prestige behind the [alleged] discrimination." *Burton v. Wilmington Parking
Authority*, 365 U.S., at 725, 81 S.Ct., at 862. In so doing, the government has
"create[d] the legal framework governing the [challenged] conduct," *National
Collegiate Athletic Assn.*, 488 U.S., at 192, 109 S.Ct., at 462, and in a significant way
has involved itself with invidious discrimination.

21 In determining Leesville's state-actor status, we next consider whether the action
in question involves the performance of a traditional function of the government. A
traditional function of government is evident here. The peremptory challenge is
used in selecting an entity that is a quintessential governmental body, having no
attributes of a private actor. The jury exercises the power of the court and of the
government that confers the court's jurisdiction. As we noted in *Powers*, the jury
system performs the critical governmental functions of guarding the rights of
litigants and "insur[ing] continued acceptance of the laws by all of the people." 499
U.S., at ----, 111 S.Ct., at 1369. In the federal system, the Constitution itself commits
the trial of facts in a civil cause to the jury. Should either party to a cause invoke its
Seventh Amendment right, the jury becomes the principal factfinder, charged with
weighing the evidence, judging the credibility of witnesses, and reaching a verdict.
The jury's factual determinations as a general rule are final. *Basham v.
Pennsylvania R. Co.*, 372 U.S. 699, 83 S.Ct. 965, 10 L.Ed.2d 80 (1963). In some
civil cases, as we noted earlier this Term, the jury can weigh the gravity of a wrong
and determine the degree of the government's interest in punishing and deterring
willful misconduct. See *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. ----, 111 S.Ct.
1032, 113 L.Ed.2d 1 (1991). A judgment based upon a civil verdict may be preclusive
of issues in a later case, even where some of the parties differ. See *Allen v. McCurry*,
449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). And in all jurisdictions a true
verdict will be incorporated in a judgment enforceable by the court. These are
traditional functions of government, not of a select, private group beyond the reach
of the Constitution.

If a government confers on a private body the power to choose the government's
employees or officials, the private body will be bound by the constitutional mandate
of race-neutrality. Cf. *Tarkanian*, 488 U.S., at 192-193, 109 S.Ct., at 462-463;
Rendell-Baker v. Kohn, 457 U.S. 830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982). At
least a plurality of the Court recognized this principle in *Terry v. Adams*, 345 U.S.
461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953). There we found state action in a scheme in
which a private organization known as the Jaybird Democratic Association
conducted whites-only elections to select candidates to run in the Democratic
primary elections in Ford Bend County, Texas. The Jaybird candidate was certain to
win the Democratic primary and the Democratic candidate was certain to win the
general election. Justice Clark's concurring opinion drew from *Smith v. Allwright*,

22 321 U.S. 649, 664, 64 S.Ct. 757, 765, 88 L.Ed. 987 (1944), the principle that "any
« up 'part of the machinery for choosing officials' becomes subject to the Constitution's
constraints." *Terry, supra*, 345 U.S., at 481, 73 S.Ct., at 819. The concurring
opinion concluded:

"[W]hen a state structures its electoral apparatus

23 in a form which devolves upon a political organization the uncontested choice of
public officials, that organization itself, in whatever disguise, takes on those
attributes of government which draw the Constitution's safeguards into play." 345
U.S., at 484, 73 S.Ct., at 821.

24 The principle that the selection of state officials, other than through election by
all qualified voters, may constitute state action applies with even greater force in the
context of jury selection through the use of peremptory challenges. Though the
motive of a peremptory challenge may be to protect a private interest, the objective
of jury selection proceedings is to determine representation on a governmental
body. Were it not for peremptory challenges, there would be no question that the
entire process of determining who will serve on the jury constitutes state action.
The fact that the government delegates some portion of this power to private
litigants does not change the governmental character of the power exercised. The
delegation of authority that in *Terry* occurred without the aid of legislation occurs
here through explicit statutory authorization.

25 We find respondent's reliance on *Polk County v. Dodson*, 454 U.S. 312, 102 S.Ct.
445, 70 L.Ed.2d 509 (1981), unavailing. In that case, we held that a public defender
is not a state actor in his general representation of a criminal defendant, even
though he may be in his performance of other official duties. See *id.*, at 325, 102
S.Ct., at 453-54; *Branti v. Finkel*, 445 U.S. 507, 519, 100 S.Ct. 1287, 1295, 63
L.Ed.2d 574 (1980). While recognizing the employment relation between the public
defender and the government, we noted that the relation is otherwise adversarial in
nature. 454 U.S., at 323, n. 13, 102 S.Ct., at 452, n. 13. "[A] defense lawyer is not,
and by the nature of his function cannot be, the servant of an administrative
superior. Held to the same standards of competence and integrity as a private
lawyer, . . . a public defender works under canons of professional responsibility that
mandate his exercise of independent judgment on behalf of the client." *Id.*, at 321,
102 S.Ct., at 451.

26 In the ordinary context of civil litigation in which the government is not a party,
an adversarial relation does not exist between the government and a private
litigant. In the jury-selection process, the government and private litigants work for
the same end. Just as a government employee was deemed a private actor because
of his purpose and functions in *Dodson*, so here a private entity becomes a
government actor for the limited purpose of using peremptories during jury
selection. The selection of jurors represents a unique governmental function
delegated to private litigants by the government and attributable to the government
for purposes of invoking constitutional protections against discrimination by reason
of race.

27 Our decision in *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40
(1988), provides a further illustration. We held there that a private physician who
contracted with a state prison to attend to the inmates' medical needs was a state
actor. He was not on a regular state payroll, but we held his "function[s] within the
state system, not the precise terms of his employment, [determined] whether his
actions can fairly be attributed to the State." *Id.*, at 55-56, 108 S.Ct., at 2259. We
noted that:

28 "Under state law, the only medical care West could receive for his injury was that
« up provided by the State. If Doctor Atkins misused his power by demonstrating
deliberate indifference to West's serious medical needs, the resultant deprivation
was caused, in a sense relevant for state-action inquiry, by the State's exercise of its
right to punish West by incarceration and to deny him a venue independent of the
State to obtain needed medical care." *Id.*, at 55, 108 S.Ct., at 2259.

29 In the case before us, the parties do not act pursuant to any contractual relation
with the government. Here, as in most civil cases, the initial decision whether to sue
at all, the selection of counsel, and any number of ensuing tactical choices in the
course of discovery and trial may be without the requisite governmental character
to be deemed state action. That cannot be said of the exercise of peremptory
challenges, however; when private litigants participate in the selection of jurors,
they serve an important function within the government and act with its substantial
assistance. If peremptory challenges based on race were permitted, persons could
be required by summons to be put at risk of open and public discrimination as a
condition of their participation in the justice system. The injury to excluded jurors
would be the direct result of governmental delegation and participation.

30 Finally, we note that the injury caused by the discrimination is made more severe
because the government permits it to occur within the courthouse itself. Few places
are a more real expression of the constitutional authority of the government than a
courtroom, where the law itself unfolds. Within the courtroom, the government
invokes its laws to determine the rights of those who stand before it. In full view of
the public, litigants press their cases, witnesses give testimony, juries render
verdicts, and judges act with the utmost care to ensure that justice is done.

