

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

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

FLOYD M. BUFORD
United States Attorney

JOHN DOAR
Assistant Attorney General

FRANK M. DUNBAUGH
GARY L. BETZ
DANIEL J. POCHODA
Attorneys
Department of Justice

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

D. U. FULLUM, et al.,)	
)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
by Ramsey Clark,)	
Attorney General of the)	
United States)	
)	CIVIL ACTION
Plaintiff-Intervenor,)	NO. 625
)	
v.)	
)	
AUSTIN GREENE, et al.,)	
)	
Defendants.)	
)	

PROPOSED FINDINGS OF FACT

1. This suit was brought as a class action on June 23, 1966 by male and female Negro 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. The plaintiffs allege that the defendants have systematically excluded Negroes from jury service in Terrell County, Georgia, that Negroes have been deliberately excluded from serving as jury commissioners in Terrell County, Georgia, and that the juries selected in Terrell County, Georgia, have not been bodies truly representative of all persons in the county qualified for jury service.

2. On September 1, 1966 this Court granted leave to the United States to intervene, pursuant to 42 U.S.C. 2000h-2 and Rule 24 of the Federal Rules of Civil Procedure. The plaintiff-intervenor alleged that Negroes have been systematically excluded from jury service in Terrell County, Georgia and sought to have the juries in Terrell County, Georgia to be truly representative of all persons in the county.

3. The defendants in this suit include the members of the Jury Commission of Terrell County, Georgia; the Judge of the Superior Court of the Patoula Judicial Circuit which includes Terrell County; and the Clerk of the Jury Commission of Terrell County, Georgia.

4. Responsibility for selecting persons to be listed in the Terrell County jury roll rests with the defendant members of the Jury Commission, assisted by the defendant clerk. The members of the Jury Commission are selected by the defendant Superior Court Judge.

5. Georgia law provides that Jury Commissioners are to select upright and intelligent citizens as traverse jurors. These persons are to be selected from the official registered voters list. However, if the jury list so composed is not a fairly representative cross-section of the upright and intelligent citizens of the county, the Commissioners shall supplement the list by including qualified citizens of any significantly identifiable group in the county which may not be fairly represented thereon.

6. With the exception of being upright and intelligent citizens, there are no additional qualifications for persons to serve on traverse juries. To serve on grand juries 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. 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. Negroes have been systematically excluded by the defendants from jury service in Terrell County, Georgia because of their race.

- a. For at least 20 years prior to September 1966 not one Negro served on a jury in Terrell County or was placed on the Terrell County jury roll.
- b. In September 1966, in response to this suit, only 166 Negroes out of a total of 764 persons were placed on the jury roll, even though the majority of the adult population of Terrell County, Georgia is Negro

8. The use of the statutory standards of "upright and intelligent," as applied in Terrell County, Georgia has resulted in the systematic exclusion of Negroes from jury service in the County because of their race.

- a. The standards formulated individually by the Terrell County Jury Commissioners were completely subjective and discretionary, and not subject to check or review. As such they allowed and encouraged personal prejudice to enter the selection process.

b. The application of these subjective standards necessitated personal knowledge of the prospective juror of more than a casual nature. Since only the "most" upright and intelligent persons were placed on the jury list, an even higher degree of knowledge was required for actual selection. In a racially segregated community such as Terrell County, Georgia, the contacts that white persons have with Negroes are both quantitatively and qualitatively limited. The conditions in Terrell County make it difficult, and at times impossible, for white jury commissioners to make the character judgments of Negroes required by the standards employed.

9. The use of a property qualification by the Terrell County Commissioners resulted in the systematic exclusion of small property owners from jury service.

a. Approximately one out of every two persons listed on the tax digest owning property valued at \$5,000 or more were placed on the jury roll; the ratio was one out of three for those owning \$1,000 to \$4,999 of property, while only one out of eight persons having property worth less than \$1,000 were selected. The large class of small property owners comprises 49 percent of the tax digest, but only 26

percent of the traverse jury roll

and 14 percent of the grand jury roll.

10. Since Negroes comprise a disproportionately high percent of the small property owners in Terrell County, Georgia, the application of a property qualification by the Jury Commissioners operated to exclude Negroes from jury service.

