

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

D. U. PULLUM, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,
by Ramsey Clark,
Attorney General of the
United States

Plaintiff-Intervenor,

v.

AUSTIN GREENE, et al.,

Defendants.

CIVIL ACTION
NO. 625

BRIEF IN SUPPORT OF PLAINTIFF-
INTERVENOR'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND DECREE

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I.

NATURE OF THIS ACTION

This action was filed on June 23, 1966 as a class action by Negro male and female residents of Terrell County, Georgia against the members of the Jury Commission of Terrell County, Georgia and other officials having responsibility for the selection of jurors in Terrell County,

Georgia. In their complaint, the plaintiffs set forth three claims: (1) that Negroes have been systematically excluded from jury service in Terrell County, Georgia; (2) that the juries selected in Terrell County, Georgia have not been bodies truly representative of all persons in the county qualified for jury service; and (3) that Negroes have been deliberately excluded from serving as jury commissioners in Terrell County, Georgia. The Complaint seeks injunctive relief to remedy the alleged conduct of the defendants, including denials of the equal protection of the laws.

On September 1, 1966, the United States was granted leave to intervene pursuant to 42 U.S.C. 2000h-2 and Rule 24 of the Federal Rules of Civil Procedure. The complaint in intervention alleges the systematic exclusion of Negroes from jury service in Terrell County, Georgia, and seeks injunctive relief to remedy alleged conduct of the defendants and prays the defendants be enjoined from failing to take all necessary steps to ensure that the jury lists reflect a truly representative cross-section of the adult population of Terrell County.

II.

THE PARTIES

The plaintiffs in this suit are twelve male and female Negro residents of Terrell County, Georgia, who filed this action for themselves and for all others

similarly situated. Three of these plaintiffs are not listed on the books of the tax receiver as previously required by state law in order to be eligible for jury service.

The plaintiff-intervenor is the United States of America. Its standing to intervene is established by 42 U.S.C. 2000h-2 and by Rule 24 of the Federal Rules of Civil Procedure.

The defendants are members of the Jury Commission of Terrell County, Georgia; the Judge of the Superior Court of Pataula Judicial Circuit which includes Terrell County; and the Clerk of the Jury Commission of Terrell County, Georgia. ^{1/}

III.

STATUTORY PROCEDURES FOR SELECTION OF JURORS IN GEORGIA

A. Qualification and Source of Jurors.

The Constitution of Georgia directs the Georgia General Assembly to "provide by law for the selection of the most experienced, intelligent and upright men to serve as grand jurors, and intelligent and upright men to serve as traverse jurors." ^{2/} These qualifications are codified in Title 59, Section 106 of the Code of Georgia of 1933. ^{3/}

^{1/} Title 59, Section 106 of the Georgia Code of 1933 requires the Clerk of the Superior Court to be the Clerk of the Jury Commission.

^{2/} Georgia Constitution, Art. VI, Par. II, in 1945 the Constitution was amended to permit women to serve as jurors.

^{3/} All statutory references in this section are to Title 59 of the Code of Georgia of 1933 unless otherwise noted. The text of the relevant Sections of the Code of Georgia of 1933 are set out in Appendix L.

Prior to March 30, 1967 Georgia law had required the selection of prospective jurors exclusively from the books of the tax receiver. ^{4/} By Act of the Georgia legislature Title 59, Section 106 has been amended and now provides for selection of jurors from the official registered voters list which was used at the preceding election. The Act also provides:

"If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significantly identifiable group in the county which may not be fairly represented thereon. ^{5/}"

With the exception of being upright and intelligent citizens, there are no additional qualifications for persons to serve on a traverse jury. To serve on a grand jury a citizen must be over 21 years of age, being neither an idiot, lunatic, nor insane, and must have resided in the county six months preceding the time of serving. ^{6/} Georgia law exempts from jury duty many classes of persons such as women, teachers, and ministers, but does not render any of these classes ineligible. ^{7/}

^{4/} Section 106.

^{5/} Act No. 122 (H.B. No. 307), March 30, 1967. See Appendix M for full text of this Act.

^{6/} Section 201. Under this provision certain county officials are incompetent to serve as grand jurors. This is because under Georgia law grand juries are given a number of political functions. For example, the grand jury is empowered to select which county roads are to be repaired, select the Board of Education, examine the voter lists for irregularities, inspect the books and records of certain county officers and inspect various public buildings and properties. Sections 306-316; Title 95, Section 410.

^{7/} Section 112.

B. Selection of Names For the Jury Boxes.

The primary responsibility for making up jury lists and boxes rests in each county in a board of jury commissioners consisting of six persons appointed by the superior court judge. ^{8/} The jury commissioners must revise the lists every two years, or every year if the superior court judge directs. ^{9/} The jury commissioners are to select a fairly representative cross-section of the upright and intelligent citizens of the county to serve as traverse jurors. ^{10/} From these names a sufficient number, not exceeding two-fifths of the total, are to be selected as grand jurors. ^{11/} A ticket is made out for every name selected, and placed in the proper jury box. Names of grand jurors are placed in a separate box. ^{12/} The traverse jury box is to contain the names of all persons selected, including those names in the grand jury box. These names are also placed in a book in alphabetical order by the superior court clerk. ^{13/}

^{8/} Section 101.

^{9/} Act No. 122 (H.B. No. 307), March 30, 1967. The time periods had been two and three years.

^{10/} Act No. 122 (H.B. No. 307), March 30, 1967.

^{11/} Act No. 122 (H.B. No. 307), March 30, 1967.

^{12/} Section 103.

^{13/} Section 109.

IV.

THE DEFENDANT JURY COMMISSIONERS HAVE SYSTEMATICALLY
EXCLUDED NEGROES FROM JURY SERVICE IN TERRELL COUNTY

A. Prior to this Suit, Negroes Were
Totally Excluded From Jury Service.

It is not disputed that for many years prior to September 1966, extending back at least 26 years, no Negro had ever been selected for jury service in Terrell County (Tr. 15, 221, 291). The names to be placed on the jury roll are taken from the tax digest (Tr. 23). The tax digest has two alphabetical parts - one for white persons and one for Negroes (Tr. 391). Before September 1966, the jury commissioners in Terrell County chose names for inclusion on the jury list only by reference to the white section of the tax digest (Dep. of Fleming p. 73; Dep. of Hanner p. 60). ^{14/} It was not "customary" to select Negroes (Tr. 145) so the commissioner made no determination with respect to the qualifications of Negroes (Dep. of Fleming p. 73). During this same period, they also excluded all women from serving on juries in Terrell County (Tr. 494).

B. Since this Suit was Commenced, Negroes
Have Continued to be Systematically
Excluded From Jury Service.

Approximately three months after this suit was filed, the Terrell County jury list was revised. This revision was carried out under a selection system which

^{14/} The depositions of the Jury Commissioners were admitted in evidence (Tr. 634) but were not given an exhibit number.

permitted some Negroes (and some women) to be placed on the jury list but which continued to systematically exclude Negroes because of their race.

Although slightly more than half ^{15/} of the adult population of Terrell County is Negro, the revised jury list contains the names of 593 white persons and only 166 Negroes. ^{16/}

1. Mechanics of the 1966 Jury Revision.

The Terrell County Jury Commissioners convened for the 1966 jury revision on September 12, 1966. They met for a total of two and one-half days (Tr. 18-21). Five of the six Jury Commissioners and the Clerk of Court were present (Tr. 17, 19). The only documents in the room with the Commissioners while the revision was underway were a copy of the 1966 Tax Digest for Terrell County, ^{17/} and a number of letters from women in the county ^{18/} requesting that they be excused from jury service (Tr. 31, 611). No other records were referred to, and no other persons were consulted by the Commissioners (Tr. 94, 236, 273).

Mr. Fox was appointed the chairman of the Jury Commission (Tr. 198). He called out the names from the tax digest for consideration by the Commissioners (Tr. 193).

^{15/} Appendix A sets out the revelant 1960 census statistics by race and sex.

^{16/} Def. Ex. 1; See Appendix B which tables the results of the 1966 jury revision.

^{17/} Pl. Int. Ex. 23.

^{18/} Pl. Int. Ex. 2. Only the names of 85 women who wrote in letters could be found on the 1966 tax digest; See Appendix I.

The digest was segregated by race, listing the white persons first, and then the Negroes (Tr. 391). In order to keep the final list "alphabetical," Mr. Fox first read a few names of white persons and then turned to the other digest and read some names from the Negro section (Tr. 610-611). This was continued until every name in the digest had been considered (Tr. 202).

When a name was read, the Commissioners would discuss it and decide whether or not to place it on the jury roll (Tr. 25-26). Not all persons who were qualified for jury service were put on the jury roll (Tr. 168, 228, 605). In fact, only 764 names were placed on the jury roll, although most of the 3,192 persons whose names appear in the tax digest ^{19/} were found by the Commissioners to be qualified for jury service (Tr. 229, 295, 301).

The Commissioners did not apply any objective standards in determining which of the qualified persons to include on the jury roll. They simply included the names of the "most" qualified people and excluded the rest. There was no attempt to select at random from the group that was considered by them to be qualified (Tr. 169).

^{19/} Appendix E sets out a count of the names of 1,988 white persons and 1,204 Negroes on the 1966 tax digest (Pl. Int. Ex. 23) which eliminates double counting of names on the tax digest.

Mr. John Senn, the tax collector, testified that the tax digest contains the names of 2,024 white persons and 1,267 Negroes (Tr. 407).

Mr. Collier, the Clerk, kept a running count and list of those names selected (Tr. 46). No record was made of those persons not accepted, nor was any indication made of the reason for rejection (Tr. 296).

The digest was read through only once, at the end of which 764 names had been placed on the traverse jury roll (Tr. 169). A count was also made of the number of Negroes and women selected (Tr. 299). It was felt that the totals were "sufficient," and, therefore, no further names were added (Tr. 300).

The "best" of those on the traverse jury roll were then selected to be grand jurors (Tr. 172, 210). After the revision was completed, Mr. Collier recorded the names of those selected in the permanent "Jury Roll Book" (Tr. 46), and wrote the same names on small pieces of paper in preparation for the drawing (Tr. 174). Once a name appears in the Jury Roll Book, it is also in the jury box (Tr. 59).