31 Race discrimination within the courtroom raises serious questions as to the
fairness of the proceedings conducted there. Racial bias mars the integrity of the
judicial system and prevents the idea of democratic government from becoming a
reality. *Rose v. Mitchell*, 443 U.S. 545, 556, 99 S.Ct. 2993, 3000, 61 L.Ed.2d 739
(1979); *Smith v. Texas*, 311 U.S. 128, 130, 61 S.Ct. 164, 165, 85 L.Ed. 84 (1940). In
the many times we have addressed the problem of racial bias in our system of
justice, we have not "questioned the premise that racial discrimination in the
qualification or selection of jurors offends the dignity of persons and the integrity of
the courts." *Powers*, 499 U.S., at ----, 111 S.Ct., at 1366. To permit racial exclusion
in this official forum compounds the racial insult inherent in judging a citizen by
the color of his or her skin.

B

32 Having held that in a civil trial exclusion on account of race violates a prospective
juror's equal protection rights, we consider whether an opposing litigant may raise
the excluded person's rights on his or her behalf. As we noted in *Powers*: "[I]n the
ordinary course, a litigant must assert his or her own legal rights and interests, and
cannot rest a claim to relief on the legal rights or interests of third parties." *Id.*, at --
--, 111 S.Ct., at 1370. We also noted, however, that this fundamental restriction on
judicial authority admits of "certain, limited exceptions," *ibid.*, and that a litigant
may raise a claim on behalf of a third party if the litigant can demonstrate that he or
she has suffered a concrete, redressable injury, that he or she has a close relation
with the third party, and that there exists some hindrance to the third party's ability
to protect his or her own interests. All three of these requirements for third-party
standing were held satisfied in the criminal context, and they are satisfied in the
civil context as well.

33 Our conclusion in *Powers* that persons excluded from jury service will be unable
« up to protect their own rights applies with equal force in a civil trial. While individual
jurors subjected to peremptory racial exclusion have the right to bring suit on their
own behalf, "[t]he barriers to a suit by an excluded juror are daunting." *Id.*, at ----,
111 S.Ct., at 1373. We have no reason to believe these barriers would be any less
imposing simply because a person was excluded from jury service in a civil
proceeding. Likewise, we find the relation between the excluded venireperson and
the litigant challenging the exclusion to be just as close in the civil context as in a
criminal trial. Whether in a civil or criminal proceeding, "[v]oir dire permits a party
to establish a relation, if not a bond of trust, with the jurors," a relation that
"continues throughout the entire trial." *Id.*, at ----, 111 S.Ct., at 1372. Exclusion of a
juror on the basis of race severs that relation in an invidious way.

34 We believe the only issue that warrants further consideration in this case is
whether a civil litigant can demonstrate a sufficient interest in challenging the
exclusion of jurors on account of race. In *Powers*, we held:

35 "The discriminatory use of peremptory challenges by the prosecution causes a
criminal defendant cognizable injury, and the defendant has a concrete interest in
challenging the practice. See *Allen v. Hardy*, 478 U.S., [255], at 259 [106 S.Ct.
2878, at 2880, 92 L.Ed.2d 199 (1986)] (recognizing a defendant's interest in
'neutral jury selection procedures'). This is not because the individual jurors
dismissed by the prosecution may have been predisposed to favor the defendant; if
that were true, the jurors might have been excused for cause. Rather, it is because
racial discrimination in the selection of jurors 'casts doubt on the integrity of the
judicial process,' *Rose v. Mitchell*, [*supra*, at 556, 99 S.Ct., at 3000], and places the
fairness of a criminal proceeding in doubt." *Id.*, at ---- - ----, 111 S.Ct. at 1371.

36 The harms we recognized in *Powers* are not limited to the criminal sphere. A civil
proceeding often implicates significant rights and interests. Civil juries, no less than
their criminal counterparts, must follow the law and act as impartial factfinders.
And, as we have observed, their verdicts, no less than those of their criminal
counterparts, become binding judgments of the court. Racial discrimination has no
place in the courtroom, whether the proceeding is civil or criminal. See *Thiel v.*
Southern Pacific Co., 328 U.S., at 220, 66 S.Ct., at 985-86. Congress has so
mandated by prohibiting various discriminatory acts in the context of both civil and
criminal trials. See 18 U.S.C. § 243; 28 U.S.C. §§ 1861, 1862. The Constitution
demands nothing less. We conclude that courts must entertain a challenge to a
private litigant's racially discriminatory use of peremptory challenges in a civil trial.

It may be true that the role of litigants in determining the jury's composition
provides one reason for wide acceptance of the jury system and of its verdicts. But if
race stereotypes are the price for acceptance of a jury panel as fair, the price is too
high to meet the standard of the Constitution. Other means exist for litigants to
satisfy themselves of a jury's impartiality without using skin color as a test. If our
society is to continue to progress as a multiracial democracy, it must recognize that
the automatic invocation of race stereotypes retards that progress and causes
continued hurt and injury. By the dispassionate analysis which is its special
distinction, the law dispels fears and preconceptions respecting racial attitudes. The
quiet rationality of the courtroom makes it an appropriate place to confront race-
based fears or hostility by means other than the use of offensive stereotypes.
Whether the race generality employed by litigants to challenge a potential juror
derives from open hostility or from some hidden and unarticulated fear, neither
motive entitles the litigant to cause injury to the excused juror. And if a litigant
believes that the prospective juror harbors the same biases or instincts, the issue

37 can be explored in a rational way that consists with respect for the dignity of
« up persons, without the use of classifications based on ancestry or skin color.

III

38 It remains to consider whether a prima facie case of racial discrimination has been established in the case before us, requiring Leesville to offer race-neutral explanations for its peremptory challenges. In *Batson*, we held that determining whether a prima facie case has been established requires consideration of all relevant circumstances, including whether there has been a pattern of strikes against members of a particular race. 476 U.S., at 96-97, 106 S.Ct., at 1722-23. The same approach applies in the civil context, and we leave it to the trial courts in the first instance to develop evidentiary rules for implementing our decision.

39 The judgment is reversed, and the case is remanded for further proceedings consistent with our opinion.

40 *It is so ordered.*

41 Justice O'CONNOR, with whom THE CHIEF JUSTICE and Justice SCALIA join, dissenting.

42 The Court concludes that the action of a private attorney exercising a peremptory challenge is attributable to the government and therefore may compose a constitutional violation. This conclusion is based on little more than that the challenge occurs in the course of a trial. Not everything that happens in a courtroom is state action. A trial, particularly a civil trial, is by design largely a stage on which private parties may act; it is a forum through which they can resolve their disputes in a peaceful and ordered manner. The government erects the platform; it does not thereby become responsible for all that occurs upon it. As much as we would like to eliminate completely from the courtroom the specter of racial discrimination, the Constitution does not sweep that broadly. Because I believe that a peremptory strike by a private litigant is fundamentally a matter of private choice and not state action, I dissent.

43 * In order to establish a constitutional violation, Edmonson must first demonstrate that Leesville's use of a peremptory challenge can fairly be attributed to the government. Unfortunately, our cases deciding when private action might be deemed that of the state have not been a model of consistency. Perhaps this is because the state action determination is so closely tied to the "framework of the peculiar facts or circumstances present." See *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 726, 81 S.Ct. 856, 862, 6 L.Ed.2d 45 (1961). Whatever the reason, and despite the confusion, a coherent principle has emerged. We have stated the rule in various ways, but at base, "constitutional standards are invoked only when it can be said that the [government] is *responsible* for the specific conduct of which the plaintiff complains." *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S.Ct. 2777, 2785-86, 73 L.Ed.2d 534 (1982). Constitutional "liability attaches only to those wrongdoers 'who carry a badge of authority of [the government] and represent it in some capacity.'" *National Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179, 191, 109 S.Ct. 454, 461, 102 L.Ed.2d 469 (1988), quoting *Monroe v. Pape*, 365 U.S. 167, 172, 81 S.Ct. 473, 476, 5 L.Ed.2d 492 (1961).

