

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

\*

\*

v.

\*

Case No. CC-00-0000

\*

JOE CLIENT.

\*

**MOTION TO DISMISS THE INDICTMENT**  
**BECAUSE OF DISCRIMINATION IN THE SELECTION**  
**OF THE GRAND JURY FOREPERSON**

Joe Client respectfully moves this Court to dismiss the indictment against him because of the systematic underrepresentation of African Americans, women, and young adults age eighteen to thirty in the selection of grand jury forepersons. In support of this motion, Mr. Client submits the following:

1. Mr. Client indicted for one count of capital murder on February 28, 2013, by a grand jury of Maycomb County. The State is seeking the death penalty.

2. Upon information and belief, African Americans, women, young adults, and other cognizable groups are systematically and discriminatorily excluded from serving as grand jury forepersons in Maycomb County. The population of Maycomb County is 40 percent African American and 54 percent women. The grand jury foreperson in Mr. Client's case was a white male; eight out of nine grand jury forepersons in Maycomb County in 2013 were white, and seven out of nine were male. In 2017, three of four grand jury forepersons have been white, and all four have been male. This evidence demonstrates a pattern and history in Maycomb County of the systematic exclusion of African Americans, women, and young adults from the position of grand jury foreperson. This practice existed when the grand jury that indicted Joe Client was selected and the pattern persists today.

3. African Americans and women constitute cognizable, distinctive classes of persons in this community under both state and federal law. Strauder v. West Virginia, 100 U.S. 303 (1879) (African Americans); Taylor v. Louisiana, 419 U.S. 522 (1975) (women). The intentional exclusion of African Americans and women from the position of grand jury foreperson "strikes at the fundamental values of our judicial system and our society," and violates Mr. Client's state and federal constitutional rights. Rose v. Mitchell, 443 U.S. 545, 556 (1979); see also Turner v. State, 924 So. 2d 737, 749-50 (Ala. Crim. App. 2002); Smith v. State, 797 So. 2d 503, 510-12 (Ala. Crim. App. 2000); Ala. Code §§ 12-16-55, 56. The possibility of prejudice in the selection of the grand jury foreperson is intolerable, and an

indictment from a grand jury so constituted must be dismissed.

4. Moreover, the “fundamental respect for humanity” underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special need for reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (death penalty is “special circumstance” that justifies expansion of constitutional rights).

5. Because of the significant role played by the grand jury foreperson in Alabama, see Ala. Code § 12-16-171; Ala. R. Crim. P. 12.5, these constitutional guarantees are of exceptional importance. In Alabama practice, the grand jury foreperson presides over all grand jury proceedings. Ala. R. Crim. P. 12.5(b)(1). The grand jury foreperson takes a special oath, which his or her fellow jurors then follow. Ala. Code § 12-16-171. The grand jury foreperson assumes various special duties, including the responsibility to issue subpoenas for witnesses and endorse them when witnesses fail to appear, Ala. Code § 12-16-197, and keeps a list of all witnesses who appear before the grand jury. Ala. Code § 12-16-199.

6. The selection of the foreperson is meaningful because he or she serves as the leader for the grand jury proceedings. Bias of the grand jury foreperson is a significant concern, particularly since under informal Alabama practice, the foreperson may be selected either by the district attorney or the court. Ala. R. Crim. P. 12.5 Advisory Committee Comments (1990), which gives special authority to the foreperson’s role.

7. Discrimination in the selection of the grand jury foreperson deprives Mr. Client of his rights to due process, equal protection, a fair trial, and a reliable sentencing as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Joe Client respectfully requests that this Court:

- a. dismiss the indictment returned against Mr. Client because of the discrimination in the selection of grand jury foreperson; and
- b. order the compilation of a new jury pool comprised of a fair cross-section of the community.

Respectfully submitted,

/s/ Linda Lawyer

Linda Lawyer

123 Main Street

Maycomb, AL 54321

(334) 987-6543

lawyer@email.com

*Counsel for Joe Client*

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]