2. An Inadequate Source Was Used

The names of prospective jurors were taken exclusively from the Terrell County Tax Digest (Tr. 23). No other records or sources were consulted (Tr. 236-237, 273). The Commissioners realized that many otherwise qualified persons were excluded from jury service only because their names did not appear on the tax list (Tr. 240).

The 1966 tax digest does not adequately represent the Negro citizens of Terrell County. The statistics ^{20/} are:

	<u>Population over 21</u>	<u>Number on Digest</u>	<u>Percentage of Population on Digest</u>
Males			
White	1,344	1,362	100%
Negro	1,625	850	52.3%
Females			
White	1,589	626	39.4%
Negro	2,034	354	17.4%

3. Vague Standards Were Applied

Georgia law requires jury commissioners to select "upright and intelligent citizens" when revising the jury rolls. ^{21/}

There is no objective measure of "upright and intelligent." As understood by the Terrell County Jury Commissioners, these terms do not set stringent requirements for jury service, and few people named on the tax digest were found to be disqualified (Tr. 229, 295, 301).

^{20/} See Appendix F.

^{21/} Code of Georgia of 1933, Title 59, Section 106, as amended.

For example, the lack of any formal education, or the inability to read and write were not disqualifying factors (Tr. 92, 205). The commissioners realized that very few people lead completely virtuous lives, and allowed for normal, everyday character defects (Tr. 278). Even a person convicted of a felony might be accepted depending on the circumstances (Tr. 92).

In spite of the fact that most persons considered were found to be qualified, the Commissioners put only 764 names on the jury roll and left 2,428 names off.^{22/} They were unable to articulate the criteria employed when deciding which qualified people to include and which qualified people to exclude. They only indicated that the "best" qualified - the "most" upright and intelligent citizens - were chosen for service on juries.

Therefore, in order to determine what standards governed this final selection process, one must analyze the criteria the Commissioners used in judging whether a person was "upright and intelligent." Each commissioner was asked to explain this statutory standard:

Commissioner Fleming:

... if he was a good man or good lady in the community and some of us knew him or her (Tr. 78).

Well, it was somebody that you could depend on and had been in the county (Tr. 80).

^{22/} See Appendix B.

Commissioner Fox:

In my own mind the things that I took into consideration was common sense and a fair amount of decency. I would not put myself up to judge anybody's intelligence or morality (Tr. 205).

Commissioner Varner:

Well, what I would consider the best people in the County (Tr. 268).

... that don't have any criminal records ... (Tr. 268).

Well, whether they were people that was church members (Tr. 275).

That's person that I would consider as one that ... has always lived a good life and tried to make an honest living (Tr. 277).

Mr. Varner was not looking for an individual who will not lie, steal or cheat, and has no criminal record because:

You don't find many of those (Tr. 278).

Well, they haven't been caught, that's true; they have no record; they haven't been caught (Tr. 279).

Commissioner Smith:

We went by their reputation; I did (Tr. 318).

We wanted -- I tried to pick out the ones that had a reasonable amount of fair judgment (Tr. 319).

I said the man that judges in a way, in a reasonable -- judges in correct way with other people (Tr. 322).

Commissioner Hanner:

Dependability and stability (Tr. 145).

The people finally put on the jury list differed from those who were left off only in that they possessed, or appeared to the Commissioners to possess, more of the qualities and characteristics set out in the quotes above. Thus, the jury roll was composed of "the best people in the County" (Tr. 268).

The "best" people are the affluent people. Although property ownership is not a prerequisite for jury service under Georgia law, it strongly influenced the Commissioners in selecting potential jurors.

Commissioner Hanner testified that the amount of property owned by an individual was a governing factor in the jury selection process (Tr. 149). Therefore, in a situation where persons were equally qualified on the basis of the Georgia statutory standards, the extent of real property owned would be controlling (Tr. 150). Commissioner Varner agreed that this factor entered into the selection process, and that there was a correlation between the value of land owned and being an "outstanding" person (Tr. 277-278). Commissioner Fleming stated in his deposition that he felt that a person who was not a landowner should not be put in the jury box (Dep. of Fleming p. 72), but testified at the trial that he did not consider this during the 1966 revision (Tr. 89-90).

An analysis of the 1966 tax digest, and the names of persons selected for jury duty reveals that 48.7% of the persons owning property valued greater than \$5,000, 31.5% of the persons owning property between \$1,000 and \$5,000 and only 12.6% of the persons owning property valued at less than \$1,000 were placed on the traverse jury rolls.^{23/} Persons owning less than \$1,000 of property comprise 49% of the persons on the tax digest and only 26% of the persons on the traverse jury roll and 14% of the persons on the grand jury roll.^{24/} Although persons owning property in Terrell County valued at greater than \$5,000 comprise only 10% of the persons on the tax digest, they account for 20% of the persons on the traverse jury roll and 35% of the persons on the grand jury roll.^{25/}

The use of this property qualification also operated to exclude Negro citizens of Terrell County from serving on juries. Negroes comprise a disproportionately high percentage of the class excluded by the application of this standard. Seventy-seven percent of the Negroes on the Terrell County tax list own less than \$1,000 of property, while only one percent of the Negroes own property valued at greater than \$5,000; only 32% of the white persons on the tax digest own property valued at less than \$1,000, and 15% of the white persons own property valued over \$5,000.

^{23/} See Appendix K.

^{24/} See Appendix J.

^{25/} Ibid.

4. The Racially Discriminatory Result

Out of the total of 764 persons selected for the traverse jury roll in 1966, only 166 or 21.7% were Negro. The relevant statistics^{25a/} reveal the inadequacy of this number.

	<u>Population Over 21</u>	<u>Percent of Population</u>	<u>Number Tax On Digest</u>	^{25b/} <u>Percent on Tax Digest</u>
White	2,933	44.5%	1988	62.3%
Negro	3,659	55.5%	1204	37.7%

	<u>Number on Traverse Jury List</u>	<u>Percent on Traverse Jury List</u>	<u>Number on Grand Jury Rolls</u>	<u>Percent on Grand Jury List</u>
White	598	78.3%	249	82.1%
Negro	166	21.7%	54	17.8%

While only 6.6% of the adult male Negroes are on the present traverse jury roll 40.8% of the adult white males are on the present traverse jury.^{25c/}

^{25a/} See Appendices B, C, D, F and G for a comparison of number of persons by race and sex on the jury roll compared with their number in the population and on the tax digest. Appendix H also shows the results of the exclusion of Negroes on the master jury roll carried over to those drawn for the December 1966 term of court.

^{25b/} See Appendix E.

^{25c/} See Appendix C. There are presently 556 white males on the traverse jury roll and 240 white males on the grand jury roll. There was 569 white males on the traverse roll and 225 white males on the last revision prior to 1966. (Dep. of Collier p. 16)

V.

THE SELECTION METHOD USED FOR
THE 1966 REVISION DEPRIVED NEGROES
OF EQUAL PROTECTION OF THE LAW

A. The Unexplained Statistical Result
Establishes Racial Discrimination.

The present jury rolls reflect that for every Negro on the jury rolls, traverse and grand, there are almost four white persons on the rolls. ^{26/} Furthermore, 20.3% of the adult white persons over twenty-one are on the jury rolls, but only 4.5% of the adult Negroes are listed. ^{27/} Such wide variations in a county where the majority of the adult population is Negro, ^{28/} compel an inference of discrimination and of systematic exclusion on racial grounds in violation of the Fourteenth Amendment. Reece v. Georgia, 250 U. S. 85, 88 (1955); Brown v. Allen, 344 U. S. 443, (1953); Patton v. Mississippi, 332 U. S. 463, (1947); Norris v. Alabama, 294 U. S. 587, (1935); United States ex rel Seals v. Wiman, 304 F. 2d (5th Cir., 1962); United States ex rel Goldsby v. Harpole, 263 F. 2d 71 (5th Cir., 1959), Cert. denied 361 U. S. 838 (1959).

^{26/} See Appendix B.

^{27/} Ibid.

^{28/} See Appendix A.

In a recent decision involving the jury selection procedures in Mitchell County, Georgia, Whitus v. State of Georgia, U. S. (1967), the Supreme Court found that the disparity between the percentage of Negroes on the tax digest (27.1%), and the percentage of Negroes on the grand jury venire (9.3%) and the petit jury venire (7.8%) "strongly point" to the conclusion that the commissioners have discriminated. The Court held that since the State offered no explanation for the disparity between the percentage of Negroes on the tax digest and those in the venires, and failed to offer any testimony indicating that the 27.1% of Negroes on the tax digest were not fully qualified, it had not met the burden of rebutting the petitioner's prima facie case of systematic exclusion. The case at bar exhibits the same characteristics. In fact, the evidence reveals that the prerequisites for selection were minimal, and that many more Negroes were qualified and could have been placed on the jury roll.

The explanation offered by some of the Terrell County Commissioners was that the "most qualified" of those who could have been selected were placed on the jury list (Tr. 298, 606). This testimony alone does not rebut the showing of systematic exclusion, for no evidence was introduced to demonstrate that those excluded do not meet the standard imposed. Reece v. Georgia, 350 U. S. 85; Norris v. Alabama, 294 U. S. 587; United States ex rel Seals v. Wiman, 304 F. 2d 53. Furthermore, the application

of a "most qualified" standard is impermissible in that it results in a jury list which is not truly representative of the community.^{29/}

B. In a Racially Segregated Community the Use of Subjective Standards Inevitably Results in Racial Discrimination.

Not only did the defendant jury commissioners fail to offer some satisfactory explanation to rebut the inference of systematic exclusion of Negroes, but their testimony clearly reflects that they pursued a course of conduct in the administration of their office which inevitably resulted in discrimination in the selection of jurors on racial grounds.