The Court concludes that this standard is met in the present case. It rests this conclusion primarily on two empirical assertions. First, that private parties use peremptory challenges with the "overt, significant participation of the government." *Ante*, at 622. Second, that the use of a peremptory challenge by a private party

44 "involves the performance of a traditional function of the government." *Ante*, at
« up 624. Neither of these assertions is correct.

A.

45 The Court begins with a perfectly accurate definition of the peremptory challenge. Peremptory challenges "allow parties to exclude a given number of persons who otherwise would satisfy the requirements for service on the petit jury." *Ante*, at 620. This description is worth more careful analysis, for it belies the Court's later conclusions about the peremptory.

46 The peremptory challenge "allow[s] parties," in this case *private* parties, to exclude potential jurors. It is the nature of a peremptory that its exercise is left wholly within the discretion of the litigant. The purpose of this longstanding practice is to establish for each party an " 'arbitrary and capricious species of challenge' " whereby the " 'sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another' " may be acted upon. *Lewis v. United States*, 146 U.S. 370, 376, 13 S.Ct. 136, 138, 36 L.Ed. 1011 (1892), quoting 4 W. Blackstone, Commentaries *353. By allowing the litigant to strike jurors for even the most subtle of discerned biases, the peremptory challenge fosters both the perception and reality of an impartial jury. *Ibid.*; *Hayes v. Missouri*, 120 U.S. 68, 70, 7 S.Ct. 350, 351, 30 L.Ed. 578 (1887); *Swain v. Alabama*, 380 U.S. 202, 219, 85 S.Ct. 824, 835, 13 L.Ed.2d 759 (1965); *Holland v. Illinois*, 493 U.S. 474, 481-482, 110 S.Ct. 803, ---- - ----, 107 L.Ed.2d 905 (1990). In both criminal and civil trials, the peremptory challenge is a mechanism for the exercise of *private* choice in the pursuit of fairness. The peremptory is, by design, an enclave of private action in a government-managed proceeding.

47 The Court amasses much ostensible evidence of the Federal Government's "overt, significant participation" in the peremptory process. See *ante*, at 624. Most of this evidence is irrelevant to the issue at hand. The bulk of the practices the Court describes—the establishment of qualifications for jury service, the location and summoning of perspective jurors, the jury wheel, the voter lists, the jury qualification forms, the per diem for jury service—are independent of the statutory entitlement to peremptory strikes, or of their use. All of this government action is in furtherance of the Government's distinct obligation to provide a qualified jury; the Government would do these things even if there were no peremptory challenges. All of this activity, as well as the trial judge's control over *voir dire*, see *ante*, at 623-624, are merely prerequisites to the use of a peremptory challenge; they do not constitute participation *in* the challenge. That these actions may be necessary to a peremptory challenge—in the sense that there could be no such challenge without a venire from which to select—no more makes the challenge state action than the building of roads and provision of public transportation makes state action of riding on a bus.

The entirety of the Government's actual participation in the peremptory process boils down to a single fact: "When a lawyer exercises a peremptory challenge, the judge advises the juror he or she has been excused." *Ante*, at 623-624. This is not significant participation. The judge's action in "advising" a juror that he or she has been excused is state action to be sure. It is, however, if not *de minimis*, far from what our cases have required in order to hold the government "responsible" for private action or to find that private actors "represent" the government. See *Blum, supra*, 457 U.S., at 1004, 102 S.Ct., at 2785-86; *Tarkanian, supra*, 488 U.S., at 191, 109 S.Ct., at 461. The government "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant

48 encouragement, either overt or covert, that the choice must in law be deemed to be
« up that of the State." *Blum, supra*, 457 U.S., at 1004, 102 S.Ct., at 2786.

49 As an initial matter, the judge does not "encourage" the use of a peremptory
challenge at all. The decision to strike a juror is entirely up to the litigant, and the
reasons for doing so are of no consequence to the judge. It is the attorney who
strikes. The judge does little more than acquiesce in this decision by excusing the
juror. In point of fact, the government has virtually no role in the use of peremptory
challenges. Indeed, there are jurisdictions in which, with the consent of the parties,
voir dire and jury selection may take place in the absence of any court personnel.
See *Haith v. United States*, 231 F.Supp. 495 (ED Pa.1964), *aff'd*, 342 F.2d 158 (CA3
1965) (*per curiam*); *State v. Eberhardt*, 32 Ohio Misc. 39, 282 N.E.2d 62 (1972).

50 The alleged state action here is a far cry from that the Court found, for example,
in *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). In that case,
state courts were called upon to enforce racially restrictive covenants against sellers
of real property who did not wish to discriminate. The coercive power of the State
was necessary in order to enforce the private choice of those who had created the
covenants: "[B]ut for the active intervention of the state courts, supported by the
full panoply of state power, petitioners would have been free to occupy the
properties in question without restraint." *Id.*, at 19, 68 S.Ct., at 845. Moreover, the
courts in *Shelley* were asked to enforce a facially discriminatory contract. In
contrast, peremptory challenges are "exercised without a reason stated [and]
without inquiry." *Swain, supra*, 380 U.S., at 220, 85 S.Ct., at 835-36. A judge does
not "significantly encourage" discrimination by the mere act of excusing a juror in
response to an unexplained request.

51 There is another important distinction between *Shelley* and this case. The state
courts in *Shelley* used coercive force to impose conformance on parties who did not
wish to discriminate. "Enforcement" of peremptory challenges, on the other hand,
does not compel anyone to discriminate; the discrimination is wholly a matter of
private choice. See Goldwasser, *Limiting a Criminal Defendant's Use of Peremptory
Challenges: On Symmetry and the Jury in a Criminal Trial*, 102 Harv.L.Rev. 808,
819 (1989). Judicial acquiescence does not convert private choice into that of the
state. See *Blum*, 457 U.S., at 1004-1005, 102 S.Ct., at 2785-2786.

52 Nor is this the kind of significant involvement found in *Tulsa Professional
Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565
(1988). There, we concluded that the actions of the executrix of an estate in
providing notice to creditors that they might file claims could fairly be attributed to
the State. The State's involvement in the notice process, we said, was "pervasive and
substantial." *Id.*, at 487, 108 S.Ct., at 1345-46. In particular, a state statute directed
the executrix to publish notice. In addition, the District Court in that case had
"reinforced the statutory command with an order expressly requiring [the
executrix] to 'immediately give notice to creditors.'" *Ibid.* Notice was not only
encouraged by the State, but positively required. There is no comparable state
involvement here. No one is compelled by government action to use a peremptory
challenge, let alone to use it in a racially discriminatory way.