11. The defendants have not selected juries in Terrell County, Georgia that are fairly representative of the community. The Terrell County Jury Commissioners employed exclusively a source that did not adequately reflect the percentages of Negroes or women in the county. The commissioners, by the use of this source and by their practice of selecting only the most qualified persons, excluded the majority of qualified persons in Terrell County from jury service. Although they placed only a limited number of the qualified persons in the county on the jury roll, the Terrell County Commissioners did not attempt to have the jury roll reflect the percentage of Negroes and women in the population of the county. Since the jury selection procedures have remained constant in Terrell County, Georgia, many of the same persons will appear on the jury roll after each revision.

PROPOSED CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1343(3) and 2201.

2. This suit was properly brought as a class action pursuant to Rule 23(a), Federal Rules of Civil Procedure.

3. The Attorney General is authorized to intervene in this action under 42 U.S.C. 2000h-2 and Rule 24 of the Federal Rules of Civil Procedure.

4. The Equal Protection and Due Process clauses of the Fourteenth Amendment make unlawful the systematic exclusion of Negroes from jury service because of race.

5. The fact that for twenty years prior to September 1966 the Jury Commissioners never included the name of a Negro on the jury roll of Terrell County, Georgia; and the fact that in September 1966 in response to this suit the Jury Commissioners selected only 166 Negroes out of a total of 764 persons for the jury roll even though the majority of the adult population of Terrell County, Georgia is Negro, prove that these defendants have systematically excluded Negroes from jury service in Terrell County, Georgia, on account of their race.

6. The "upright and intelligent" standards for jury service as formulated and applied by the Terrell County Commissioners are unconstitutionally vague, subjective and discretionary. They do not allow for review of the decision to exclude a person from jury

service, and thus permit discrimination and abuse.

In the context of a racially segregated society subjective standards requiring knowledge of a potential juror are incapable of evenhanded and objective application, and, therefore, are invalid. Exclusion of Negroes from juries because of unfamiliarity with their qualifications is a violation of the Fourteenth Amendment.

7. The use of a property qualification unreasonably excludes the class of small property owners and the class of Negroes - who comprise a disproportionately large percent of the small property owners - from jury service in Terrell County, Georgia in violation of the Fourteenth Amendment.

8. The failure of the Terrell County Jury Commissioners to select juries that are fairly representative of the community violates the Fourteenth Amendment.

9. This being a case in equity, this Court has the power and duty to fashion such specific and comprehensive relief as will insure the non-discriminatory functioning of the jury selection system in Terrell County, Georgia.

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

PLAINTIFF-INTERVENOR'S
PROPOSED DECREE

Pursuant to the Findings of Fact and Conclusions
of Law entered this date:

IT IS ORDERED, ADJUDGED AND DECREED that the
jury rolls and jury boxes for Terrell County, Georgia
as the rolls and boxes are presently constituted, are
illegal and violative of the constitutional rights
of the plaintiffs and other Negro citizens of Terrell
County, Georgia, similarly situated.

IT IS ORDERED, ADJUDGED AND DECREED that the
defendants, Austin Greene, A. C. Hanner, John Ed Thomas

H. A. Fleming, W. G. Callis, Marvin Varner, Joe E. Smith, and John A. Fox, individually and as members of the Jury Commission of Terrell County, Georgia; J. Homer Collier, Clerk of the Jury Commission of Terrell County, Georgia; and Honorable Walter I. Geer, as Judge of the Superior Court of the Pataula Judicial Circuit of the State of Georgia; their agents, officers, employees, successors in office, and all persons in active concert with them be and each is hereby enjoined from engaging in any act or practice which involves or results in discrimination by reason of race, color, or sex, in the selection of jurors for jury service in Terrell County, Georgia and from failing to take all necessary steps to ensure that the jury rolls and jury boxes reflect a truly representative cross-section of the adult population of Terrell County, Georgia.

