In the

Supreme Court of the United States

BILLY J. TAYLOR,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 73-5744
	)	
STATE OF LOUISIANA,	)	
	)	
Appellee.	)	

Washington, D.C.
October 16, 1974

Pages 1 thru 29

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BILLY J. TAYLOR, Appellant,	:	
v.	:	No. 73-5744
STATE OF LOUISIANA, Appellee.	:	

Washington, D. C.,

Wednesday, October 16, 1974.

The above-entitled matter came on for argument at 11:38 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

WILLIAM McM. KING, ESQ., 611 E. Boston Street, P. O. Box 1029, Covington, Louisiana 70433; for the Appellant.

KENDALL L. VICK, ESQ., Assistant Attorney General of Louisiana, 7th Floor, 2-3-4 Loyola Building, 234 Loyola Avenue, New Orleans, Louisiana 70112; for the Appellee.

C O N T E N T S

[Afternoon Session - pg. 21]

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-5744, Taylor against Louisiana.

Mr. King, you may proceed whenever you're ready.

ORAL ARGUMENT OF WILLIAM McM. KING, ESQ.,

ON BEHALF OF THE APPELLANT

MR. KING: Mr. Chief Justice, and may it please the Court:

The Louisiana constitutional provisions and statutory provisions are the same in this case as were present in the Healy case. But there is this distinction: the appellant here was charged with a serious criminal offense, a capital offense in Louisiana, found guilty by a jury, an all-male jury chosen from an all-male jury venire.

A motion to quash the jury venire prior to trial was entered and denied. The motion was based on the grounds that his rights to an impartial jury under the guarantees of the Sixth and Fourteenth Amendments of the United States Constitution were denied him.

QUESTION: Would your position be the same, Mr. King, if in fact there had been five women on this jury who had got there by the existing processes?

MR. KING: With the existing constitutional and statutory provisions, the position that we take would still be the same.

QUESTION: In other words, you --

MR. KING: On its face, we say the constitutional and statutory provisions which not only exempt but exclude women is unconstitutional. It provides for jury service only where the woman volunteers, and excludes her from the jury unless she does volunteer.

The stipulation of fact between the State and Healy are equally applicable to this case, in that it occurred at the same time and during the same period. And that stipulation showed the complete failure of the volunteer system for women, as adopted by the Constitution and the State statute.

The distinction in this and the Healy case, as we see it, is that here we have a Sixth Amendment question, which arises because of this Court's opinion in Duncan vs. Louisiana, which opinion was rendered in 1968. This trial took place in 1972.

In Duncan vs. Louisiana, the Court will remember, the right of a State court defendant in a serious criminal trial to a jury was granted him by application of the Sixth Amendment through the Fourteenth Amendment.

In Williams vs. Florida, there was an attempt made to have this Court extend the application of Duncan vs. Louisiana to a 12-man jury. And the Court denied that extension on the grounds that numbers alone did not constitute the essential attribute of a jury.

That same position was taken, I believe, by the Court in Apodaca, where the number necessary to convict was at issue. But here the quality of the jury is at issue, and an essential attribute of the jury trial is at issue for criminal defendants.

QUESTION: What is that?

MR. KING: Pardon?

QUESTION: What is that essential attribute?

MR. KING: In the very case which denied the extension to the 12-man jury, this Court declared what the essential attribute was. It said that the purpose of a jury was to prevent oppression by government, and that the manner in which it is exercised is by the jury in a barrier between the government or the accusor and the accused. And that in order to form an effective barrier, the Court stated that it is composed of representative segments of the community, and that in denying that the 12-man jury apply to Louisiana, the Court looked to whether the number on the jury had the effect of denying that representative cross-section of the community.

QUESTION: Well, why would a jury composed of 12 men be expected to hurt your client's chances, if your client is a man?

MR. KING: If Your Honor is asking me whether I can feel, touch, smell or taste that harm, or whether there is a

harm that is tangible in character, I cannot do so.

QUESTION: Well, then, what authority do you have for saying that in the absence of such, on what decision of this Court do you rely on?

MR. KING: Well, I rely primarily in the federal context, in the federal courts, on the Thiel case.

QUESTION: But of course that wasn't -- that was a federal court decision reviewing the jury system in federal courts, wasn't it?