The Court relies also on *Burton v. Wilmington Parking Authority*, 365 U.S. 715,
81 S.Ct. 856, 6 L.Ed.2d 45 (1961). See *ante*, at 621, 624. But the decision in that case
depended on the perceived symbiotic relationship between a restaurant and the
state parking authority from whom it leased space in a public building. The State
had "so far insinuated itself into a position of interdependence with" the restaurant
that it had to be "recognized as a joint participant in the challenged activity."
Burton, supra, at 725, 81 S.Ct., at 861-62. Among the "peculiar facts [and]

53 circumstances" leading to that conclusion was that the State stood to profit from the
« up restaurant's discrimination. 365 U.S., at 726, 724, 81 S.Ct., at 862, 861. As I have
shown, the government's involvement in the use of peremptory challenges falls far
short of "interdependence" or "joint participation." Whatever the continuing vitality
of *Burton* beyond its facts, see *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345,
358, 95 S.Ct. 449, 457, 42 L.Ed.2d 477 (1974), it does not support the Court's
conclusion here.

54 *Jackson* is a more appropriate analogy to this case. Metropolitan Edison
terminated Jackson's electrical service under authority granted it by the State,
pursuant to a procedure approved by the state utility commission. Nonetheless, we
held that Jackson could not challenge the termination procedure on due process
grounds. The termination was not state action because the State had done nothing
to encourage the particular termination practice:

55 "Approval by a state utility commission of such a request from a regulated utility,
where the commission has not put its own weight on the side of the proposed
practice by ordering it, does not transmute a practice initiated by the utility and
approved by the commission into "state action." . . . *Respondent's exercise of the
choice allowed by state law where the initiative comes from it and not from the
State, does not make its action in doing so "state action" for purposes of the
Fourteenth Amendment.*" *Id.*, at 357, 95 S.Ct., at 456-57 (emphasis added; footnote
omitted).

56 The similarity to this case is obvious. The Court's "overt, significant" government
participation amounts to the fact that the government provides the mechanism
whereby a litigant can choose to exercise a peremptory challenge. That the
government allows this choice and that the judge approves it, does not turn this
private decision into state action.

57 To the same effect is *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56
L.Ed.2d 185 (1978). In that case, a warehouseman's proposed sale of goods
entrusted to it for storage pursuant to the New York Uniform Commercial Code was
not fairly attributable to the State. We held that "the State of New York is in no way
responsible for Flagg Brothers' decision, a decision which the State in § 7-210
permits but does not compel, to threaten to sell these respondents' belongings." *Id.*,
at 165, 98 S.Ct., at 1738. Similarly, in the absence of compulsion, or at least
encouragement, from the government in the use of peremptory challenges, the
government is not responsible.

58 "The essential nature of the peremptory challenge is that it is one exercised
without a reason stated, without inquiry and without being subject to the court's
control." *Swain*, 380 U.S., at 220, 85 S.Ct., at 836. The government neither
encourages nor approves such challenges. Accordingly, there is no "overt,
significant participation" by the government.

B

The Court errs also when it concludes that the exercise of a peremptory challenge
is a traditional government function. In its definition of the peremptory challenge,
the Court asserts, correctly, that jurors struck via peremptories "otherwise . . .
satisfy the requirements for service on the petit jury." *Ante*, at 620. Whatever
reason a private litigant may have for using a peremptory challenge, it is not the
government's reason. The government otherwise establishes its requirements for
jury service, leaving to the private litigant the unfettered discretion to use the strike
for any reason. This is not part of the government's function in establishing the
requirements for jury service. "Peremptory challenges are exercised by a party, not

59 in selection of jurors, but in rejection. It is not aimed at disqualification, but is exercised upon qualified jurors as matter of favor to the challenger." C. Lincoln, « up Abbott's Civil Jury Trials 92 (3d ed. 1912), quoting *O'Neil v. Lake Superior Iron Co.*, 67 Mich. 560, 35 N.W. 162 (1887). For this reason, the Court is incorrect, and inconsistent with its own definition of the peremptory challenge, when it says that "[i]n the jury-selection process [in a civil trial], the government and private litigants work for the same end." See *ante*, at 627. The Court is also incorrect when it says that a litigant exercising a peremptory challenge is performing "a traditional function of the government." See *ante*, at 624.

60 The peremptory challenge is a practice of ancient origin, part of our common law heritage in criminal trials. See *Swain, supra*, at 212-218, 85 S.Ct., at 831-835 (tracing history); *Holland*, 493 U.S., at 481, 110 S.Ct., at ---- (same). Congress imported this tradition into federal civil trials in 1872. See ch. 333, 17 Stat. 282; *Swain*, 380 U.S., at 215, n. 14, 85 S.Ct., at 833, n. 14. The practice of unrestrained private choice in the selection of civil juries is even older than that, however. While there were no peremptory challenges in civil trials at common law, the struck jury system allowed each side in both criminal and civil trials to strike alternately, and without explanation, a fixed number of jurors. See *id.*, at 217-218, and n. 21, 85 S.Ct., at 834-835, and n. 21, citing J. Proffatt, *Trial by Jury* § 72 (1877), and F. Busch, *Law and Tactics in Jury Trials* § 62 (1949). Peremptory challenges are not a traditional government function; the "tradition" is one of unguided private choice. The Court may be correct that "[w]ere it not for peremptory challenges, . . . the entire process of determining who will serve on the jury [would] constitut[e] state action." *Ante*, at 626. But there are peremptory challenges, and always have been. The peremptory challenge forms no part of the *government's* responsibility in selecting a jury.

61 A peremptory challenge by a private litigant does not meet the Court's standard; it is not a traditional government function. Beyond this, the Court has misstated the law. The Court cites *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953), and *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946), for the proposition that state action may be imputed to one who carries out a "traditional governmental function." *Ante*, at 621. In those cases, the Court held that private control over certain core government activities rendered the private action attributable to the State. In *Terry*, the activity was a private primary election that effectively determined the outcome of county general elections. In *Marsh*, a company that owned a town had attempted to prohibit on its sidewalks certain protected speech.

62 In *Flagg Bros., supra*, the Court reviewed these and other cases that found state action in the exercise of certain public functions by private parties. See 436 U.S., at 157-160, 98 S.Ct., at 1733-35, reviewing *Terry, Marsh, Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944), and *Nixon v. Condon*, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984 (1932). We explained that the government functions in these cases had one thing in common: exclusivity. The public-function doctrine requires that the private actor exercise "a power 'traditionally exclusively reserved to the State.'" 436 U.S., at 157, 98 S.Ct., at 1734, quoting *Jackson*, 419 U.S., at 352, 95 S.Ct., at 454. In order to constitute state action under this doctrine, private conduct must not only comprise something that the government traditionally does, but something that *only* the government traditionally does. Even if one could fairly characterize the use of a peremptory strike as the performance of the traditional government function of jury selection, it has never been exclusively the function of the government to select juries; peremptory strikes are older than the Republic.

63 *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988), is not to the
« up contrary. The Court seeks to derive from that case a rule that one who "serve[s] an
important function within the government," even if not a government employee, is
thereby a state actor. See *ante*, at 628. Even if this were the law, it would not help
the Court's position. The exercise of a peremptory challenge is not an important
government function; it is not a government function at all. In any event, *West* does
not stand for such a broad proposition. The doctor in that case was under contract
with the State to provide services for the State. More important, the State hired the
doctor in order to fulfill the State's constitutional obligation to attend to the
necessary medical care of prison inmates. 487 U.S., at 53, n. 10, 57, 108 S.Ct., at
2257, n. 10, 2260. The doctor's relation to the State, and the State's responsibility,
went beyond mere performance of an important job.