IT IS FURTHER ORDERED that the jury boxes shall be emptied forthwith and no names that have been drawn or shall be drawn therefrom will be used as names of jurors in the next term of court in Terrell County, Georgia until the jury rolls are revised and the jury boxes are refilled in accordance with this decree. The jury roll shall be revised and the jury boxes refilled before the June 1967 term of the Superior Court in Terrell County, Georgia, or before any special term which may be held prior to that date, and thereafter

by the following procedures:

- a. The defendant jury commissioners and defendant clerk of the jury commission shall obtain or prepare a complete list of all registered voters in Terrell County and such other names from supplemental sources as are necessary to compile a comprehensive alphabetical list of the adult citizens of Terrell County which closely approximates the proportions of the total adult population represented by white and Negro citizens of Terrell County. This list which shall also contain the address, sex, and race of each person whose name appears thereon and shall be known as the "Jury Commissioners' Comprehensive List."
- b. The Jury Commissioners shall determine what number (n) the Comprehensive List shall be divided by in order to produce a sufficient number not less than 1000, for the jury list. They shall then go through the Comprehensive List and select every nth name and consider the qualifications of each person so selected. The first person to be considered shall be selected by randomly choosing a number from 1 to n.

c. The name of each person selected in the fashion prescribed in paragraph b, above, shall be placed on the jury roll unless he is specifically found by the Jury Commissioners to be disqualified for jury service. No person shall be disqualified from jury service unless he is:

1. Not a resident of Terrell County, Georgia;
2. Not a citizen over 21 years of age;
3. Unfit to discharge the duties of a juror by reason of a permanent disease or physical weakness;
4. Convicted of any crime or offense involving moral turpitude; or
5. Exempt because he is a public official.

- d. Names of qualified persons entitled to exemptions under Georgia law, including teachers, and persons over 60 years of age, shall not be excluded from the jury box, but if such persons, upon being called for jury service, claim their exemption, the presiding judge shall decide on the validity of their claim.
- e. The names of the persons to be listed as grand jurors shall be obtained by randomly selecting two-fifths of the names on the traverse jury rolls. No additional qualification standards shall be imposed.
- f. At least once every year the Jury Commissioners and the Clerk of the Jury Commission shall empty the jury box and refill it according to the procedures set forth in this decree.

IT IS FURTHER ORDERED that the defendants submit to the Clerk of this Court a report in writing, with copies sent to the Plaintiffs and the Plaintiff-Intervenor, within fourteen days after each revision of the "Jury Commissioners' Comprehensive List" and compilation of lists of traverse and grand jury rolls by the Jury Commissioners of Terrell County. This report shall include:

- a. The number of persons by race and sex,
as follows:
 - (1) On the 'Jury Commissioners' Comprehensive List"
 - (2) Selected at random from the Jury Commissioners' Comprehensive List and whose qualifications were considered by the commissioners.
 - (3) On the traverse jury roll.
 - (4) Found by the commissioners to be disqualified for jury service.
 - (5) On the grand jury roll.
- b. Information concerning each person found by the commissioners to be disqualified for jury service, as follows:
 - (1) Name
 - (2) Address
 - (3) Race
 - (4) Sex
 - (5) Reason for disqualification
 - (6) Disqualifying facts

IT IS FURTHER ORDERED that defendants shall submit to the Clerk of this Court in writing, with copies sent to the Plaintiffs and the Plaintiff-Intervenor, a notice showing the date, time, and place at which the next regular drawing from the Terrell County jury roll is to be made by the Judge of the Superior Court of Terrell County or other persons duly authorized by him to conduct the drawing. This notice must be sent at least ten days prior to the time in which such drawing takes place.

IT IS FURTHER ORDERED that the said defendants shall henceforth keep or cause to be kept the following records available for public inspection, and shall make all such records available for inspection and copying by the parties or their agents at any reasonable time:

- a. All records required to be compiled, prepared and used in furtherance of this decree;
- b. Minutes of the Superior Court of Terrell County, showing the names of persons, by race, which were placed on the jury rolls of Terrell County, Georgia;
- c. Minutes of the Superior Court of Terrell County showing names, race and addresses of persons drawn for jury service;
- d. Copies of all venire facias and precipes delivered to the sheriff, the name and race of each person not served by the sheriff with a subpoena to appear for jury service and the reason for the sheriff's failure of service; and the name and race of each person excused by the Court from grand, traverse or petit jury service and the reason for the excuse.

The Court retains jurisdiction of this cause to amend or modify this decree and to issue such further orders as may be necessary or appropriate.

The costs incurred in this proceeding to date are hereby taxed against the defendants.

Done this day of , 1967.

UNITED STATES DISTRICT JUDGE