MR. KING: But the Court found there that the exemption by the federal judge of daily wage earners violated the system of jury to such an extent that it would not even look into whether the party, the appellant in that case, was a member of that class. They -- this Court would not even go behind that.

Once it found that the jury system --

QUESTION: But that was a Seventh Amendment case, involving a civil jury trial. Now, the Seventh Amendment has not application to the States, does it?

MR. KING: That's correct, Your Honor. But if the -- if that application was made in a civil jury trial, much more so should it apply to a criminal jury trial.

QUESTION: That's your principal authority, then, is the Thiel case, for saying that your client has standing to raise this issue?

MR. KING: Only by application and by a mode of reasoning. I believe the Duncan case --

QUESTION: Well, you rely on Duncan --

MR. KING: I believe Duncan --

QUESTION: -- you rely on Duncan and some other cases that say that if you're going to satisfy the jury requirement of the Sixth and Fourteenth Amendments, the jury should be drawn from a fair cross-section of the community.

MR. KING: Absolutely. I believe the Duncan case is the principal case. In Peters vs. Kiff, which was a standing case, between a white who was complaining of the lack of blacks.

QUESTION: On a grand jury.

MR. KING: On a grand jury. I believe it also may have been applicable to the petit jury in that case.

It is not that case that I'm relying upon, but the Court stated in that case --

QUESTION: Was there a Court opinion in that case?

MR. KING: Pardon?

QUESTION: Was there an opinion for the Court in that case?

MR. KING: There was a divided Court -- three, three, three.

QUESTION: Which -- which opinion are you going to

rely on?

[Laughter.]

MR. KING: The language in the -- in Justice Marshall's opinion and the language in Chief Justice Burger's opinion, the dissenting opinion, express the thought of the Court, I believe, that if that had been a post-Duncan case, there would have been little question of the standing to complain.

QUESTION: I thought the Chief Justice's opinion relied on the notion of prejudice and that there ought to be some showing of prejudice. It was a dissenting opinion.

MR. KING: I believe that, in essence, that's so. But the language in the Court's dissenting opinion stated that we are not here concerned with the essential attributes of trial by jury. But here you are concerned with the essential attributes of trial by jury.

If in Duncan vs. Louisiana you apply the jury to the States in criminal proceedings, serious criminal proceedings, then to deny the essence of the jury trial is to, in effect, deny the jury trial. Because if you don't have a jury composed in as large a measure as possible of representative cross segments, you have no jury.

QUESTION: Well, you would, I suppose, concede that the rule would only be that the jury panels should -- or the venire should be a representative cross-section, not the

actual jury?

MR. KING: Oh, no, sir. The jury venire.

QUESTION: Yes.

MR. KING: The venire. Who can say whether the selection from the venire will bring about a proportion that is --

QUESTION: To let alone peremptory challenges?

MR. KING: Yes, sir.

The possibility of bias in situations where State juries do not have to be selected, as far as possible, from a cross-section of the community is so present, that without a restriction on the State juries, selection systems, it is tantamount to saying that you have no jury at all.

QUESTION: Well, then you're really saying that we haven't had juries at all for over a century in this country?

MR. KING: When 53 percent of a community are excluded from the jury, I would say that that's correct, Your Honor.

QUESTION: Would you throw into limbo convictions that have been had, then, for, under the old system, for years and years?

MR. KING: Of course that's a problem I really don't feel that I can answer. I'm arguing a case for a particular individual, who has raised this issue prior to trial. What may be the fate of those who have been

convicted under this exclusionary device, I really would rather not say.

QUESTION: Well, I merely ask it only because you said that this didn't equate with a jury, therefore we haven't had a jury system for years and years.

MR. KING: It doesn't equate with what the Court has said was a jury.

QUESTION: Yes, but Duncan was never made retroactive. Because Duncan didn't question the reliability of non-cross-section juries. It just emphasized the political role of a jury.

MR. KING: Well, it does no good, Your Honor.

QUESTION: And it wasn't made retroactive, was it?

MR. KING: It was not made retroactive. Duncan. But it does not good to say that juries are meant to protect people's liberty and yet deprive the jury of an essential attribute. Because the same jury that was present in the Thiel case may well have been the same jury to protect the liberty that we speak of.

The mere --

QUESTION: Your argument would apply equally to a jury from which five, the only five women were stricken by peremptory challenges. But you haven't --

MR. KING: But there, Your Honor, that's a matter of choice. Peremptory challenges.