The standards that were formulated and applied by the Terrell County Commissioners were highly capable of abuse. These standards are almost completely subjective in nature; the individual judgments made concern a person's "goodness," "stability," "common sense," "decency," "integrity," and "reliability." The application of such standards depend entirely on the experiences and preconceptions of each Commissioner, and is incapable of any form of check or review. If a Commissioner entertains a preconceived notion about Negroes generally, or concerning any other class, these standards allow and in fact insure that it will affect his decision as to who to place on the jury rolls. Thus, Commissioner Fleming's opinion that as a

^{29/} See discussion in Section VI, infra.

whole, Negroes in Terrell County are "less reliable" than white persons (Tr. 81), must have influenced him when his selection standard was "somebody that you could depend on." The Supreme Court has enjoined the use of state statutes which vest too much discretion in local voting officials. United States v. Louisiana, 380 U.S. 145 (1965). ^{30/} In Louisiana, the Supreme Court affirmed the District Court's finding that an interpretation test as a prerequisite for voter registration was invalid because it "vested in the voting registrars, a virtually uncontrolled discretion as to who should vote and who should not ... without any objective standard to guide them, ..." The Court cited as "squarely in point" the case of Schnell v. Davis, 336 U.S. 933 (1949), in which it affirmed per curiam the invalidation of Alabama's "Boswell Amendment" which enacted a similar understanding and interpretation test as a condition to voting. The lower court in Schnell felt that there was no reasonable standard inherent in this test, that the officials who applied it were not required to have sufficient training in the law to permit them to develop coherent standards, and that the use

^{30/} The Fifth Circuit has pointed out the close relationship between selecting jurors and registering voters. United States ex rel Goldsby v. Harpole, 263 F. 2d 71, cert. denied, 361 U.S. 838 (1959).

of such a test effectively isolated the determination of the registrar from judicial review. The words "understand" and "interpret" were found to be

so ambiguous, uncertain and indefinite in meaning that they confer upon ... [local registration] officials' arbitrary power to register whomever they please, 81 F. Supp. 872, 877, (S.D. Ala.).

The fact that the standards were formulated individually by each Terrell County Commissioner and were never discussed by the entire Commission, (Dep. of Greene pp. 41, 46; Tr. 30-31, 297), or reviewed for possible correction added to the opportunity for discrimination. So too did the failure to maintain any record of those rejected, or any accounting of the reason for the rejection (Tr. 59-60). In Avery v. Georgia, 345 U. S. 559, 562 (1953), the cards that were used to draw the juror's names were of different colors depending upon whether the potential jurors were Negro or white. The Court enjoined this procedure because of the opportunity to discriminate and potential for abuse inherent in the method of selection, even though no specific act of discrimination had been shown.

The potential for discrimination inherent in the standards employed in Terrell County is increased to the point of inevitability in the context of a racially segregated community. The application of the completely subjective standards formulated by the Terrell County Commissioners -- plus their practice of selecting the

"most" qualified persons for the jury list -- required a fair amount of personal knowledge about the individual being considered. Therefore, if very little was known about a particular person, the name would not be placed on the jury list (Tr. 26, 92).

A "casual" acquaintance with a prospective juror was not sufficient (Tr. 146, 276). The conditions existing in Terrell County, however, make it difficult, if not impossible for a white person to have more than a superficial acquaintance with a Negro. There is a "separateness" in the community; racially the two cultures are "distinct and apart," (Tr. 137). Commissioner Hanner also testified that because of community custom, only a "casual acquaintance" with a Negro was possible (Tr. 146). The relationship that a white person in Terrell County has with a Negro is "very different" than the relationship he has with another white person (Tr. 228).

Contacts with Negroes are not only qualitatively different, but also quantitatively. The separation of the race in Terrell County makes it unlikely that the white Jury Commissioners will meet, or get to know a fair number of Negroes, and be able to make the character judgments required by their selection standards. The testimony of Commissioner Fox, for example, reveals that out of a number of political, educational, social and religious organizations that he belongs to in the county, not one admits any Negro members (Tr. 601-620). Mr. Fox agreed that the

commissioners did not know people whose names appear in the tax digest as well as they should (Tr. 227).

Commissioner Varner first testified that he was "born and raised" with Negroes, and then in explanation stated that the Negroes in the geographical area involved grew up in the "Negro community," while he grew up in the "white community," (Tr. 282). Thus, in a small community (Sasser) of some 300 persons, Mr. Varner does not even know many of the Negroes' names, although he would recognize their faces (Tr. 283, 305). Commissioner Fleming admitted that he knows very few Negroes in the county, and only knows those slightly (Tr. 79).

The most definite and easily ascertainable criterion in the minds of the Commissioners was the criminal record of a prospective juror. However, upon inquiry, it was revealed that in the great majority of cases even this objective fact was unknown to the Commissioners (Tr. 140, 287-290, 616-617). Furthermore, the Negro persons asked about were suggested by the Commissioners themselves as people they "know," and therefore, are presumably those Negroes the Commissioners are most familiar with.

The exclusion of Negroes from juries because of unfamiliarity with their qualifications is a violation of the Fourteenth Amendment. Cassell v. Texas, 339 U.S. 282 (1950); Smith v. Texas, 311 U.S. 128 (1940); Hill v. Texas,

316 U.S. 400 (1942); Collins v. Walker, 329 F. 2d 100 (1964). As stated by the Supreme Court in Smith v. Texas:

If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand, 311 U.S. at 132.

Finally, the application of the property standards by the Terrell County Jury Commissioners excluded the large economic class of small and non-property owners. Its use not only runs counter to state policy, but violates the Fourteenth Amendment. In Hernandez v. Texas, 347 U.S. 475 (1954), the Supreme Court discussed jury selection procedures and said that:

When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory" -- that is, based upon differences between "white" and Negro, 347 U.S. at 478.

The economic position of a person is not a "reasonable classification" in this context. The Supreme Court has ruled that payment of a tax cannot be a prerequisite to voting because:

[W]ealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. Harper v. Virginia State Board of Elections, 383 U.S. 663, 668 (1966).

Property ownership and wealth are no more germane to one's ability to render intelligent jury service than to one's ability to participate in the election process.

Furthermore, the Supreme Court has ruled several times that economic discrimination is impermissible in other phases of state judicial systems. See Griffin v. Illinois, 351 U.S. 12 (1956); Douglas v. California, 372 U.S. 353 (1963); Gideon v. Wainwright, 372 U.S. 325 (1963).

In Labat v. Bennett, 365 F. 2d 698, (1966), cert. denied. U.S. (1967), the Fifth Circuit struck down a law which had the effect of excluding the class of daily wage earners from serving on juries because:

[T]he exclusion of this class, 47 percent of all Negro workers in Orleans Parish. . . discriminates against Negroes in violation of the equal protection clause in that the class contains a disproportionately large number of Negroes, 365 F. 2d at 720.

It is no defense that when applying this standard, the Terrell County Jury Commission did not intend this exclusion of Negroes. For, in accordance with the general rule concerning causation, Jury Commissioners are held to have intended the natural and foreseeable results which flow from their conduct. See Glasser v. United States, 315 U.S. 60, 85 (1942); Smith v. Texas, 311 U.S. 128, 132 (1940).

VI.

THE SELECTION METHOD USED FOR THE 1966
REVISION COULD NOT RESULT IN A JURY LIST
FAIRLY REPRESENTATIVE OF THE COMMUNITY

The Supreme Court has recognized that juries are "instruments of public justice" and must be bodies truly representative of the community. Smith v. Texas 311 U.S. 123, 130 (1940); Glasser v. United States, 315 U.S. 60 (1942); Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). The Fifth Circuit in its recent series of en banc jury selection cases made it clear that the cross-section of the community standard is made applicable to the states by the equal protection and due process clauses of the Fourteenth Amendment. See Labat v. Bennett, 365 F. 2d (1966); ^{31/}Brooks v. Beto, 366 F. 2d 1 (1966); Billings v. Clayton, 359 F.2d 3 (1966).

^{31/} "The 'very integrity of the fact-finding process' depends on impartial venires representative of the community as a whole. The undermining of the jury system's fact-finding process, the opportunity for unfairness, the risk that defendants... will be prejudiced by exclusion of jurors in the same class are dangers which compel condemnation of the practice without the necessity of the court's finding actual prejudice affecting the outcome of the case." 365 F. 2d at 723. [emphasis added].

The Terrell County Jury Commissioners made no attempt to fulfill their constitutional duty. They employed a source that did not adequately reflect the make-up of the community. No additional names were considered.

The Commissioners further narrowed the pool of potential jurors by selecting only a portion of the persons on this source. The Commissioners did not select jurors randomly from the entire list of qualified persons on the tax digest (Tr. 169), a practice which would have insured that every qualified persons had an equal chance of selection and that different names would appear on the jury roll after each revision.

Since the jury selection procedures and standards in Terrell County have remained constant, (Dep. of Fleming p. 63; Tr. 46,81), ^{32/} certain "best qualified" individuals are bound to be selected time after time, while other persons, although fully qualified will never appear on the jury roll. For example, Commissioner Hanner testified that he has served on juries "6 or 8 or 10" times during the past 22 years and that his name has appeared on the jury roll continuously throughout this period (Tr. 581). Commissioner Fox believes that he has been selected for the jury roll at every revision for the last 16 years (Tr. 621).

^{32/} The only difference was that in 1966 Negroes and women became a part of the jury selection process for the first time (Tr. 81, 100-101).

In Glasser v. United States, the Supreme Court noted that the jury should not be the "organ of any special group or class" and warned that:

... the officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted. 315 U.S. at 86.

If only a limited number of qualified persons are to make up the jury roll, the Fourteenth Amendment requires that the final list adequately represent the various identifiable elements and groups in the community. "To fairly represent the community there must be an awareness of the make-up of that community." Jury Commissioners "must uncover the source of competent jury prospects from all significantly identifiable elements of the community." Brooks v. Beto, 366 F.2d 1 (1966). The Terrell County Commissioners were not adequately aware of the make-up of the community. They did not know, for example, the ratio of Negroes to white persons, (Tr. 93, 332), or of males to females (Tr. 231), in the total population of the county and on the tax digest. Although the commissioners were aware of the number of Negroes and females that they had selected after going

through the tax digest, no effort was made to adjust the figures by adding additional names in order that the percentages on the jury roll would approximate the percentages of these groups in the community (Tr. 231).

The selection methods employed in Terrell County during the 1966 jury revision were not calculated to and did not result in juries fairly representative of the community. The statistics ^{33/} reveal that the large number of Negroes in the county are not adequately represented on the jury roll.