64 The present case is closer to *Jackson, supra*, and *RendellBaker v. Kohn*, 457 U.S.
830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982), than to *Terry, Marsh*, or *West*. In the
former cases, the alleged state activities were those of state-regulated private actors
performing what might be considered traditional public functions. See *Jackson*
(electrical utility); *Rendell-Baker* (school). In each case, the Court held that the
performance of such a function, even if state regulated or state funded, was not
state action unless the function had been one exclusively the prerogative of the
State, or the State had provided such significant encouragement to the challenged
action that the State could be held responsible for it. See *Jackson*, 419 U.S., at 352-
353, 357, 95 S.Ct., at 454-455, 456-57; *Rendell-Baker, supra*, 457 U.S., at 842, 840,
102 S.Ct., at 2771-72, 2770-71. The use of a peremptory challenge by a private
litigant meets neither criterion.

C

65 None of this should be news, as this case is fairly well controlled by *Polk County*
v. Dodson, 454 U.S. 312, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981). We there held that a
public defender, employed by the State, does not act under color of state law when
representing a defendant in a criminal trial.* In such a circumstance, government
employment is not sufficient to create state action. More important for present
purposes, neither is the performance of a lawyer's duties in a courtroom. This is
because a lawyer, when representing a private client, cannot at the same time
represent the government.

66 Trials in this country are adversarial proceedings. Attorneys for private litigants
do not act on behalf of the government, or even the public as a whole; attorneys
represent their clients. An attorney's job is to "advanc[e] the 'undivided interests of
his client.' This is essentially a private function . . . for which state office and
authority are not needed." *Id.*, at 318-319, 102 S.Ct., at 449-450 (footnotes
omitted). When performing adversarial functions during trial, an attorney for a
private litigant acts independently of the government:

67 "[I]t is the function of the public defender to enter 'not guilty' pleas, move to
suppress State's evidence, object to evidence at trial, cross-examine State's
witnesses, and make closing arguments in behalf of defendants. All of these are
adversarial functions. We find it peculiarly difficult to detect any color of state law
in such activities." 454 U.S., at 320, 102 S.Ct., at 451.

Our conclusion in *Dodson* was that "a public defender does not act under color of
state law when performing a lawyer's traditional functions as counsel to a defendant
in a criminal proceeding." *Id.*, at 325, 102 S.Ct. at 453. It cannot be gainsaid that a
peremptory strike is a traditional adversarial act; parties use these strikes to further
their own perceived interests, not as an aid to the government's process of jury

68 selection. The Court does not challenge the rule of *Dodson*, yet concludes that
« up private attorneys performing this adversarial function are state actors. Where is the
distinction?

69 The Court wishes to limit the scope of *Dodson* to the actions of public defenders
in an adversarial relationship with the government. *Ante*, at 626-627. At a
minimum then, the Court must concede that *Dodson* stands for the proposition that
a criminal defense attorney is not a state actor when using peremptory strikes on
behalf of a client, nor is an attorney representing a private litigant in a civil suit
against the government. Both of these propositions are true, but the Court's
distinction between this case and *Dodson* turns state action doctrine on its head.
Attorneys in an adversarial relation to the state are not state actors, but that does
not mean that attorneys who are not in such a relation *are* state actors.

70 The Court is plainly wrong when it asserts that "[i]n the jury-selection process,
the government and private litigants work for the same end." See *ante*, at 627. In a
civil trial, the attorneys for each side are in "an adversarial relation," *ibid.*; they use
their peremptory strikes in direct opposition to one another, and for precisely
contrary ends. The government cannot "work for the same end" as both parties. In
fact, the government is neutral as to private litigants' use of peremptory strikes.
That's the point. The government does not encourage or approve these strikes, or
direct that they be used in any particular way, or even that they be used at all. The
government is simply not "responsible" for the use of peremptory strikes by private
litigants.

71 Constitutional "liability attaches only to those wrongdoers 'who carry a badge of
authority of [the government] and represent it in some capacity.'" *Tarkanian*, 488
U.S., at 191, 109 S.Ct., at ----. A government attorney who uses a peremptory
challenge on behalf of the client is, by definition, representing the government. The
challenge thereby becomes state action. It is antithetical to the nature of our
adversarial process, however, to say that a private attorney acting on behalf of a
private client represents the government for constitutional purposes.

II

72 Beyond "significant participation" and "traditional function," the Court's final
argument is that the exercise of a peremptory challenge by a private litigant is state
action because it takes place in a courtroom. *Ante*, at 628. In the end, this is all the
Court is left with; peremptories do not involve the "overt, significant participation
of the government," nor do they constitute a "traditional function of the
government." The Court is also wrong in its ultimate claim. If *Dodson* stands for
anything, it is that the actions of a lawyer in a courtroom do not become those of the
government by virtue of their location. This is true even if those actions are based
on race.

73 Racism is a terrible thing. It is irrational, destructive, and mean. Arbitrary
discrimination based on race is particularly abhorrent when manifest in a
courtroom, a forum established by the government for the resolution of disputes
through "quiet rationality." See *ante*, at 631. But not every opprobrious and
inequitable act is a constitutional violation. The Fifth Amendment's Due Process
Clause prohibits only actions for which the Government can be held responsible.
The Government is not responsible for everything that occurs in a courtroom. The
Government is not responsible for a peremptory challenge by a private litigant. I
respectfully dissent.

74 Justice SCALIA, dissenting.

75 I join Justice O'CONNOR's dissent, which demonstrates that today's opinion is
wrong in principle. I write to observe that it is also unfortunate in its consequences.

« up

76 The concrete benefits of the Court's newly discovered constitutional rule are problematic. It will not necessarily be a net help rather than hindrance to minority litigants in obtaining racially diverse juries. In criminal cases, *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), already prevents the prosecution from using race-based strikes. The effect of today's decision (which logically must apply to criminal prosecutions) will be to prevent the *defendant* from doing so—so that the minority defendant can no longer seek to prevent an all-white jury, or to seat as many jurors of his own race as possible. To be sure, it is ordinarily more difficult to *prove* race-based strikes of white jurors, but defense counsel can generally be relied upon to do what we say the Constitution requires. So in criminal cases, today's decision represents a net loss to the minority litigant. In civil cases that is probably not true—but it does not represent an unqualified gain either. *Both* sides have peremptory challenges, and they are sometimes used to *assure* rather than to *prevent* a racially diverse jury.

77 The concrete costs of today's decision, on the other hand, are not at all doubtful; and they are enormous. We have now added to the duties of already-submerged state and federal trial courts the obligation to assure that race is not included among the other factors (sex, age, religion, political views, economic status) used by private parties in exercising their peremptory challenges. That responsibility would be burden enough if it were not to be discharged through the adversary process; but of course it is. When combined with our decision this Term in *Powers v. Ohio*, 499 U.S. ----, 113 S.Ct. 1364, 113 L.Ed.2d 411 (1991), which held that the party objecting to an allegedly race-based peremptory challenge need not be of the same race as the challenged juror, today's decision means that *both* sides, in *all* civil jury cases, no matter what their race (and indeed, even if they are artificial entities such as corporations), may lodge racial-challenge objections and, after those objections have been considered and denied, appeal the denials—with the consequence, if they are successful, of having the judgments against them overturned. Thus, yet another complexity is added to an increasingly Byzantine system of justice that devotes more and more of its energy to sideshows and less and less to the merits of the case. Judging by the number of *Batson* claims that have made their way even as far as this Court under the *pre-Powers* regime, it is a certainty that the amount of judges' and lawyers' time devoted to implementing today's newly discovered Law of the Land will be enormous. That time will be diverted from other matters, and the overall system of justice will certainly suffer. Alternatively, of course, the States and Congress may simply abolish peremptory challenges, which would cause justice to suffer in a different fashion. See *Holland v. Illinois*, 493 U.S. 474, 484, 110 S.Ct. 803, ----, 107 L.Ed.2d 905 (1990).