QUESTION: Not the choice, necessarily,of the defendant.

MR. KING: But where the law, the law excludes, I believe that's another matter. What happens in practice --

QUESTION: The law does exclude them as of now in Louisiana, in the sense that you're talking about.

MR. KING: That's what we say is so vicious, is the exclusionary device by law.

QUESTION: Well, but is not the peremptory challenge in operation sometimes a mode of exclusion by operation of law?

MR. KING: Correct, Your Honor, but that's a right that's granted to all alike; the peremptory challenge.

QUESTION: Well, not necessarily all alike, sometimes one side is given more peremptory challenges than the other. In some States.

MR. KING: But only in a numerical fashion, it's not meant to be a device that can be used to exclude segments from the community.

QUESTION: Well, are you standing in any degree on the proposition that women, as a category, might be more compassionate toward a defendant, --

MR. KING: I believe that's --

QUESTION: -- or have a different attitude toward defendants?

MR. KING: I can't say that. I know there have been studies made of that. In 1948 I represented a defendant who was accused of murder in New Orleans, on which jury served the first woman juror in the history of the State on a capital case. And I would say that she was sympathetic, by my own personal experience.

But that's a matter of conjecture, Your Honor, and I --

QUESTION: What happened in that case?

MR. KING: Pardon?

QUESTION: What do you mean, what happened in that case?

MR. KING: He was found guilty of a lesser charge of manslaughter. And after the case, the jurors were questioned.

QUESTION: Unh-hunh.

MR. KING: She happened to be the president of the League of Women Voters, and volunteered for jury service.

QUESTION: Unh-hunh.

MR. KING: But I didn't know it at the time. She was the first woman in the State of Louisiana, in 1948.

QUESTION: In a capital case?

MR. KING: Pardon?

QUESTION: In a capital case, that's what you mean.

MR. KING: In a capital case.

And in answer to questions after the case, it appeared that she had a greater sense of justice, fair play and compassion than the men sitting on the jury.

QUESTION: I wouldn't be surprised that you should think that, when they reduced it from first-degree murder to manslaughter.

MR. KING: Well, Your Honor asked, and that's the only way I can answer the question, is by my own personal experience.

QUESTION: Mr. King, your client here, Billy Taylor, was convicted of what, aggravated kidnapping, --

MR. KING: Yes, sir.

QUESTION: Was the victim a man or a woman?

MR. KING: The victim was a woman.

QUESTION: Unh-hunh.

MR. KING: The victim was a woman, her daughter and the woman's son, small son.

QUESTION: Three victims?

MR. KING: Three victims.

But within the charge, and part of the evidence introduced, was that of aggravated rape of the mother at knife-point.

QUESTION: Unh-hunh.

In the Hoyt case, of course, the woman, Mrs. Hoyt had killed her husband, as I remember, --

MR. KING: With a baseball bat.

QUESTION: Unh-hunh -- beating him over the head with a baseball bat, and her implicit claim was that women would be more understanding of her actions than men. Women jurors.

You don't have any such claim here, do you?

MR. KING: No, sir. I could not honestly, and intellectually I couldn't make that statement. But I believe in the Hoyt case it was first an equal protection case --

QUESTION: Here the defendant, Billy Taylor, was a man and the, two out of the three victims were women, really. Is that right?

MR. KING: Correct.

QUESTION: Now, and you're not -- you're not making the claim explicitly or implicitly that women would be more sympathetic to the defendant intrinsically than men --

MR. KING: In all honesty, I couldn't say that.

QUESTION: -- in this case?

MR. KING: I couldn't say --

QUESTION: Unlike Hoyt. I just wanted to be sure.

MR. KING: No, sir, I'm not saying that. I know there have been studies made that have reached that conclusion, by certain educators.

QUESTION: What conclusion?

MR. KING: That women are more sympathetic than men.

QUESTION: In rape cases and kidnapping cases?

MR. KING: In that type of case. There have been studies by scholars to that effect. But I have to say it's conjecture, and I really don't have any tangible evidence of that.

There is that school of thought.

QUESTION: Then you are making the claim?

MR. KING: Only in so far as the Court can recognize it. I can't give any --

QUESTION: In Hoyt it was a very colorable claim, one could say. But are you making any such similar claim in this case, on the circumstances of this case?