	<u>% Adult Pop.</u>	<u>% on Tax Digest</u>	<u>% on Traverse Jury Roll</u>
White	44.5	62.3	78.3
Negro	55.5	37.7	21.7

The same is true of women who comprise over 50% of the adult population but comprise only slightly over 13% of the persons on the traverse jury roll, ^{34/} and slightly over 6% of the persons on the grand jury roll.

^{33/} See Appendices B and G. Also see Appendix II which shows the result of the drawing from this jury roll for the December 1966 Term of Court.

^{34/} See Appendices C, D, F, and G for a comparison of representation of males and females on juries.

VII

THE RELIEF

A. The Practices of the Defendants Demonstrate that Affirmative Relief is Needed

In Terrell County there has been long-standing systematic exclusion of Negroes from juries. Prior to the commencement of this action no Negro had been selected for jury service, or even placed on the jury list, for at least 26 years. The qualifications of Negro citizens were not even considered by the Terrell County Jury Commissioners prior to September 1966.

These facts demonstrate that an affirmative decree is required to insure the proper selection of juries in Terrell County. The inclusion of some Negroes on the 1966 jury list does not alleviate the necessity for affirmative relief. Turner v. Spencer, Black v. Curb, and McNeir v. Agee, 261 F. Supp. 542 (S.D. Ala. 1966). ^{35/}

The need for injunctive relief is to be measured by the defendants' actions of non-compliance prior to suit, not by their behavior subsequent to suit when they were under threat of judicial compulsion. Goldberg v. Cockrell, 303 F.2d 811 (5th Cir. 1962).

The addition of Negroes (and women) to the Terrell County jury list in 1966 was under threat of judicial compulsion. It had been the procedure that the jury commission would meet to revise the jury rolls every two years, on or about the first of August (Tr. 57). In 1966, this

^{35/} Although the reported decision does not reflect the statistics, the number of Negroes on the jury rolls in Turner v. Spencer, where Negroes had comprised a little more than 2% between 1954 and 1964 rose to 22% after suit was filed and in McNeir v. Agee, Negroes on the rolls rose from 4% to 14% and in Black v. Curb, Negroes on the rolls rose from 2.6% to 12.2% after suit was filed. In all three cases Negroes comprised over 50% of the adult population in each county.

meeting was postponed because of the pending legal action (Tr. 82). One commissioner testified that because of the litigation that was filed, the primary concern of the Commission was to add some Negroes' names to the jury rolls (Tr. 81). Another stated that it [w]asn't customary" to select Negroes for jury service in Terrell County and that the change in 1966 was due to "[t]his lawsuit, I'm sure" (Tr. 144-145).

Even after suit was filed, the results of the 1966 jury revision establish a prima facie case of exclusion of Negroes from juries and the methods and standards used to select jurors did not lead to a truly representative cross-section of the community on the Terrell County jury rolls. Without injunctive relief, there is no assurance that these defendants will determine the qualifications of all prospective jurors in the future on a nondiscriminatory basis. ^{36/}

The recent legislation in the State of Georgia requiring the jury commissioners to select a cross-section of the county for jury service does not diminish the need for relief in this action. It has always been the law in the State of Georgia that Negroes were not to be excluded from jury service on the basis of race. ^{37/} The practice of the defendants in excluding Negroes for such a long and continuous period in violation of both state and federal law clearly shows that without injunctive relief there is no assurance that state or federal law will be followed.

36/ United States v. Atkins, 323 F.2d 733 (5th Cir. 1963).

37/ See Allen v. State, *supra* and Cobb v. State, 218 Ga. 10, 126 S.E. 2d 231 (1962); Crumb v. State, 205 Ga. 547, 54 S.E. 2d 639 (1949).

B. The Relief Requested Provides
An Appropriate Remedy

The plaintiffs, in this civil action,^{38/} assert the right of Negroes collectively to be free from racial discrimination in the jury selection process and to have juries representing a fair cross-section of the community. They invoke the unquestioned principle that systematic discrimination against Negroes in selecting jurors for jury service involves state action directly contrary to the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The United States joins in the assertion of this right because the Attorney General regards this case as one of general public importance.

^{38/} Mr. Justice Jackson, in his dissent in Cassell v. Texas, 339 U.S. 282, at 298, suggested that remedies for jury exclusion other than release of criminal defendants had unfortunately been neglected.

"Qualified Negroes excluded by discrimination have available. . . remedies in courts of equity. I suppose there is no doubt, and if there is this Court can dispel it, that a citizen or a class of citizens unlawfully excluded from jury service could maintain in a federal court an individual or a class action for an injunction or mandamus against the state officers responsible."

Other civil actions have been undertaken to provide specific injunctive relief directed at curing jury exclusion. See White v. Crook, 251 F. Supp. 401, (3 judges, M.D. Ala., 1966), Mitchell v. Johnson, 250 F. Supp. 117, (M.D. Ala., 1966), Turner v. Spencer, Black v. Curb, McNeir v. Agee, decided together 261 F. Supp. 542 (S.D. Ala. 1966).

The constitutional prohibition against the systematic exclusion of Negroes from service on civil and criminal juries, grand and petit, has several basic aspects. First, Negroes who become involved in the litigation process, whether as parties to civil actions, or as criminal defendants, have a right, under the Fourteenth Amendment, not to have members of their race systematically excluded from jury service. As stated in Strauder v. West Virginia, 100 U.S. 303 at 308, 25 L. Ed. 664 (1880):

"The very idea of a jury is that it is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; . . ."

Second, the otherwise qualified Negro citizen has a right not to be denied participation in the democratic institution by which all citizens become most directly involved in the administration of justice. When Negroes are excluded from jury service as a result of their race, the action of the State "is practically a brand upon them affixed by the law; an assertion of their inferiority, . . ." Strauder v. West Virginia, supra. at 308.

Third, Negroes have the right, as do all citizens, to the equal protection of the laws afforded by a fairly administered system of justice from which no portion of the community has been excluded and which result in juries truly representative of a cross-section of the community. Smith v. Texas, 311 U.S. 128, (1940); Brooks v. Beto, 366 F. 2d 1, (5th Cir., 1966); Labat v. Bennett, 365 F. 2d 698 (5th Cir., 1966); Allen v. State, 110 Ga. App. 50, 137 S. E. 2d 711 (1964)

To remedy the denial of these rights, we ask this court to exercise its equity powers to insure a constitutional jury system in Terrell County. Although this court does not sit to enforce state law, it would be appropriate in fashioning relief for the proven violations of the Fourteenth Amendment for the court to tailor its decree to the scheme of state law as much as practical and consistent with the object of eliminating discrimination in the Terrell County jury selection system.

We propose that in this regard the emphasis should be placed on adherence to the mandates of Act No. 122 (H.B. No. 307) of March 30, 1967,^{39/} passed after this suit was filed and tried, and at the same time the relief should be drawn to eliminate the evils of a system which allows discretion on the part of officials selecting jurors which can be and has been used to discriminate.

We propose that until further order of this court the Commissioners be deprived of their power to judge citizens for jury service on the basis of such subjective standards of being "upright and intelligent". Past performance by the Commissioners requires that these standards be suspended.^{39a/}

We therefore propose that the Commissioners and Clerk of Court examine a complete list of registered voters in the county and seek out and secure other

^{39/} See Appendix M.

^{39a/} Although in the past literacy was not a requirement for jury service, should the defendants propose such requirement it should be limited to having potential jurors respond to simple questions concerning their qualifications on a form approved in advance by the court after hearing.

names to compile a complete comprehensive list of persons in Terrell County which contain proportionate numbers closely approximating the percent of the adult population that are Negroes and the percent of the adult population that are white persons. This comprehensive list secured with intent to achieve representation of Negroes in the percent Negroes are in the population of the county will provide a nondiscriminatory and comprehensive cross-section of the citizens of Terrell County. As envisioned by Act No. 122 (H.B. No. 307) of March 30, 1967, supplemental names may be added to the present voter list. The testimony of the tax commissioner, Mr. John Senn clearly demonstrated that there is not a sufficient number of Negroes on the present voter roll to constitute a fair cross-section of the community.^{40/}

We propose that once a comprehensive list of persons is secured selection of prospective jurors should be a random process and our proposed decree incorporates a random selection of names from the comprehensive list to serve as traverse jurors and a random selection of names from the traverse jury rolls to be grand jurors.

In our view, random selection in place of subjective criteria for determining jury service in Terrell County must be used and suspension of the subjective criteria is necessary if jury discrimination is to be completely eliminated. It is no objection to granting this relief that the subjective criteria, viewed in isolation, might be capable of valid administration.

^{40/} Mr. Senn testified there were 3,006 white voters over 21 years of age and 453 Negroes over 21 years of age (Tr. 412).

It is a settled principle of equity that when important rights have been violated, the judicial remedy may go beyond restraining the plainly unlawful conduct and may prohibit the defendant from engaging in associated practices which others might lawfully do, and which even the defendant could do if he had not followed such practices to perpetuate the wrong done. Thus, in United States v. Bausch & Lomb Co., 321 U.S. 707, 724 (1944), the Supreme Court entered an antitrust decree directing that "subsequent price maintenance contracts, otherwise valid, should be cancelled, along with the invalid arrangements, in order that the ground may be cleansed effectually from the vice of the former illegality." "Equity has power," the Court said, "to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole."

Similarly, use of a licensing system was prohibited in Ethyl Gasoline Corp. v. United States, 309 U.S. 436 (1940). There the Court said (309 U.S. at 461):

Since the unlawful control over the jobbers was established and maintained by resort to the licensing device, the decree rightly suppressed it even though it had been or might continue to be used for some lawful purposes. The court was bound to frame its decree so as to suppress the unlawful practices and to take such reasonable measures as would preclude their revival. Local 167 v. United States, 291 U.S. 293; Warner & Co. v. Lilly & Co., 265 U.S. 526, 532. It could, in the exercise of its discretion, consider whether that could be accomplished without dis-establishing the licensing system, and whether

there were countervailing reasons for continuing it as a necessary or proper means for appellant to carry out other lawful purposes. Since the court rightly concluded that these reasons were without substantial weight, it properly suppressed the means by which the unlawful restraint was achieved. Local 167 v. United States, supra, 299, 300; cf. Merchants Warehouse Co. v. United States, 283 U.S. 501, 513 (emphasis added).