78 Although today's decision neither follows the law nor produces desirable concrete results, it certainly has great symbolic value. To overhaul the doctrine of state action in this fashion—what a magnificent demonstration of this institution's uncompromising hostility to race-based judgments, even by private actors! The price of the demonstration is, alas, high, and much of it will be paid by the minority litigants who use our courts. I dissent.

Dodson was a case brought under 42 U.S.C. § 1983, the statutory mechanism for many constitutional claims. The issue in that case, therefore, was whether the public defender had acted "under color of state law." 454 U.S., at 314, 102 S.Ct., at 447-48. In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929, 102 S.Ct. 2744, 2749-50, 73 L.Ed.2d 482 (1982),

« up the Court held that the statutory requirement of action "under color of state law" is identical to the "state action" requirement for other constitutional claims.

Student Materials

- Class-Prep Assignment
- Research Activity: “Compare /Contrast Civil & Criminal Trials Through Jury Selection”
- “Student’s Video Guide: The Right To Trial by an Impartial Jury”
- Activity: “A Difference of Opinion”
- “Take-Home Quiz: True/False/Opinion”

Class-Prep Assignment Sheet

The following assignment provides essential background knowledge and context for understanding the short video that we will watch and discuss in the following days. From it you will be introduced to the story behind the Supreme Court case of *Edmonson v. Leesville Concrete Co.* (1991).

Materials Needed

- Video: Jury Selection: Edmonson v. Leesville Concrete Company (Time 23:19)
Available from <http://www.annenbergclassroom.org/page/jury-selection-edmonson>

Instructions

Watch and listen to learn about the story of *Edmonson v. Leesville Concrete Co.* then answer the following questions. Bring this sheet and the completed questions with you to class.

Questions

1. Who is Thaddeus Edmonson and why did he go to court?
2. What was the nature of Edmonson' case?
3. What disturbed Doyle about Edmonson's trial and why did he feel it was significant?
4. Explain the shift that occurred in Edmonson's case when it was appealed.
5. What Constitutional principle became the grounds for the appeal?
6. Identify Willie Combs and Wilton Simmons and explain their role in the story.
7. What do you think motivated Thaddeus Edmonson and Doyle to keep up the appeals?
8. What was the outcome of the Supreme Court case for Edmonson?
9. Did Edmonson achieve what he was after in court?
10. Explain the significance of the Supreme Court case of *Edmonson v. Leesville Concrete Co.*

Research Activity: “Compare /Contrast Civil & Criminal Trials Through Jury Selection” (Federal Court)

Instructions

Conduct research to compare and contrast criminal and civil trials related to each factor listed below. Reproduce the chart to allow more space for answers. Use court-related terminology when possible.

Factors	Civil Trial	Both	Criminal Trial
1. Constitutional basis			
2. Purpose of the trial			
3. Role of the court			
4. Responsibility of the judge			
5. Responsibility of the jury			
6. Types of cases heard			
7. Examples of cases heard			
8. Party initiating the case			
9. Party charged			
10. State actors (government) in the courtroom			
11. Private actors in the courtroom			
12. Potential outcomes			
13. Goal of each side			
14. Burden of proof			
15. Selection process for juror pool			
16. Qualifications for jury service			
17. Purpose of voir dire			
18. Challenges allowed attorneys			
19. Goal of jury selection process			
20. Civic dispositions of jurors			
21. <i>Edmonson v. Leesville Concrete Co.</i>			

Research Activity: “Compare /Contrast Civil & Criminal Trials Through Jury Selection” (Federal Court)

Readings and Resources to Review

Materials Provided

The following materials are available from the teacher or they may be accessed at the sites indicated.

- **U.S. Constitution**

Available from The Annenberg Guide to the Constitution (includes commentary)

<http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>

- Preamble
- Article III
- Sixth Amendment
- Seventh Amendment
- Fourteenth Amendment

- **“Chapter 18: The Right to Trial by Jury”** from *Our Rights* by David J. Bodenhamer

Available from Annenberg Classroom at http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Rights/Chapter_18_Our_Rights.pdf

- **Definitions for “Constitution,” “Justice,” & “Rights,”** from *Understanding Democracy, A Hip Pocket Guide* by John J. Patrick

Available from Annenberg Classroom at

<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>

- **Glossary of Jury- and Court-Related Terms**

- **Background story for *Edmonson v. Leesville Concrete Co. (1991)***

Internet Sources

- **American Judicature Society**

Juries in Depth – Right to a Jury Trial

http://www.ajs.org/jc/juries/jc_right_overview.asp

- **Federal Judicial Center: What Federal Courts Do**

<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu2c&page=/federal/courts.nsf/page/A2ACB10A0EEA99B185256824004B4FAA?opendocument>

- **United States Courts**

- Civil Cases

<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/CivilCases.aspx>

- Criminal Cases

<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/HowCourtsWork/CriminalCases.aspx>

- Jury Service

<http://www.uscourts.gov/FederalCourts/JuryService.aspx>

- Handbook for Trial Jurors Serving in the United States District Courts

<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/Jury/trialhandbook.pdf>

- **Sunnylands: Mini documentaries on juries**

<http://sunnylandsclassroom.org/Asset.aspx?id=1468>

- **National Center for State Courts Information & Resources** (Browse by state and topic)

http://www.ncsc.org/Web%20Document%20Library/IR_landing.aspx

- **District Courts by State**

http://www.findlaw.com/10fedgov/judicial/district_courts.html

“Student’s Video Guide: The Right To Trial by an Impartial Jury”

Introduction

In this video, a group of high school students participate in a question-and-answer session with a panel of U.S. Supreme Court Justices (Sandra Day O’Connor, Anthony M. Kennedy, and Stephen G. Breyer) about the use of peremptory challenges in the civil case of *Edmonson v. Leesville Concrete Co.* (1991). After hearing the arguments and deliberating the issues, the Court ruled in a 6-3 split decision that, “A private litigant in a civil case may not use peremptory challenges to exclude jurors on account of race.” Such action in a civil case denies jurors of their Constitutional right to be treated fairly in a court of law.

Though not mentioned in the video, Justices Kennedy and O’Connor were sitting Justices in *Edmonson v. Leesville Concrete Co.* Justice Kennedy delivered the opinion of the Court and Justice O’Connor filed a dissenting opinion that was joined by Chief Justice William Rehnquist.

Note: The Q & A in the first half of the video covers basic information about juries. In the second half, the Justices discuss issues of rights in the context of a civil jury trial. Pay close attention to the two main lines of questioning that prompt the students to think about rights from different viewpoints.