MR. KING: If the Court asks --

QUESTION: Can be the argument that was made in Hoyt.

MR. KING: I can only make the argument, without proof.

QUESTION: Well, are you making it or aren't you? That's all I'm asking.

MR. KING: I would like to be able to make that argument, Your Honor.

QUESTION: Well, that's --

MR. KING: But I have no proof.

QUESTION: You'd like to be able to make lots of arguments --

MR. KING: I have no tangible evidence of that.

QUESTION: Mr. King, when we used to try jury cases, where I practiced, we used to follow a maxim, which is perhaps an old wives' tale, that "woman is man's best friend, but her own worst enemy", and the idea was if you had a male client you wanted a bunch of women on the jury, and if you had a woman client you wanted a bunch of men on the jury.

I take it, in your area they don't follow any such handy maxims.

QUESTION: But you can't in Louisiana, can you?

MR. KING: I have to say again I have no proof of that, Your Honor.

QUESTION: Doesn't have a chance -- you don't have a chance, do you?

QUESTION: Right.

QUESTION: Well, when you have applied for consent (?) women jurors, you at least have some access.

MR. KING: On the jury venire.

QUESTION: On the venire.

MR. KING: On the jury venire you have that.

QUESTION: Does the record show how many are actually used? What's the rate of it?

MR. KING: The record shows that in 170 -- oh, 13 women were included in a total of 1850 names drawn for the petit jury system terms.

Now, in Washington Parish, which is the parish above

St. Tammany, and part of the same judicial district, only one woman has ever been known to volunteer for jury service, and there have never been any women appear on the petit jury.

QUESTION: You just want the chance to keep them or strike them as the particular case fits your needs, is that it?

MR. KING: They should be available for jury service, without the volunteer system. That's a failure. The volunteer system is a complete failure.

It cannot no more work for the women than it would for the men. And I don't believe the Court would approve of a volunteer system of jury service blanketwide, a blanket volunteer -- that wouldn't work. You'd have no juries whatsoever.

QUESTION: You think it's a necessary corollary that the Court would have to approve under Hoyt a voluntary system for men only?

MR. KING: I believe that would be the same -- in order to acknowledge that that's a proper system for women, the Court would have to acknowledge that that would also be a proper system for men.

And it doesn't work.

I have never ever seen a man volunteer for jury service, who enjoyed an exemption under our law. The exemptions in Louisiana, the particular exemptions in Louisiana are personal, but I've never seen one man volunteer.

So it's not really a mark against women that only ten percent have volunteered. That's incredible, really, under the circumstances. Because I've never seen a man volunteer who enjoyed an exemption.

QUESTION: Are the exemptions waivable?

MR. KING: The exemptions given to men are waivable, yes.

QUESTION: I mean a man could volunteer?

MR. KING: Yes, Your Honor.

QUESTION: Unh-hunh.

MR. KING: They are.

Now, in Hoyt, I believe that was an equal protection case. But I believe the contention made in that case was specifically that there weren't women on the particular jury that tried the --

QUESTION: Well, I think it was -- wasn't it a due process case?

MR. KING: It was an equal -- excuse me, I'll stand corrected. I just felt, from my memory, it was.

QUESTION: Unh-hunh.

MR. KING: But in that case the contention was made that that woman was entitled to women on the jury.

QUESTION: Well, she was entitled, or the claim was, to a system that would treat women the same way as men, in so far as jury service went.

MR. KING: I recall language that stated the core of the case.

QUESTION: Unh-hunh.

MR. KING: I may be mistaken. The core of the Hoyt case was the demand that there be women on the jury. That that type of crime demanded the compassion of women on the jury.

QUESTION: Well, that's -- in any event, your claim is that you're entitled to a -- you and all criminal defendants in Louisiana are entitled to a system that calls women and men, equally, to jury duty.

MR. KING: Gives a fair possibility.

QUESTION: Right.

MR. KING: Yes, sir.

Now, the arguments made by Mrs. Ginsburg relating to the women as a discernible group are equally applicable here, and I won't burden the Court, the time it takes to repeat, even though I couldn't repeat them, that argument in as sound a fashion as Mrs. Ginsburg. I will adopt those arguments.

QUESTION: The State would be free, I take it, to set its own age limits for men and women, as long as they treated them in the same way, would they not?

Suppose --

MR. KING: From the standpoint of equal protection,

that's probably correct.