So too, in United States v. Gypsum Co., 340 U.S. 76, 89 (1950) the Court held that an equity decree "is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal." Hence, it was said, "Acts entirely proper when viewed alone may be prohibited." ^{41/}

The same principles govern racial discrimination cases. In United States v. Alabama, 304 F. 2d 583 (C.A. 5, 1962), affirmed, 371 U.S. 37, the Court said that in enforcing the Fifteenth Amendment it would grant mandatory relief because "The aim of equity is to adopt judicial power to the needs of the situation" and that "the nature of the relief" to be granted in such cases "is to be molded by the necessities." ^{42/}

^{41/} Congress has often exercised the same broad power. See, e.g., Everard's Breweries v. Day, 265 U.S. 545, 560; Purity Extract Co. v. Lynch, 226 U.S. 192.

^{42/} Citing Porter v. Warner Holding Co., 328 U.S. 395 (1946); Hecht Co. v. Bowles, 321, 329 (1944).

And in the by now well-know "freezing" cases the Fifth Circuit Court of Appeals and the Supreme Court have frequently prohibited the use of the means of discrimination despite protestations that they would be used lawfully in the future. ^{43/} While the theory of these cases was that the application of literacy tests would perpetuate past discrimination, that in no way undermines the broad principle of these decisions that an otherwise valid system or practices, even though required by state law, should be banned by an equity court where such relief is essential to the complete elimination of discrimination.

Moreover, the relief we seek here is especially necessary where the "standards" set forth in State law are vague, discretionary, and inherently subject to abuse. Cf. United States v. Louisiana, 380 U.S. 145, 153 (1965) (literacy test banned because it left "the voting fate of a citizen to the passing whim or impulse of an individual registrar.")

On the basis of these authorities, the subjective standards prescribed by Georgia law for the selection of jurors should be suspended by this Court. The evidence of past discriminatory practices makes it clear that the defendants cannot be trusted to fairly administer criteria which leave wide latitude for racial manipulation. Nothing short of this relief would satisfy the "necessities" of this case and the "need of the situation" shown by the record.

^{43/} E. g. United States v. Duke, 332 F. 2d 759 (C.A. 5, 1964); United States v. Wilbur Ward, 345 F. 2d 857 (C.A. 5, 1965); United States v. Louisiana, 380 U.S. 145 (1965).

As a remedy for the unconstitutional exclusion of women from jury service the Court, in our view, should order the jury commission to make no differentiation because of sex in selecting names for jury service. Women called for jury service should be excused from such service only by the judge of the Superior Court of Terrell County.

Finally, to insure that the various jury selection procedures are fairly followed, we propose that the defendants be required to make a report to the Court within 14 days of each revising of the jury rolls. This report should include the names and race of all persons placed in the jury box, and the names, race and reasons for rejecting any person considered by the Jury Commissioners and found unqualified. Furthermore, to guarantee that the new system is working, we ask that the defendants maintain records, available for inspection at the courthouse, showing the names and race of persons (1) not found by the sheriff in executing the venire facias and precipes and (2) those excused by the circuit judge and the reasons for such excuse, as well as the records they now must keep in accordance with state statutes.

Such reporting procedures as proposed have come to be recognized as integral parts of decrees in equity directed at correcting the effects of discrimination in the voter registration process. See United States v. Mississippi, supra; and United States v. Wilbur Ward, supra.

In one of the recent school desegregation cases detailed reports were ordered. See United States v. Jefferson County Board of Education, (C. A. 5, No. 23345, decided December 29, 1966, affirmed en banc, March 29, 1967). Also reporting provisions were ordered in the Alabama jury discrimination cases of White v. Crook, supra, Mitchell v. Johnson, supra, and Turner v. Spencer, Black v. Curb, McNeir v. Agee, supra.

CONCLUSION

For the reasons set forth in this brief, and on the basis of the authorities cited, the plaintiff-intervenor requests this Court to enter judgment in accordance with the plaintiff-intervenor's proposed decree.

Respectfully submitted,

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APPENDIX A

POPULATION, 1960 TERRELL COUNTY, GEORGIA ALL AGES 1/

<u>RACE</u>	<u>MALE</u>	<u>FEMALE</u>	<u>TOTAL</u>	<u>% OF TOTAL MALE</u>	<u>% OF TOTAL FEMALE</u>	<u>% OF TOTAL MALE & FEMALE</u>
NEGRO	3,891	4,318	8,209	64.5	64.3	64.4
WHITE	<u>2,140</u>	<u>2,393</u>	<u>4,533</u>	35.5	35.7	35.6
TOTAL	6,031	6,701	12,742			

POPULATION, 1960 TERRELL COUNTY, GEORGIA AGED 21 AND OVER 2/

<u>RACE</u>	<u>21 AND OVER MALE</u>	<u>21 AND OVER FEMALE</u>	<u>21 AND OVER TOTAL</u>	<u>% OF TOTAL MALE 21 AND OVER</u>	<u>% OF TOTAL FEMALE 21 AND OVER</u>	<u>% OF TOTAL MALE & FEMALE 21 AND OVER</u>
NEGRO	1,625	2,034	3,659	54.7	56.1	55.5
WHITE	<u>1,344</u>	<u>1,589</u>	<u>2,933</u>	45.3	43.9	44.5
TOTAL	2,969	3,623	6,592			

1/ U. S. CENSUS OF POPULATION, 1960, GEORGIA, GENERAL POPULATION
CHARACTERISTICS, U.S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS,
TABLE 27, p. 12-131

2/ Ibid.

APPENDIX B

Terrell County Population By Race And 1966 Jury Roll Statistics 1/

	<u>White</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>
Population over 21 (1960 Census Terrell County, Georgia)	2,933		3,659	
Percent of total population over 21		44.5%		55.5%
Names of Persons on 1966 Jury Roll (Traverse Jury)	598		166	
Percent of total names of persons on 1966 Jury Roll (Traverse Jury)		78.3%		21.7%
Names of persons on 1966 Jury Roll (Grand Jury)	249		54	
Percent of total names of persons on 1966 Jury Roll (Grand Jury)		82.1%		17.8%
Percent of popula- tion of each race over 21 on 1966 Jury Rolls (Traverse Jury)		20.3%		4.5%

1/ Defendants' Exhibits 1-4.

APPENDIX C

Terrell County Male Population By Race and 1966 Jury Roll Statistics 1/

	<u>White</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>
Male population over 21 (1960 Census Terrell County, Georgia	1,344		1,625	
Percent of total population over 21		20.4%		24.7%
Names of males on 1966 Jury Roll (Traverse Jury)	556		106	
Percent of total names on 1966 Jury Roll (Traverse Jury)		72.8%		13.9%
Names of males on 1966 Jury Roll (Grand Jury)	240		44	
Percent of total names on 1966 Jury Roll (Grand Jury)		79.2%		14.5%
Percent of male population of each race over 21 on 1966 Jury Rolls (Traverse Jury)		40.8%		6.6%

1/ Defendants' Exhibits 1 - 4.

Males comprise 86.6% of the 764 names of persons placed on the Traverse Jury Roll and 93.7% of the 303 names of persons placed on the Grand Jury Rolls.

White males comprise 84.0% of the total names of males (662), on the Traverse Jury Rolls and 84.5% of the total names of males (284), on the Grand Jury Rolls.

Negro males comprise 16.0% of the total names of males (662), on the Traverse Jury Rolls and 15.5% of the total names of males (284), on the Grand Jury Rolls.

APPENDIX D

Terrell County Female Population By Race and 1966 Jury Roll Statistics 1/

	<u>White</u>	<u>Percent</u>	<u>Negro</u>	<u>Percent</u>
Female popula- tion over 21 (1960 Census Terrell County, Georgia)	1,589		2,034	
Percent of total population over 21		24.1%		30.9%
Names of females on 1966 Jury Roll (Traverse Jury)	42		60	
Percent of total names on 1966 Jury Rolls (Traverse Jury)		5.5%		7.9%
Names of females on 1966 Jury Roll (Grand Jury)	9		10	
Percent of total names on 1966 Jury Roll (Grand Jury)		3.0%		3.3%
Percent of female population of each race over 21 on 1966 Jury Rolls (Traverse Jury)		3.0%		2.9%

1/ Defendants' Exhibits 1-4.

Females comprise 13.4% of the 764 names of persons placed on the Traverse Jury Rolls and 6.3% of the 303 names of persons placed on the Grand Jury Rolls.

White females comprise 41.2% of the total names of females (102), on the Traverse Jury Rolls and 47.4% of the total names of females (19) on the Grand Jury Rolls.

Negro females comprise 58.8% of the total names of females (102), on the Traverse Jury Rolls, and 52.6% of the total names of females (19) on the Grand Jury Rolls.

APPENDIX E

Count of Persons By Race and Sex
On 1966 Tax Digest - Terrell County */

	<u>White Male</u>	<u>White Female</u>	<u>Total White</u>	<u>Negro Male</u>	<u>Negro Female</u>	<u>Total Negro</u>
1966 Tax Digest	1362	626	1988	850	354	1204

*/ Count of 1966 Tax Digest (Pl. Int. Ex. 23) does not include names on the Tax Digest more than one time. The 1966 Tax Digest listed white persons in the first part of the Digest in alphabetical order and Negroes in the second part of the Digest in alphabetical order. Pages E-2 through E-7 of this Appendix are a count, by page, of the 1966 Tax Digest. All persons were counted as females having a female first name, Miss or Mrs., and all first names having just initials were counted as males.

John H. Senn, Terrell County Tax Commissioner testified that there were 2,024 white and 1,267 colored persons listed on the 1966 Tax Digest. (Tr. 407).

All references in this Brief and Appendices to the number of persons on the 1966 Tax Digest are derived from Appendix E.