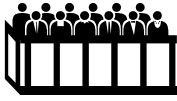
Background Knowledge

In order to understand the interaction between the Justices and group of students in this short video and the constitutional principles involved, viewers should have advance knowledge about the following:

- Constitutional basis for jury rights
- Similarities and differences between civil and criminal trials in federal court
- Process and procedures for selecting and seating impartial juries
- Primary courtroom actors
- Responsibilities and limitations of the government
- Rights of private individuals
- Background story for *Edmonson v. Leesville Concrete Co.* (1991)

Vocabulary

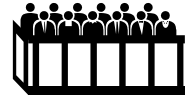
bias	jury	responsibility
civil case	jury selection	right
court	justice	service
criminal case	litigant	set aside
defendant	party	sue
facts	peremptory challenge	suit
fair	plaintiff	summoned
impartial	prejudice	trial by jury
judge	prospective juror	U.S. Constitution
juror	recovery	voir dire



Student's Video Guide

The Right to Trial by an Impartial Jury

(Audio Time 8:13)



Preparation for Viewing

1. Complete the compare-and-contrast research activity included with this lesson prior to watching the video.
2. Become familiar with the background facts of *Edmonson v. Leesville Concrete Co.*

During the Video

Watch and listen carefully as this is a short video with little time for note-taking.

Note: There are several times in the video when students misspoke. The errors are noted below, followed by the correction.

- Vice-Admiralty acts > Vice-Admiralty courts
- Leesville Construction Company > Leesville Concrete Company

Discussion Questions

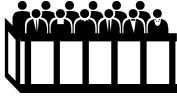
1. What information was communicated about juries in the first half of the video? What facts do you remember? Make a list.
2. Define *peremptory challenge* and explain the concern over its use by lawyers in the civil case of *Edmonson v. Leesville Concrete Co.* Describe the problem and use the correct name of the party.
3. What is the purpose of having an impartial jury? Why is it important?
4. Whose rights were violated in *Edmonson v. Leesville*? Give your reasons. During which part of the trial did the violation occur?

Analyze the Words

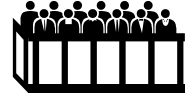
1. Revisit the sections related to rights in the courtroom by reading and discussing the following transcript excerpts.

Excerpt 1: The following exchange with Justice O'Connor involves questions about rights on behalf of which individuals in the courtroom?

Justice O'Connor (Time 4:32): Suppose I'm driving my car and I have an auto accident, and I'm injured And I want to sue the person that I thought caused the accident. And I go to court with my case. I can have a jury trial. Suppose I'm African American. I'm the plaintiff and I'm suing, and a jury is picked and the other side challenges and has removed from that jury panel every African American on the panel so that I don't have one left on my jury. Now is that a violation of a constitutional right do you think? What is that? What can you do about that? What can you do about that? . . . Yes.



Student's Video Guide
The Right to Trial by an Impartial Jury
 (Audio Time 8:13)



Student: It is a violation of the juror's right to sit on a jury and hear the case.

Justice O'Connor: Well, but the juror isn't complaining. It's the other side, the other party. It's the party who's suing. And I'm suing in this case and I want a jury. And I'm African American and the other side removed every African American from the jury.

Student: I think it's your right to an impartial jury . . . your right to an impartial jury.

Justice O'Connor: Your right to an impartial jury. Well, what I want is a partial jury. I want somebody who will vote for me. So do I still have a right? It isn't 'cause I want an impartial jury, I don't want them taking off every African American on my jury panel. Do I have that right?

Student: The jury is supposed to be representative of the community that it comes from. So if litigants can eliminate jurors based on race, then the jury is no longer representative of the community.

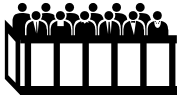
Excerpt 2: What did Justice Kennedy communicate to the viewer/listener through his words at the end of the video? Whose rights became the concern of the Court and why?

Justice Kennedy (Time 6:20): So we hadn't been in this precise area before, and at the end of the argument, the attorney who was arguing that it was wrong to exclude the jurors said something like. . .

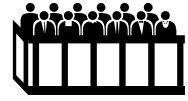
"This case isn't just about my client, Mr. Edmonson, or my friend's client, the Leesville Concrete Co. This case is about two men who are not represented here. Their names are William Combs and Wilton Simmons. We don't know what their education was, because they were excused without being asked any questions. We don't know where they lived, which town, because they were excused without being asked any questions. We don't know if they could be fair; we don't know if they could be impartial, because they were excused without being asked any questions. We do know, that on that day in 1987 in July, when they walked into the United States District courtroom, they thought things had changed. Their fathers and their grandfathers, their mothers and their grandmothers could not have been on a jury, they could not have voted. But for them to be on a jury was as important as the right to vote. And when they walked into that courtroom, they thought that things had changed. They thought there was a promise that they would be judged by not the color of their skin but by the content of their character and we ask you to keep that promise. . . .

That was the essence of the argument. And that I think persuaded some of the judges...some of the Justices....That is was really the juror's right and there was a legal problem there that we had to overcome.

"That it was really the juror's right and there was a legal problem there that we had to overcome."



Student's Video Guide
The Right to Trial by an Impartial Jury
(Audio Time 8:13)



Think About It

Draw on prior knowledge and information in the video to answer these questions.

1. Suppose you're the one on trial. Do you want an impartial jury or one that favors you, a partial jury? What about the opposing party? What kind of a jury does that side want? Explain the procedures used by the court try to cancel out the interests of each party and seat an impartial jury.
2. Identify the partial and impartial parts of the jury selection process.
3. Do eligible citizens have the right to sit on a particular jury or do they have a right to be considered for jury service? What are the implications of each in seating an impartial jury?
4. Is it possible for a juror to have strong opinions and make impartial decisions?
5. Only eligible citizens are summoned for jury service. What are the assumptions about citizens that make them important for serving on juries?
6. In your opinion, are potential jurors treated fairly when they are peremptorily excused during voir dire without an opportunity to respond to any questions? How would you feel?
7. Explain the risks involved in collecting a random group of people from the community to sit on a jury and the procedures used to reduce those risks.
8. Edmonson wanted a representative jury. What constitutes a representative jury in an increasingly diverse society?
9. Should disputing parties in a civil trial be concerned about the rights of prospective jurors? After all, it's not the prospective jurors who are having the dispute and the trial hasn't even started. Voir dire is part of the pre-trial jury selection process. The trial doesn't start until after the jury is selected. Explain.
10. Discuss the similarities and differences between a prospective juror and a sitting juror.
11. Why should the Supreme Court be concerned about the rights of a prospective juror? Should you be concerned? Explain.
12. The courts, as established by the Constitution, are places where disputing parties seek justice. What is justice and how is it pursued in the courtroom? How does an impartial jury serve justice?

Activity: “A Difference of Opinion”

Introduction

When it comes to Supreme Court deliberations, often there is a difference of opinion among the Justices. When split decisions happen, the Court goes by the democratic practice of majority rule. Because the voice of the minority is also important in a democracy, Justices who disagree with the majority may choose to file their dissent as part of the court record.

A Justice writes a dissenting opinion to express disagreement with the decision of the majority. This disagreement (dissent) can take many forms. It may be written to express an opinion, point out contradictions, express concerns about the ramifications of the decision, or provide a point-by-point rebuttal to the Court’s interpretation and application of law, history and policy. A dissenting opinion presents and supports a different point of view.

The Court’s decision in *Edmonson* was not a unanimous one. Three of the nine Justices dissented—Justice Sandra Day O’Connor, Chief Justice William Rehnquist, and Justice Antonin Scalia. Justice O’Connor filed a dissent that was joined by the Chief Justice. Justice Scalia also filed a dissent. What concerns did these Justices have about the opinion of the majority? Something troubled them. Did they disagree with the reasoning and application of law as Justice Anthony M. Kennedy described? Did they have concerns about the future ramifications of the decision? You decide. The ruling in *Edmonson* is now a legal precedent. Dissents don’t carry any legal weight, but they do serve to raise public awareness of issues and may set the stage for later Supreme Court decisions as times and events change in this country.