QUESTION: Let me suggest a hypothetical. Suppose they said people over thirty and over and seventy and under, for both men and women; would that give you any problems?

MR. KING: Yes, sir, I believe that it would. Because what reason would there be for the people thirty to twenty not being able to serve on juries? What possible rationality would there be behind that?

As a matter of fact, a defendant within the twenty and thirty age group could well complain of that, I would think.

Thank you.

MR. CHIEF JUSTICE BURGER: We'll resume after lunch.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

AFTERNOON SESSION

[1:02 p.m.]

MR. CHIEF JUSTICE BURGER: You're saving the balance of your time for rebuttal, I take it?

MR. KING: If there are no further questions, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Yes.

Mr. Vick.

ORAL ARGUMENT OF KENDALL L. VICK, ESQ.,

ON BEHALF OF THE APPELLANT

MR. VICK: Mr. Chief Justice, and may it please the Court:

In June of this year, this Court, speaking through Mr. Justice Rehnquist, in Michigan vs. Tucker, said: The law does not require that a defendant receive a perfect trial, only a fair one.

It has been said at least three times this morning, and undoubtedly hundreds of times in this chamber: Is it fair?

I would also beg the Court to ask, in this case: Was it unfair? Was Taylor's trial unfair? And, if so, how?

Counsel for the appellant Taylor has not given the Court any help in answering this question, except that the absence of women in this case is a, per se, grounds for reversal. A case involving aggravated kidnap, aggravated rape,

and armed robbery of a women in the presence of her daughter and small child.

As Mr. Justice Harlan said in Hoyt, that it is really within the realm of conjecture whether one gets a jury to his liking or not, depending of course on the venire; and I concede that the percentage of women is very small.

But counsel for the appellant, in his brief, and in oral argument, has sidestepped at every foot of the way the guidance of Hoyt.

We have followed Hoyt, we have done what we thought was proper in following the guidelines set down in Hoyt.

The only case that gives us any problem whatsoever in the cases cited by appellant is Kiff.

But I would like to just quickly skip over the ones he has cited: Alexander -- race. Except for Ballard -- federal question: women on jury. No doubt about it. But not applicable to the States.

Carter -- race. Duncan -- race. Frontiero -- administrative convenience; no race, but sex. Hoyt, Kiff -- I will get to in a moment.

Reed -- administrative convenience; and sex. San Antonio Independent School District -- race. Smith vs. Texas -- race.

Thiel, which we discussed this morning -- no applicability here. And Williams -- race.

Now, --

QUESTION: Which one, no applicability here?

MR. VICK: Thiel vs. Southern Pacific.

QUESTION: What was that about?

MR. VICK: That was the daily wage earners being excluded.

QUESTION: Class, yes.

MR. VICK: Yes.

Now, I have searched Peters vs. Kiff, I have not found one mention of Hoyt. Justice Marshall alludes to only Ballard, in footnote 12. He could have bruised Hoyt, perhaps, he could have given some indication in the States that he was unhappy with Hoyt. Perhaps we could have had some other admonition. But nothing. Silence. In footnote 12 only reference is to Ballard.

Now, the problem with this case, as the State of Louisiana sees it, is that there was no lawless law enforcement here. There is no map question here. No Miranda question here, as there was in Tucker vs. Michigan, or the applicability of Miranda. There was no lawless law enforcement, for which law enforcement should be penalized.

The State of Louisiana went by the rules set down in Hoyt.

Now, if the Court in its wisdom remands this case, I just wonder -- it's again in the realm of conjecture -- but

I wonder if there are women on the jury, in a case involving women, the victim of an anus crime, whether the other side of the coin might not come into play, that that's prejudice that there are women on the jury.

And more than one, five or six or more. And that's a hanging jury.

So I don't know how the State of Louisiana can win in this sort of -- in this sort of context.

QUESTION: Are there any cases in this Court with respect to federal juries, that hold that part of the concept of a Sixth Amendment jury is a fair cross-section?

MR. VICK: The cases cited in both briefs --

QUESTION: Do they actually hold that? Do they hold that to satisfy the Sixth Amendment right to a jury trial, you must have a fair cross-section of the community?

MR. VICK: Well, I would think that Ballard held that.

However -- however, if the Court please, I want to retract that. Ballard, I think, was exercising supervision. This Court exercising supervision.