Count of 1966 Tax Digests
(Pl.-Int. Ex. 23)

White Persons

<u>1/</u> Page	<u>2/</u> Spaces Used	<u>3/</u> Males	<u>4/</u> Dup.	<u>5/</u> Females	<u>6/</u> Dup.	<u>7/</u> Married Couples	<u>8/</u> Bus.	<u>9/</u> Estates	<u>10/</u> Multiple Owners
1	30	27	1	9			2		1-2 Males
2	20	12	1	3			4		
3	38	22		12		1	4	1	
4	38	27		9		1	3	1	1-2 Males
5	38	28		12		1			1-1 Male 1 Female
6	38	25	1	14		2			
7	38	28	4	6		1		1	1-1 Male 1 Female
8	21	15		5		1	3		1-2 Males
9	38	26	1	9			2		
10	38	22	1	11	1	1	3	1	
11	38	20	2	12		1	4	1	
12	38	21	1	11			5		
13	38	24	2	8		1	3	2	
14	12	5		6				1	
15	38	25	1	8	1		1	2	
16	38	7		10		1	22		
17	38	21	1	12		2	6	1	1-2 Males
18	8	4		3			1		
19	31	22	1	5			2	1	
20	38	20	2	12		1	5	1	1-2 Females
21	38	28		8		1	3		
22	22	15	1	8		1			1-2 Males

White Persons

<u>1/</u> Page	<u>2/</u> Spaces Used	<u>3/</u> Males	<u>4/</u> Dup.	<u>5/</u> Females	<u>6/</u> Dup.	<u>7/</u> Married Couples	<u>8/</u> Bus.	<u>9/</u> Estates	<u>10/</u> Multiple Owners
23	33	22	2	11		1	3	1	
24	38	22	3	12		1	3		1-2 Females
25	21	12		6			3		
26	38	24	3	8			2	1	
27	38	30	2	8	1	2			1-1 Male 1 Female
28	38	19	1	15	1		2	1	1-2 Females
29	38	23	2	8	3	1	4	2	1-2 Males 2-2 Females
30	38	26	2	7			2	1	
31	23	15	1	7					
32	16	8		5			3		
33	38	24	2	14		2	1		1-2 Males
34	38	23	2	11			1	2	1-2 Males
35	18	14		4		1	2		1-2 Males
36	39	21	1	16		2	2	1	
37	14	8		4			2		
38	38	24	1	10	1		3		1-1 Male 1 Female
39	38	26	2	10			1	1	2-2 Males
40	38	21	1	12	2	1	2	2	1-1 Male 1 Female
41	9	6		4		1			
42	38	19		18	1	1	2		1-2 Females
43	37	22	1	13				1	

White Persons

<u>1/</u> Page	<u>2/</u> Spaces Used	<u>3/</u> Males	<u>4/</u> Dup.	<u>5/</u> Females	<u>6/</u> Dup.	<u>7/</u> Married Couples	<u>8/</u> Bus.	<u>9/</u> Estates	<u>10/</u> Multiple Owners
44	38	26	1	10			2		1-1 Male 1 Female
45	38	23	3	9	1		2		
46	38	21	1	9		1	4	5	1-1 Male 1 Female
47	38	18		19			2		1-2 Female
48	20	11	2	7		1		2	1-2 Females
49	33	23		10		1	1	1	1-1 Male 1 Female
50	32	16	2	8		1	5	2	1-2 Males
51	33	23		8			3		1-1 Male 1 Female
52	38	23	8	6			4	1	4-2 Males
53	37	26		8			2	1	
54	38	26	1	9	2			1	1-2 Males
55	38	24	3	10		1	3		1-1 Male 1 Female
56	14	7	1	3			2	1	
57	38	17	5	8	1		7	1	1-2 Females
58	38	26	3	10				1	2-2 Males
59	38	26		10		1	3		
60	38	22	1	13			2		
61	18	11		6			1		
62	38	17		15			9		2-1 Male 1 Female 1-2 Females
63	28	17		11		2	3		1-1 Male 1 Female
64	8	7						1	
65	38	22	1	11	1	1	5	1	2-1 Male 1 Female

White Persons

<u>1/</u> Page	<u>2/</u> Spaces Used	<u>3/</u> Males	<u>4/</u> Dup.	<u>5/</u> Females	<u>6/</u> Dup.	<u>7/</u> Married Couples	<u>8/</u> Bus.	<u>9/</u> Estates	<u>10/</u> Multiple Owners
66	38	23	1	10	1		2	1	
67	38	25	4	11	1	1		1	1-2 Males 1-2 Females 1-1 Male 1 Female
68	32	24		8					
69	4			1			1	2	
TOTAL		1362		626					

Negroes

85	36	30		6		1		2	1-2 Males
86	38	27		7				4	
87	38	24	3	11		3	1	3	
88	38	28		10		2		2	
89	40	28		11		1		2	
90	38	26	1	9				2	
91	34	23	2	12		3			
92	38	26	1	13	1	3		2	1-2 Males 1-2 Females
93	28	21		8		1			
94	14	10		3				1	
95	23	13		12		1		2	3-1 Male 1 Female
96	38	28		10		3		3	
97	24	18		4				2	
98	38	27		11		4		4	
99	38	27	1	11		5		4	

Negroes

<u>1/</u> Page	<u>2/</u> Spaces Used	<u>3/</u> Males	<u>4/</u> Dup.	<u>5/</u> Females	<u>6/</u> Dup.	<u>7/</u> Married Couples	<u>8/</u> Bus.	<u>9/</u> Estates	<u>10/</u> Multiple Owners
100	38	20		18	1	1		2	1-2 Males 1 Female 1-2 Female
101	7	5		1				1	
102	38	29		8				1	
103	38	29	1	10		1			
104	13	9		3				1	
105	24	19		5					
106	38	25		11	1			1	
107	32	23		11		2		1	1-2 Female
108	12	6		5				1	
109	38	27		10		1		2	
110	38	27	1	9		2		4	1-2 Males
111	13	9		3				1	
112	11	7		4					
113	38	28		10		1		1	
114	8	5		3					
115	38	22		16		2	1	2	1-2 Female
116	5	3		1				1	
117	38	25		15		1		1	1-3 Female
118	38	23		13		2		4	
119	23	15	1	5				2	
120	38	27	2	9					
121	24	17		6		1		2	
122	2	2							
123	38	26		11		1		2	
124	38	22		14	1	1		2	

Negroes

<u>1/</u> <u>Page</u>	<u>2/</u> <u>Spaces</u> <u>Used</u>	<u>3/</u> <u>Males</u>	<u>4/</u> <u>Dup.</u>	<u>5/</u> <u>Females</u>	<u>6/</u> <u>Dup.</u>	<u>7/</u> <u>Married</u> <u>Couples</u>	<u>8/</u> <u>Bus.</u>	<u>9/</u> <u>Estates</u>	<u>10/</u> <u>Multiple</u> <u>Owners</u>
125	38	30		9					1-2 Males 1 Female
126	13	9		4					
127	10	5		2				3	
TOTAL		850		354					

- 1/ Indicates the page number of the 1966 Tax Digest (Pl. Int. Ex. 23)
- 2/ Indicates the number of spaces or lines used on a given page to list persons in the Tax Digest (Pl. Int. Ex. 23)
- 3/ Indicates the number of persons with male first names, initials only, or "Dr." or "Mr." designations.
- 4/ Indicates the number of times a male name has two listings. [Note: A male listed twice in the Digest is listed once under "males" and once under "duplicates."]
- 5/ Indicates the number of persons with female first names or with "Miss" or "Mrs." designations.
- 6/ Indicates the number of times a female name has two listings. [Note: A female listed twice in the Digest is listed once under "females" and once under "duplicates."]
- 7/ Indicates the number of times that a male and female with the same last name appear on a single line. [Note: One is listed under "Male" column and one is listed under "Female" column.]
- 8/ Indicates the number of times that businesses and churches and parsonages appear.
- 9/ Indicates the number of times there is property designated as an "estate". (This notation usually appears after the name of the person).
- 10/ Indicates the number of times that there is more than one name on a single line, and when the names are not those of husband and wife. (Note: Males are listed under "Male" column and females are listed under "Female" column).

APPENDIX F

Number of Persons By Race and Sex On 1966 Tax Digest 1/ And Population of Terrell County By Race and Sex

	<u>White Male</u>	<u>White Female</u>	<u>Total White</u>	<u>Negro Male</u>	<u>Negro Female</u>	<u>Total Negro</u>
Population over 21 (1960 Census Terrell County, Georgia)	1,344	1,589	2,933	1,625	2,034	3,659
Names of persons on 1966 Tax Digest	1,362	626	1,988	850	354	1,204
Percent of total names on 1966 Tax Digest	42.7%	19.6%	62.3%	26.6%	11.1%	37.7%
Percent of population of each race and sex over 21 on 1966 Tax Digest	100%	39.4%	67.8%	52.3%	17.4%	32.9%

1/ Plaintiff Intervenor's Exhibit 23.

APPENDIX G

Number of Persons By Race and Sex On 1966 Tax Digest 1/ And 1966 Traverse Jury Roll 2/

	<u>White Male</u>	<u>White Female</u>	<u>Total White</u>	<u>Negro Male</u>	<u>Negro Female</u>	<u>Total Negro</u>
Number of Persons on 1966 Tax Digest	1,362	626	1,988	850	354	1,204
Number of Persons on 1966 Traverse Jury Roll	556	42	598	106	60	166
Percent of Persons on 1966 Tax Digest that are on the 1966 Traverse Jury Roll	40.8%	6.7%	30.1%	12.5%	16.9%	13.8%

1/ Plaintiff Intervenor's Exhibit 23.

2/ Defendants' Exhibits 1, 3.

APPENDIX H

Terrell County Traverse and Grand Jurors December Term of Court 1966

<u>TRAVERSE JURORS DRAWN</u> ^{1/}		<u>PERCENTAGE</u>
WHITE	151	81.2
NEGRO	35	18.8
	<u>186</u>	
MALE	157	84.4
FEMALE	29	15.6
	<u>186</u>	

<u>TRAVERSE JURORS SWORN IN</u> ^{2/}		<u>PERCENTAGE</u>
WHITE	86	81.9
NEGRO	19	18.1
	<u>105</u>	
MALE	94	89.5
FEMALE	11	10.5
	<u>105</u>	

<u>GRAND JURORS DRAWN</u> ^{3/}		<u>PERCENTAGE</u>
WHITE	38	84.4
NEGRO	7	15.6
	<u>45</u>	
MALE	43	95.6
FEMALE	2	4.4
	<u>45</u>	

<u>GRAND JURORS SWORN IN</u> ^{4/}		<u>PERCENTAGE</u>
WHITE	17	81.0
NEGRO	4	19.0
	<u>21</u>	
MALE	21	100.0
FEMALE	0	0
	<u>21</u>	

1/ Defendants' Exhibits 5, 6. This count reflects the number of persons drawn from the master Traverse Jury Roll to serve on the first and second week traverse juries.

