

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 ACCESS TO, INSPECTION OF,
AND COPYING OF ALL JURY SYSTEM RECORDS**

Joe Client respectfully moves this Court for an order directing Maycomb County or state officials having direction and control over the jury system to provide undersigned counsel access to inspect and copy any and all source lists, master lists, foreperson selection procedures, computer programs and data, historical data, and any other records in their possession. In support of this motion, Mr. Client submits the following:

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

2. Every criminal defendant is guaranteed 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 Duren v. Missouri, 439 U.S. 357 (1979); Castaneda v. Partida, 430 U.S. 482 (1977); Taylor v. Louisiana, 419 U.S. 522 (1975). The importance of affording the criminally 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). “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).

3. 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's equal protection of the law, 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 Duren, 439 U.S. at 360.

4. 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 percent African American. Counsel has reason to believe that the jury pool from which the petit jury will be drawn is only 21% African-American and only 46 percent female.

5. On information and belief, the present jury system in Maycomb County is largely computerized. Most steps within the process, from the maintenance of the names in the master lists and pools, the periodic selection of a certain number of jurors, and the division of summoned names into grand and petit jury lists, are dictated by computer programs. For Mr. Client to investigate and assess adequately the composition of the grand and petit juries, as well as the procedures utilized in selecting the grand jury foreperson, it is imperative that he have access to all data maintained by the Jury Commission and the Administrative Office of Courts, as well as to the computer systems and programs that maintain and direct the operation of the system.

6. In order to obtain and present evidence on this issue and to litigate this claim adequately, Mr. Client must have full discovery of all materials, information, procedures, programs, and historical data from the years 2012 through 2017 in control of the Clerk of Maycomb County Circuit Court or relevant state officials. Courts have long held that jury commission records must be made available for inspection and copying by criminal defendants who allege that the system operates in violation of the Constitution. See Test v. United States, 420 U.S. 28 (1975); United States v. Orlando-Figueroa, 229 F.3d 33 (1st Cir. 2000); see also Ex parte Monk, 557 So. 2d 832 (Ala. 1989) (capital cases are sufficiently different to allow broad discovery).

7. Access to this information is necessary to protect Mr. Client's 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 the Court enter an order that provides that:

- a. the Clerk of the Maycomb County Circuit Court or state officials in control or possession of such information make available to Mr. Client, at a time mutually agreed upon, all information and materials necessary for an adequate and complete determination of the validity of his challenge to the composition of the grand jury and petit jury, and to the selection of the grand jury foreperson, including but not limited to:
 - i. a list of the name, age, race, and gender of each Maycomb County Jury Commissioner from and including 2012 through 2017;
 - ii. a list of the name, age, race, and gender of each Maycomb County grand jury pool member from and including 2012 through 2017;
 - iii. a list of the name, age, race, and gender of each Maycomb County grand jury foreperson from and including 2012 through 2017;
 - iv. a list of the name, age, race, and gender of each Maycomb County petit jury pool member from and including 2012 through 2017; and
 - v. all information, materials, memoranda, and reports concerning the selection process for grand juries, grand jury forepersons, and petit jury venires, including but not limited to jury questionnaires, source lists, and venire lists;
- b. the director of computer services, or her equivalent, shall be available at that time to explain all phases of the computer programs and hardware utilized by the Jury Commission to maintain jury lists, summon jurors, select grand jury forepersons, and perform other tasks; and
- c. a representative of the defense shall be permitted to copy any and all records, programs, procedures for selection of grand jury forepersons, and data utilized in the maintenance of the master lists, the periodic summoning of jurors, and other aspects of the selection process.

Respectfully submitted,

/s/ Linda Lawyer

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Counsel for Joe Client

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]

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STATE OF ALABAMA,

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Case No. CC-00-0000

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JOE CLIENT.

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ORDER

Upon consideration of Defendant Joe Client's Motion for Access to, Inspection of, and Copying of all Jury System Records, it is hereby

ORDERED that Defendant Joe Client be allowed to conduct discovery regarding his claim of underrepresentation in the grand jury, grand jury foreperson selection process, and petit jury venire; and it is further

ORDERED that the Clerk of Maycomb County Circuit Court or state officials in control or possession of such information shall make available to Mr. Client, at a time mutually agreed upon, all information and materials necessary to make an adequate and complete determination of the validity of this challenge to the grand jury, grand jury foreperson, and petit jury venire, including but not limited to:

- (a) a list of the name, age, race, and gender of each Maycomb County Jury Commissioner from and including 2012 through 2017;
- (b) a list of the name, age, race, and gender of each Maycomb County grand jury pool member from and including 2012 through 2017;
- (c) a list of the name, age, race, and gender of each Maycomb County grand jury foreperson from and including 2012 through 2017;
- (d) a list of the name, age, race, and gender of each Maycomb County petit jury pool member from and including 2012 through 2017; and
- (e) all information, materials, memoranda, and reports concerning the selection process for grand juries, grand jury forepersons, and petit jury venires, including but not limited to jury questionnaires, source lists, and venire lists;

It is further ORDERED that the director of computer services, or her equivalent, shall be available at that time to explain all phases of the computer programs and hardware utilized by the Jury Commission to maintain jury lists, summon jurors, select grand jury forepersons, and perform other tasks; and it is further

ORDERED that a representative of the defense shall be permitted to copy any and all records, programs, procedures for selection of grand jury forepersons, and data utilized in the maintenance of the master lists, the periodic summoning of jurors, and other aspects of the selection process.

Done and ordered this ____ day of _____, 2017.

CIRCUIT JUDGE