QUESTION: Well, I'm talking about Sixth Amendment. I'm talking about the Sixth Amendment.

MR. VICK: Not that I know of, Your Honor.

But it's alluded to, because of the applicability of the Sixth Amendment through the Fourteenth Amendment.

QUESTION: Duncan -- that wasn't particularly the issue in Duncan, but Duncan said that a federal jury was a fair cross-section type of jury.

MR. VICK: Was not.

QUESTION: But do you know of any other cases that talk about a fair cross-section?

MR. VICK: Not directly on point, Your Honor.

QUESTION: Kiff gives you some trouble about that, with respect to a grand jury?

MR. VICK: Yes, it does give me some trouble, and especially the --

QUESTION: The plurality opinion -- I mean Mr. Justice Marshall's opinion?

MR. VICK: Yes.

QUESTION: Is there any allegation anywhere in this case that jury commissioners, or other State officials, systematically sought to discourage or exclude the presence of women on juries in any way?

MR. VICK: None, Mr. Chief Justice. As a matter of fact, I think that the counsel for the appellant has conceded that.

The only issue here is women, being systematically excluded, as it were, from this jury.

That concludes my remarks, Mr. Chief Justice and may it please the Court.

QUESTION: Well, is there a case -- is there a case which does hold, does have that holding in it?

MR. KING: No, sir. As I say, I think this is the case which squarely presents the issue to the Court.

QUESTION: It is now, of course, a federal policy, is it not, to undertake to see that every jury represents a cross-section?

MR. KING: Correct.

QUESTION: It's a statute.

MR. KING: Statutory for federal courts. And the Court has held in due process cases -- not held, but there has been much language in the due process cases which would have required a representative cross-section on the jury, even without the application of the Sixth Amendment.

QUESTION: The essence of your -- the heart of your case is that the Hoyt case is wrong and should be overruled, was wrongly decided; is that it?

MR. KING: That's part of it, yes.

QUESTION: What else is there?

MR. KING: The second phase of it is that the jury, even though the complainaing party, such as Taylor, is not a member of the excluded class, that he has a right to have that vindicated, that there is no representative cross-section of the community from which the jury can be chosen.

QUESTION: Well, that's just another way of saying

that every person, independent of sex or race, has a constitutional right to a, what you call a cross-section jury?

MR. KING: As far as possible.

QUESTION: Yes.

MR. KING: Without any arbitrary exclusion. Particularly of such a large class as that involved here.

QUESTION: Then, when you put it that way, arbitrary exclusion, you must of necessity carry the burden or you must of necessity be saying that to allow a women preferential exemption is an arbitrary exclusion?

MR. KING: Yes, sir. And we feel --

QUESTION: Would you care to enlarge on that a little bit?

MR. KING: Your Honor mentioned a burden. We feel that in view of the fact that the appellant in this case has a constitutional right to an impartial jury under the Sixth Amendment for application through the Fourteenth Amendment, the burden of showing that there is a compelling State interest for that exclusion falls not on us but on the State.

Because Taylor had been deprived, in our opinion, of a fundamental constitutional right.

QUESTION: Mr. King, can you prevail unless we overrule Hoyt?

MR. KING: I believe it would be difficult to reach a decision without -- I mean favorable to Taylor, without

overruling that part of Hoyt which sustained the constitutionality of the exclusion statute, and constitutional provisions of the State of Louisiana. To that extent, yes.

QUESTION: Well, if Hoyt raised only a due process issue, or only an equal protection issue, that isn't the issue you're raising?

MR. KING: No, sir. Our only issue is --

QUESTION: The issue you're raising is --

MR. KING: -- the Sixth Amendment, due process.

QUESTION: -- the Sixth and Fourteenth Amendment issue.

MR. KING: Correct. But Hoyt, of course, is interwoven -- I mean what they said in Hoyt.

QUESTION: And you're not even raising a biased or an unfair due process issue?

MR. KING: No, sir. This is -- a jury, pure and simply the quality of the jury.

QUESTION: Now, if either one of those issues was not in -- or if your issue was not in Hoyt, maybe Hoyt stands on its own two feet, but because Hoyt was pre-Duncan.

MR. KING: That could be.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. King. Thank you, Mr. Vick.

The case is submitted.

[Whereupon, at 1:14 p.m., the case was submitted.]