2/ Defendants' Exhibits 7, 8. This count reflects the number of persons sworn in out of those drawn from the master Traverse Jury Roll to serve on the first and second week traverse juries.

3/ Defendants' Exhibit 9. This count reflects the number of persons drawn from the master Traverse Jury Roll to serve on the grand jury.

4/ Defendants' Exhibit 10. This count reflects the number of persons sworn in out of those drawn from the master Traverse Jury Roll to serve on the grand jury.

APPENDIX I

Names of Women Submitting Letters
Requesting Not To Serve On Juries
(Plaintiff-Intervenor Ex. 2) Who
Actually Were Eligible For Jury
Service By Being Listed On The Tax
Digest.*

<u>NAMES ON PLAINTIFF- INTERVENOR'S EXHIBIT 2</u>	<u>NAMES ON PLAINTIFF- INTERVENOR'S EXHIBIT 23</u>	<u>RACE</u>	<u>PAGE</u>
Miss Lillie Mae Anthony	Miss Lillie Mae Anthony	W	1
Mrs. David Bridges	Mrs. David Bridges	W	6
Mrs. J. Allen Beatty	Mrs. T. A. Beatty	W	4
Mrs. Bessie Brim	Mrs. Bessie Brim	W	7
Mrs. J. A. Brim	Mrs. J. A. Brim	W	7
Mrs. Jack Ballentine (Ann Dunn)	Mrs. Ann Dunn Ballentine	W	3
Mrs. S. L. Bruce	Mrs. Sara Bruce	W	8
Mrs. Mary Bridges	Mrs. Marilu Bridges	W	6
Miss Susie C. Brantley	Miss Susie C. Brantley	W	6
Miss Sue Brantley	Miss Sue Brantley	W	6
Mrs. H. T. Barbee	Mrs. H. T. Barbee	W	3
Mrs. L. M. Bridges	Mrs. L. M. Bridges	W	6
Mrs. Johnnie M. Cox	Mrs. Johnnie M. Cox	W	13
Louise M. Chappell (Mrs. Guy)	Mrs. Louise M. Chappell	W	10

* Names of women who wrote in letters asking not to serve on juries (Plaintiff-Intervenor Ex. 2) were compared with women actually eligible on the tax digests (Plaintiff-Intervenor Ex. 23). A count of Plaintiff-Intervenor's Ex. 2 reflects that out of a total of the 349 letters received from women, the names of the 85 white females and one Negro female listed on this appendix could be identified as being on the tax digest. All differences in first names of women on letters with names on tax digest were resolved by considering the women as being on the tax digest. Testimony of Commissioner Fox substantiates that most of the women who wrote in letters were not on the tax digests. Fox testimony on Tr. 595-596.

Q. Did you tell your clerk or did the clerk, to your knowledge, receive any requests for excuses by women in Terrell County from having their names placed on the jury roll?

A. I think there were some, maybe 300 or 333 names, as well as I remember. I think only a small percentage of those would have made any difference anyway, because I could say 75, at least 75 percent, of these were not eligible to serve being they were not taxpayers.

NAMES ON PLAINTIFF-
INTERVENOR'S EXHIBIT 2

Dephne Ann Chambless
Mrs. Homer Collier (Alice Mae)
Mrs. Emily W. Cook
Miss Grace Chambless
Mrs. H. C. Dozier, Sr.
Mrs. Jim W. Davis (Annette P.)
Kathleen Davis
Mary L. Denton
Mrs. L. E. W. Davis
Mrs. Paul Engram (Hilde R.)
Mrs. James Eberhart
Rushia Ferguson
Mary A. Guest
Mrs. Henry H. Gordon
Mrs. E. C. Gill
Velma S. Horne
Mrs. Cecil Hayes
Dorothy Hill
Mrs. Anne Herrington
Mrs. L. O. Haynes
Mrs. N. H. Howard
Mrs. Clara B. Isler
Mrs. J. B. Jolley
Mrs. H. H. Jackson
Mrs. T. L. Jennings (Virginia)
Miss Estelle Jones
Louise Jennings (Mrs. Tom)
Miss Fannie Lou Jones
Mrs. Mary P. Jones
Mamie Kelly
Laurine Kelly
Mrs. A. L. Lindsey
Mrs. D. W. Lovett
Miss Bertha Lane
Ruby Lavinier
Mrs. Jack Laing (Betty)
Mrs. Rogers Locke
Louise M. Lunsford
Mrs. Jeanette M. McClung
Mrs. Fred D. McLendon
Mrs. Ralph E. McGill
Mrs. C. W. McLendon
Mrs. J. C. Miller
Mrs. Harris Marshall
Mrs. J. M. Marshall (Eva Sue)
Mrs. J. R. Martin
Mrs. C. A. Mathis
Mrs. C. H. Oliver, Sr.
Helen M. O'Hearn
Miss Charlie Pinkston
Mrs. J. H. Pritchard
Sara Riley
Mary Rutherford
Mrs. J. W. Roberts
Mrs. D. E. Short, Sr.

NAMES ON PLAINTIFF-
INTERVENOR'S EXHIBIT 23

Daphne Ann Chambless
Mrs. Alice Mae Collier
Mrs. Emily W. Cook
Grace Chambless
Mrs. H. C. Dozier, Sr.
Mrs. Jim W. Davis
Kathleen Davis
Miss Mary L. Denton
Mrs. T. E. W. Davis
Mrs. Paul Engram
Mrs. James Eberhart
Rushia Ferguson
Miss Mary Frances Guest
Mrs. H. H. Gordon
Mrs. E. C. Gill
Mrs. Velma Horne
Mrs. Cecil Hayes
Dorothy Hill
Mrs. Ann C. Herrington
Mrs. L. O. Haynes
Mrs. N. H. Howard
Mrs. Clara Isler
Mrs. J. B. Jolley
Mrs. H. H. Jackson
Mrs. T. L. Jennings
Miss Estelle Jones
Miss Louise Jennings
Miss Fannie Lou Jones
Mrs. Mary P. Jones
Mamie Kelly
Laurine Kelly
Mrs. A. L. Lindsey
Mrs. Delma Lovett
Miss Bertha Lane
Ruby Alice Lavinier
Betty Laing
Mrs. Rogers Locke
Mrs. Louise Lunsford
Mrs. Jeanette McClung
Mrs. Fred McLendon
Mrs. R. E. McGill
Mrs. C. W. McLendon
Mrs. J. C. Miller
Mrs. H. P. Marshall
Mrs. J. M. Marshall
Mrs. J. R. Martin
Mrs. C. A. Mathis
Mrs. C. H. Oliver, Sr.
Mrs. Helen O'Hearn
Miss Charlie Pinkston
Mrs. J. H. Pritchard
Miss Sara Riley
Mary Rutherford
Mrs. J. W. Roberts
Mrs. D. E. Short

RACE PAGE

W 10
W 11
W 12
W 10
W 17
W 16
W 16
W 17
W 16
W 19
W 19
W 20
W 25
W 24
W 23
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W 44
W 45
W 45
W 50
W 50
W 52
W 53
W 55
W 56
W 55
W 58

NAMES ON PLAINTIFF-
INTERVENOR'S EXHIBIT 2

Mrs. H. E. Suggs
Mrs. Annie A. Smith
Mrs. J. F. Stewart
Mrs. K. M. Sullivan
Mrs. Mildred J. Stewart
Mrs. Marie Smithwick
Annie H. Thomas
Mrs. E. B. Thomas
Mrs. J. E. Thomas (Eunice P.)
Mrs. C. W. Timmerman (Anna P.)
Hilda D. Wall
Mrs. Douglas Wall (Rena)
Mrs. Roy Woolbright
Mrs. J. S. White, Jr.
Mrs. C. T. Wills (Mrs. Cleo)
Mrs. W. R. Woods (Lucy B.)
Mrs. Zeke Wall (Marjorie)

NAMES ON PLAINTIFF-
INTERVENOR'S EXHIBIT 23

Mrs. H. E. Suggs
Annie Smith
Mrs. J. F. Stewart
Mrs. K. M. Sullivan
Mrs. Mildred J. Stewart
Mrs. Marie L. Smithwick
Mrs. Annie Hill Thomas
Mrs. E. B. Thomas
Mrs. J. E. Thomas
Mrs. Anna Timmerman
Mrs. Hilda Wall
Mrs. D. G. Wall (Rena)
Mrs. Roy Woolbright
Mrs. J. S. White
Mrs. Cleo Wills
Mrs. W. R. Woods
Mrs. Zeke Wall

RACE PAGE

W 61
N 118
W 60
W 61
W 60
W 59
W 62
W 62
W 62
W 63
W 65
W 65
W 68
W 67
W 68
W 68
W 65

TOTAL: 85 WHITE
 1 NEGRO

APPENDIX J

Percent of Property Owners on Tax Digest,
Traverse Jury Roll, and Grand Jury Roll,
Broken Down According to the Value of Property Owned.

Percent of Persons on Each List Owning:

		<u>AGGREGATE PROPERTY LESS THAN \$1000</u>	<u>AGGREGATE PROPERTY GREATER THAN \$1000</u>	<u>AGGREGATE PROPERTY GREATER THAN \$4999</u>	<u>NO REAL PROPERTY</u>
Total White	Tax Digest	32%	68%	15%	34%
	Traverse Jury Roll	18%	82%	25%	27%
	Grand Jury Roll	9%	91%	41%	15%
Total Negro	Tax Digest	77%	23%	1%	51%
	Traverse Jury Roll	53%	47%	2%	31%
	Grand Jury Roll	37%	63%	7%	26%
Total White and Negro	Tax Digest	49%	51%	10%	41%
	Traverse Jury Roll	26%	74%	20%	28%
	Grand Jury Roll	14%	86%	35%	17%

APPENDIX K

Number of Persons on Tax Digest
and Traverse Jury Roll, Broken Down
According to Value of Property Owned.

