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## Summary of Afzali v. State, 130 Nev. Adv. Op. 34

Sean Daly  
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CONSTITUTIONAL LAW: EQUAL PROTECTION CLAUSE

**Summary**

The Court determined whether a defendant has a constitutional right to know the racial composition of a grand jury that indicted him.

**Disposition**

A defendant's ability to show a potential violation of his constitutional right to a grand jury drawn from a fair cross-section of the community is limited without such information, and thus, a defendant does have a right to such information when requested.

**Factual and Procedural History**

After being charged with several counts regarding crimes of a sexual nature, Shafiq Ahmed Afzali filed a motion requesting information on (1) the selection process for the grand jury, (2) the racial composition of the three grand juries that indicted him, and (3) the racial composition of the entire 100-person venires<sup>2</sup> from which the grand jurors were chosen. The district court provided Afzali with information on the grand jury selection process, but stated the race information did not exist. However, subsequent hearings revealed that the contact information of 50 potential grand jurors was preserved. After a hearing on the disclosure of the grand jury contact information, an order was rendered denying Afzali's request, stating that Afzali did not follow the proper procedure to challenge the methods used to select the grand jury. The jury found Afzali guilty on many counts, and this appeal followed.

**Discussion**

A criminal defendant's right to equal protection of the laws is denied when he is indicted by a grand jury from which members of a racial group have been purposefully excluded.<sup>3</sup> A person has the right to have indictments heard by a grand jury selected from a fair cross-section of the community.<sup>4</sup> Although Nevada is not bound by the federal statute addressing a defendant's right to obtain information necessary to mount challenges to the composition of the grand jury in federal court,<sup>5</sup> this Court is bound by the precedent set in *Adler*. The "cross-section requirement would be without meaning if a defendant were denied all means of discovery in an effort to assert that right."<sup>6</sup>

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<sup>1</sup> By Sean Daly.

<sup>2</sup> A venire is a jury pool. Here, three grand juries issued indictments of Afzali, and Afzali requested information on the racial composition of each venire.

<sup>3</sup> *Vasquez v. Hillery*, 474 U.S. 254, 262 (1986).

<sup>4</sup> *Adler v. State*, 95 Nev. 339, 347, 594 P.2d 725, 731 (1979).

<sup>5</sup> 28 U.S.C. § 1867(f) (2012).

<sup>6</sup> *State ex rel. Garrett v. Saitz*, 594 S.W.2d 606, 608 (Mo. 1980).

## **Conclusion**

Afzali is entitled to information relating to the racial composition of the grand juries used to indict him so that he may assess whether he has a viable constitutional challenge. Therefore, a limited remand is necessary for the district court to make such information available “in whatever form and by whatever means.” If the district court is unable to provide the requested materials after exploring all possible avenues, the district court should certify the appropriate factual findings to this Court, whereupon this Court will determine whether such a failure requires reversal of the judgment of conviction.