

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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**MOTION FOR FUNDS FOR EXPERT ASSISTANCE
TO INVESTIGATE GRAND AND PETIT JURY VENIRES**

Joe Client respectfully moves this Court to approve the expenditure of up to \$0000 for expert assistance to determine whether the grand and petit jury venires in Maycomb County are representative of the population of Maycomb County, and in particular whether there is underrepresentation of African Americans, women, daily wage earners, young people (aged 18 to 30), or other cognizable groups. In support of this motion, Mr. Client submits the following:

1. Mr. Client is indigent. He has been charged with capital murder and the State is seeking the death penalty.

2. The Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and the analogous provisions of the Alabama Constitution, guarantee every criminal defendant the right to a jury drawn from a pool that fairly represents a cross-section of the community as well as the right to equal protection of the law. See, e.g., Duren v. Missouri, 439 U.S. 357 (1979); Castaneda v. Partida, 430 U.S. 482 (1977); Taylor v. Louisiana, 419 U.S. 522 (1975).

3. The importance of affording the accused a trial by a representative jury of his peers is magnified in capital cases, where juries are required to consider “*as a mitigating factor*, any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” Lockett v. Ohio, 438 U.S. 586, 604 (1978); see also Skipper v. South Carolina, 476 U.S. 1, 4 (1986); Haney v. State, 603 So. 2d 368 (Ala. Crim. App. 1991). “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).

4. Mr. Client alleges that Maycomb County jury lists exclude large numbers of citizens who would otherwise qualify for jury service on account of, *inter alia*, their race, sex, age, or employment status. Specifically, Mr. Client alleges that the venire from which the grand jury was selected in this case excluded African Americans, women, young adults, and other cognizable groups; furthermore, the selection process by which the grand jury foreperson was appointed systematically excluded individuals on the basis of race, gender, age, and other constitutionally significant traits. Additionally, Mr. Client alleges that the master list from which his petit jury will be selected is unconstitutionally composed in that it underrepresents African Americans, women, young adults, and other constitutionally cognizable groups that make up Maycomb County. Such underrepresentation, if proven, would deny Mr. Client equal protection, see, J.E.B. v. Alabama, 511 U.S. 127, 129 (1994), as well as his Sixth Amendment right to a jury comprised of a fair cross-section of the community. See, e.g., Duren, 439 U.S. at 360.

5. On information and belief, Maycomb County is 40 percent African American and women constitute 54 percent of its population. The grand jury foreperson responsible for indicting Mr. Client was a white male, and he presided over a grand jury that was only 19% African American. Counsel has reason to believe that the jury pool from which the petit jury will be drawn is only 21 percent African American and only 46 percent female.

6. In order to document the extent of underrepresentation and the cognizability of the abovementioned groups as distinct classes in Maycomb County, Alabama, Mr. Client must have investigative assistance. Because a constitutionally composed jury is an essential element of Mr. Client's right to a fair trial and because racial and other group bias is relevant to this case, Mr. Client is entitled to funds. Ake v. Oklahoma, 470 U.S. 68 (1985); Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956); Dubose v. State, 662 So. 2d 1189 (Ala. 1995) (construing Ake broadly to require state funding of experts for indigent defendants); see also Gayle v. State, 591 So. 2d 153 (Ala. Crim. App. 1991). The evidence regarding underrepresentation of cognizable groups and the fundamental right to a fairly selected jury establish that the defendant has a constitutional right to the assistance of an expert in the preparation and presentation of this jury challenge. Cf. Dubose, 662 So. 2d at 1194 (due process requirement of fundamental fairness requires provision of expert assistance when an indigent defendant "makes a proper showing that the requested assistance is needed for him to have 'a fair opportunity to present his defense'" (quoting Ake, 470 U.S. at 76)).

7. Experts Requested

(a) An Investigator:

Upon information and belief, investigative services are needed to inspect, copy, and analyze Maycomb County jury records relating to race, sex, and other group data. It is estimated that seventy-five (75) investigative hours will be needed. Mr. Client requests funding to hire an investigator competent to conduct this type of investigation at a rate of \$00 per hour. Mr. Client therefore requests \$0000 for investigative services.

(b) A Statistician:

Upon information and belief, a statistician is needed to analyze the empirical data as it relates to underrepresentation. State and federal courts have relied on various statistical models in assessing whether a claim of underrepresentation has been made out (absolute disparity, comparative disparity, and standard deviation). See, e.g., Berghuis v. Smith, 559 U.S. 314, 323 (2010) (discussing absolute and comparative disparity analyses); Castaneda v. Partida, 430 U.S. 482 (1977) (discussing standard deviation analysis in favor of defendant); Machetti v. Linahan, 679 F.2d 236 (11th Cir. 1982) (discussing absolute disparity analysis in favor of defendant); Turner v. Fouche, 396 U.S. 346 (1970) (discussing comparative disparity analysis in favor of African American plaintiffs); Mitchell v. Johnson, 250 F. Supp. 117 (M.D. Ala. 1966) (discussing wide disparity analysis in favor of African American plaintiffs). Therefore, the expert assistance of a statistician is needed to analyze, compile, and present the data on underrepresentation. It is estimated that twenty (20) hours of analysis are required. Upon information and belief, a statistician competent to conduct this type of analysis can be retained at \$00 per hour. Accordingly, Joe Client requests \$0000 for a statistician's services.

(c) A Sociologist:

Upon information and belief, a sociologist is needed to speak to the cognizability of poor, young, and other groups of people in Maycomb County. Whether a group of individuals is cognizable is a mixed question of law and fact. See Willis v. Zant, 720 F.2d 1212, 1216-17 (11th Cir. 1983) (habeas corpus petitioner entitled to prove that young adults aged 18 to 30 constituted distinctive group because only group in area reared and educated in

desegregated society). It is estimated that fifteen (15) hours of research and investigation are needed. Upon information and belief, a sociologist competent to perform this type of research can be retained for \$00 per hour. Accordingly, Mr. Client requests \$000 for the services of a sociologist.

8. Denial of this motion will deprive Mr. Client of due process, a fair trial, and reliable sentencing, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court enter an order granting Mr. Client's motion for funds for expert assistance to investigate grand and petit jury venires and granting, respectively, \$0000 for an investigator, \$0000 for a statistician, and \$000 for a sociologist.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/03/17]