	Number of Persons With Market Value of Real Property			Number of Persons With Aggregate Value of Whole Property		
	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999
No. of Persons on 1966 Tax Digest	625	1111	161	1561	1315	316
No. of Persons on Traverse Jury Roll	94	395	63	196	414	154
Percent of Persons on Tax Digest on Traverse Jury Roll	15.0	35.6	39.1	12.6	31.5	48.7

	MARKET VALUE OF REAL PROPERTY			AGGREGATE VALUE OF WHOLE PROPERTY		
	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999
White Males on Tax Digest	102	634	105	460	668	234
White Males on Traverse Jury Roll	30	326	56	92	321	142
Percent of White Males on Tax Digest on Traverse Roll	29.4	51.4	53.3	20.0	48.1	60.7
White Females on Tax Digest	73	345	53	172	383	71
White Females on Traverse Jury Roll	1	18	6	15	20	8
Percent of White Females on Tax Digest on Traverse Roll	1.4	5.2	11.3	8.7	5.2	11.3
Total White on Tax Digest	175	979	158	632	1051	305
Total White Traverse Jury Roll	31	344	62	107	341	150
Percent of Total White on Tax Digest on Traverse Jury Roll	17.7	35.1	39.2	16.9	32.4	49.2

	MARKET VALUE OF REAL PROPERTY			AGGREGATE VALUE OF WHOLE PROPERTY		
	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999	Less Than \$1000	\$1000 - \$4999	Greater Than \$4999
Negro Males on Tax Digest	228	75	3	683	157	10
Negro Males on Traverse Jury Roll	28	31	1	56	43	4
Percent of Negro Males on Tax Digest on Traverse Roll	12.3	41.3	33.3	8.2	27.4	40.0
Negro Females on Tax Digest	222	57	0	246	107	1
Negro Females on Traverse Jury Roll	35	20	0	33	30	0
Percent of Negro Females on Tax Digest on Traverse Roll	15.8	35.1	0.0	13.4	28.0	0.0
Total Negroes on Tax Digest	450	132	3	929	264	11
Total Negroes on Traverse Jury Roll	63	51	1	89	73	4
Percent of Total Negroes on Tax Digest on Traverse Jury Roll	14.0	38.6	33.3	9.6	27.7	36.4

APPENDIX L

Statutory Provisions, Code of Georgia of 1933

Title 59, Section 101

There shall be a board of jury commissioners, composed of six discreet persons, who are not practicing attorneys at law nor county officers, who shall hold their appointment for six years, and who shall be appointed by the judge of the superior court. On the first appointment two shall be appointed for two years, two for four years, and two for six years, and their successors shall be appointed for six years. The judge shall have the right to remove said commissioners at any time, in his discretion, for cause, and appoint a successor: Provided, that no person shall be eligible or appointed to succeed himself as a member of said board of jury commissioners.

Title 59, Section 106

Biennially, or, if the judge of the superior court shall direct, triennially on the first Monday in August, or within 60 days thereafter, the board of jury commissioners shall revise the jury lists.

The jury commissioners shall select from the books of the tax receiver upright and intelligent citizens to serve as jurors, and shall write the names of the persons so selected on tickets. They shall select from these a sufficient number, not exceeding two-fifths of the whole number, of the most experienced, intelligent, and upright citizens to serve as grand jurors, whose names they shall write upon other tickets. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, to be drawn for service as provided by law, except that when in drawing juries a name which has already been drawn for the same term as a grand juror shall be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead.

Title 59, Section 112

The following persons shall be exempt from all jury duty, civil and criminal:

Ministers of the gospel, engaged regularly in discharging ministerial duties.

All physicians (except as provided in sections 49-604 and 49-615) and apothecaries in the practice of their professions.

School teachers engaged in teaching school.

Millers and ferrymen engaged in their occupations.

All railraod employees whom the superintendent of a railroad shall certify to the judge are necessary and are actually engaged in the work of running railroad trains.

All persons over 60 years of age.

All nurses engaged in the practice of their profession.

All mothers engaged in the raising of children under 16 years of age.

All telegraph operators.

Officers and members of each fire company to the number of 25, doing actual duty as firemen, whose names shall be filed in the office of the clerk of the superior court by the secretary of such company on or before the first day of January of each year.

Clerks connected with the several State departments at the Capital.

Persons employed at the Milledgeville State Hospital.

Persons practicing dentistry: Provided, that this exemption shall not operate to disqualify those dentists who may wish to serve as jurors.

Regularly licensed pilots, together with one boatkeeper for each pilot boat, actually engaged in the regular management of their boats.

Members of the various police forces and town marshals of the several cities and towns, while so employed on such police forces.

Telegraph line repairers whom the manager or superintendent of the telegraph company shall certify to the court to be line repairers and actually engaged in repairing telegraph lines.

Regularly licensed stationary engineers actually engaged in the regular management of engines at their places of occupation.

Railway postal clerks.

Special pay members of any company of the volunteer forces of this State, whose certificate of membership, signed by the company commander and attested by the first sergeant, when produced in any court, shall be evidence of the right to the exemption.

Licensed embalmers actually engaged in the practice of embalming.

Any person admitted to practice law in this State is hereby exempt from all jury duty, civil and criminal, in any of the courts of this State: Provided, however, that this exemption shall not operate to disqualify those attorneys at law who may wish to serve as jurors.

Nothing herein contained shall be construed to work a disqualification of any of the classes named, or to exclude them from the jury box.

Title 59, Section 201

All citizens of this State, above the age of 21 years, being neither idiots, lunatics, nor insane, who have resided in the county for six months preceding the time of serving, and who are the most experienced, intelligent, and upright persons, are qualified and liable to serve as grand jurors, unless exempted by law: Provided, however, that county commissioners, tax receivers, tax collectors, members of the county board of education, county school commissioners, ordinaries, and county treasurers shall be incompetent to serve as grand jurors during their respective terms of office.

Title 59, Section 308

The grand jury shall examine the lists of voters, and if any voter is found thereon who was not entitled to vote, they shall present him. If any person shall be suspected of voting for members of the General Assembly who was not entitled, but was entitled to vote for some other candidate at the same election, the foreman of the grand jury may examine the ballot, and that one alone, and lay it before the grand jury and return it. If the managers of elections shall fail to return the lists and the ballots as required, they shall be presented.

Title 59, Section 309

In addition to the duties of the grand jury as indicated in the oath administered to them, and as required by law, it shall be their special duty, from term to term of the superior court, to inspect and examine the offices, papers, books, and records of the clerk of the superior court and ordinary, and also the books, papers, records, accounts, and vouchers of the county treasurer or depository, as the case may be, and cause any such clerk, ordinary, or county treasurer or depository, who shall have failed or neglected to do his duty as required by law, to be presented for non-performance of official duty. In making up their general presentments, they shall take proper notice of the matters brought to their attention by the report and books of the county school superintendent.

Title 59, Section 314

Grand juries shall carefully inspect the sanitary condition of the jails of their respective counties, at each regular term of the superior court, and shall make such recommendations to the ordinaries, or other authorities having charge of county affairs, in their general presentments as may be necessary to provide for the proper heating and ventilation of such jails, which recommendations the ordinaries, or such other county authorities, shall strictly enforce. Said juries shall also make such presentments as to general sanitary condition of the jails and the treatment of the inmates as the facts may justify.

Title 59, Section 315

The first or second grand jury impaneled in each calendar year shall inspect all the public buildings and other property of the county, and the county records, and report, in their general presentments, their condition;

APPENDIX M

ENROLLMENT

March 22 1967

The Committee of the House on Auditing, Enrolling, Engrossing and Journals has examined the within and finds the same properly enrolled.

Black of Webster

Chairman

Geo. L. Smith

Speaker of the House

James H. Smith

President of the House

Hamilton M. Whorters

President of the Senate

Hamilton M. Whorters

Secretary of the Senate

Margaret R. Pedersen

Secretary, Executive Department

This 22nd day of March 1967

Approved

John M. Pickard

Governor

This 30th day of March 1967

H. B. No. 307

Act No. 122

General Assembly



AN ACT

To amend Section 59-106 of the Code of Georgia of 1933, relating to the revision of jury lists and the method whereby jury commissioners choose grand and traverse jurors, so as to change the method of choosing grand and traverse jurors; and for other purposes.

IN HOUSE

Read 1st time Feb 17, 1967

Read 2nd time Feb 20, 1967

Read 3rd time Feb 27, 1967

And passed

Ayes 105

Nays 36

Blair H. Hines

Clerk of the House

IN SENATE

Read 1st time Feb 28, 1967

Read 2nd time Mar 1, 1967

Read 3rd time Mar 16, 1967

And passed

Ayes 28

Nays 3

Hamilton M. Whorters

Secretary of the Senate

By: Messrs. Pickard, Jones and Buck of the 112th and others

AN ACT

To amend Section 59-106 of the Code of Georgia of 1933, as amended, relating to the revision of jury lists and the method whereby jury commissioners choose grand and traverse jurors, so as to change the method of choosing grand and traverse jurors; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1

Section 59-106 of the Code of Georgia of 1933, relating to the revision of jury lists and the method whereby jury commissioners choose grand and traverse jurors, is hereby amended by striking same in its entirety and inserting in lieu thereof a new Section 59-106 to read as follows:

"59-106. Immediately upon the passage of this Act and thereafter at least biennially, or, if the judge of the superior court shall direct, at least annually, on the first Monday in August, or within sixty (60) days thereafter, the board of jury commissioners shall compile and maintain and revise a jury list of upright and intelligent citizens of the county to serve as jurors. In composing such list they shall select a fairly representative cross-section of the upright and intelligent citizens of the county from the official registered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significantly identifiable group in the county which may not be fairly represented thereon.

After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number, not exceeding two-fifths of the whole number, to serve as grand jurors. The entire number first selected, including those afterwards selected as grand jurors, shall

H. B. No. 307 (SUB)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief, Proposed Findings of Fact and Conclusions of Law, and Proposed Decree for Plaintiff-Intervenor has been served by United States Air Mail, postage prepaid, in accordance with the rules of this Court, to the attorneys for plaintiffs and defendants, addressed as follows:

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Albany, Georgia

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Columbus, Georgia 31902

W. L. Ferguson, Esquire
Dawson, Georgia

R. R. Jones, Esquire
Dawson, Georgia

This 23rd day of April, 1967.

GARY L. BETZ
Attorney
Department of Justice
Washington, D.C. 20530