Essential Background Knowledge

1. Definition of *state action requirement* and how it is used to determine if a constitutional violation may have occurred
2. Positive and negative uses of peremptory challenges

Activities

1. Read excerpts from the dissenting opinions of Justices O’Connor and Scalia in *Edmonson v. Leesville Concrete Co.* (1991) to think about the issues and reasoning from a different point of view.

Justice O’Connor:

“The Court concludes that the action of a private attorney exercising a peremptory challenge is attributable to the government and therefore may compose a constitutional violation. This conclusion is based on little more than that the challenge occurs in the course of a trial. Not everything that happens in a courtroom is state action. A trial, particularly a civil trial, is by design largely a stage on which private parties may act; it is a forum through which they can resolve their disputes in a peaceful and ordered manner. The government erects the platform; it does not thereby become responsible for all that occurs upon it. As much as we would like to eliminate completely from the courtroom the specter of racial discrimination, the Constitution does not sweep that broadly. Because I believe that a peremptory strike by a private litigant is fundamentally a matter of private choice and not state action, I dissent.”

Read Justice O’Connor’s filed dissent:

Cornell University Law School

<http://www.law.cornell.edu/supct/html/89-7743.ZD1.html>

Justice Scalia:

“The concrete benefits of the Court’s newly discovered constitutional rule are problematic. It will not necessarily be a net help rather than hindrance to minority litigants in obtaining racially diverse juries.”

Activity
A Difference of Opinion

“Both sides have peremptory challenges, and they are sometimes used to *assure* rather than to *prevent* a racially diverse jury.”

Read Justice Scalia’s filed dissent:
Cornell University Law School
<http://www.law.cornell.edu/supct/html/89-7743.ZD2.html>

2. State and support your opinion.

Would you join with one of the dissenters or would you join with the opinion of the Court? What is your opinion?

- Read the opinion of the Court before deciding.
Cornell University Law School
<http://www.law.cornell.edu/supct/html/89-7743.ZO.html>
- Organize your argument. (This is a prewriting activity only.)
 - Format the body of the response on a separate piece of paper (one page only) as shown below.
 - State your position as a thesis statement.
 - Provide three points that support your position. They may be from any of the opinions. Write a topic sentence for each point. Include 1 quote with citation to support each point. The point you feel is the strongest should be first.
 - End with a strong concluding statement.

Title
Thesis statement:
Supporting Point 1:
Supporting Point 2:
Supporting Point 3:
Concluding Statement:

Closing Reflection:

After completing this activity, reflect on the lesson and the video you watched. What did you learn about the way a constitutional democracy works in America and the roles and responsibilities of American citizens?

- American constitutional democracy:
- Justices:
- Students:

Take-Home Quiz: True/False/Opinion

Instructions: Evaluate the statements below according to the rule of law. Indicate which ones are TRUE, FALSE, or OPINION by putting an "X" in the correct boxes. Do the following for each of your choices:

TRUE: Provide a supporting statement.

FALSE: Provide corrections.

OPINION: Agree or disagree then justify your position.

Note: Unless otherwise indicated, quotes are words from the U.S. Constitution.

1. If you are accused of a crime, you have the right to trial by jury in a civil court.

TRUE FALSE OPINION

2. The Seventh Amendment guarantees the right to a jury trial in both federal and state court.

TRUE FALSE OPINION

3. The Sixth Amendment guarantees the right to a jury trial in criminal cases.

TRUE FALSE OPINION

4. The Seventh Amendment guarantees the right to a jury trial in civil cases.

TRUE FALSE OPINION

5. Every adult living in the U.S. who is over 18 years of age is eligible to serve on a jury.

TRUE FALSE OPINION

6. The attorney for the plaintiff helps select the jury who will decide his/her case.

TRUE FALSE OPINION

7. The jury is part of the government.

TRUE FALSE OPINION

8. Jurors get to decide matters of fact and law in a trial.

TRUE FALSE OPINION

Take-Home Quiz: True/False/Opinion

Lesson: Justice for All in the Courtroom

9. Judges decide who will sit on a jury.

- TRUE FALSE OPINION
-

10. Only federal courts make jury trials available for both civil and criminal cases.

- TRUE FALSE OPINION
-

11. The accused wants an impartial jury.

- TRUE FALSE OPINION
-

12. Having an impartial jury serves the interests of the plaintiff.

- TRUE FALSE OPINION
-

13. Prospective jurors have a right to sit on a jury.

- TRUE FALSE OPINION
-

14. Justice is better served by using juries than judges.

- TRUE FALSE OPINION
-

15. Prospective jurors are screened to determine character traits.

- TRUE FALSE OPINION
-

16. The Constitutional rights of the plaintiff are linked to the rights of prospective jurors.

- TRUE FALSE OPINION
-

17. Drunk-driving charges would be brought in a criminal court.

- TRUE FALSE OPINION
-

18. A complaint for unfair treatment by an employer would be heard in a civil court.

- TRUE FALSE OPINION
-

Take-Home Quiz: True/False/Opinion

Lesson: Justice for All in the Courtroom

19. Because a traffic violation is a form of breaking the law, it would result in a criminal trial.

- TRUE FALSE OPINION
-

20. A civil case may result from an auto collision if one driver sues another.

- TRUE FALSE OPINION
-

21. It's impossible to achieve a truly impartial jury.

- TRUE FALSE OPINION
-

22. Only government action that violates the Constitution can be declared unconstitutional, not the actions of private individuals.

- TRUE FALSE OPINION
-

23. A private litigant in a civil case may use peremptory challenges to exclude jurors for any reason.

- TRUE FALSE OPINION
-

24. The Constitution guarantees the accused in a criminal trial the right to a trial by a "jury of one's peers," which means people like him/her.

- TRUE FALSE OPINION
-

25. The action of a private attorney exercising a peremptory challenge in a civil case is attributable to the government and therefore may compose a constitutional violation.

- TRUE FALSE OPINION
-

Class-Prep Assignment Sheet

The following assignment provides essential background knowledge and context for understanding the short video that we will watch and discuss in the following days. From it you will be introduced to the story behind the Supreme Court case of *Edmonson v. Leesville Concrete Co.* (1991).

Materials Needed

- Video: Jury Selection: Edmonson v. Leesville Concrete Company (Time 23:19)
Available from <http://www.annenbergclassroom.org/page/jury-selection-edmonson>

Instructions

Watch and listen to learn about the story of *Edmonson v. Leesville Concrete Co.* then answer the following questions. Bring this sheet and the completed questions with you to class.

Questions

1. Who is Thaddeus Edmonson and why did he go to court?
2. What was the nature of Edmonson' case?
3. What disturbed Doyle about Edmonson's trial and why did he feel it was significant?
4. Explain the shift that occurred in Edmonson's case when it was appealed.
5. What Constitutional principle became the grounds for the appeal?
6. Identify Willie Combs and Wilton Simmons and explain their role in the story.
7. What do you think motivated Thaddeus Edmonson and Doyle to keep up the appeals?
8. What was the outcome of the Supreme Court case for Edmonson?
9. Did Edmonson achieve what he was after in court?
10. Explain the significance of the Supreme Court case of *Edmonson v. Leesville Concrete Co.*