

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

GARDENIA WHITE, JESSE W. FAVOR, JOHN HULETT, LILLIAN S. MCGILL, WILLIE MAE STRICKLAND, THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY, A Corporation, THE REV. JOHN B. MORRIS, THE REV. HENRI A. STINES, THE REV. ALBERT R. DREISBACH, JR., and THE REV. MALCOLM BOYD, for themselves, jointly and severally, and for all others similarly situated,

Plaintiffs,

UNITED STATES OF AMERICA, BY
NICHOLAS deB. KATZENBACH,
Attorney General of the
United States,

Plaintiff-Intervenor,

vs.

BRUCE CROOK, HENRY BARGANIER, and J. H. JACKSON, as members of the Jury Commission of Lowndes County, Alabama, and CARLTON PERDUE, as County Solicitor of Lowndes County, Alabama, HARRELL HAMMONDS, as Judge of Probate of Lowndes County, Alabama, C. F. RYALS, as Sheriff of Lowndes County, Alabama, W. E. HARRELL, JR., as Foreman of the Grand Jury of Lowndes County, Alabama, T. WERTH THAGARD, as Judge of the Second Judicial Circuit of Alabama (Lowndes County), ARTHUR E. GAMBLE, JR., as Solicitor of the Second Judicial Circuit of Alabama (Lowndes County), and KELLY D. COLEMAN, as Clerk of the Second Judicial Circuit of Alabama (Lowndes County),

Defendants,

CIVIL ACTION

NO. 2263-N

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GARDENIA WHITE, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,
By NICHOLAS deB. KATZENBACH,
ATTORNEY GENERAL OF THE UNITED
STATES,

Plaintiff-Intervenor,

v.

BRUCE CROOK, et al.,

Defendants.

CIVIL ACTION NO. 2263-N

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

PROPOSED FINDINGS OF FACT

1. This suit was brought as a class action on August 25, 1965 by male and female Negro residents of Lowndes County, Alabama, against the members of the Jury Commission of Lowndes County, Alabama. On September 9, 1965, the plaintiffs filed an amended complaint adding as defendants officials of Lowndes County, Alabama, having responsibilities in connection with the jury selection process. The plaintiffs allege that the defendants have systematically excluded Negroes and women from jury service in Lowndes County, Alabama.

2. On October 27, 1965 this Court granted leave to the United States to intervene, pursuant to 42 U.S.C. §2000h-2 (Section 902 of the Civil Rights Act of 1964) and Rule 24(b) of the Federal Rules of Civil Procedure.

3. The defendants in this suit include the members and Clerk of the Jury Commission of Lowndes County, Alabama and the Judge for the Second Judicial Circuit of Alabama (Lowndes County).

(a) Defendant Jury Commissioners Bruce Crook, J. H. Jackson, and Henry Barganier have been members of the Jury Commission for at least five years.

(b) Defendant Kelly D. Coleman assumed the offices of the Clerk of the Second Judicial Circuit of Alabama (Lowndes County) and Clerk of the Jury Commission on August 16, 1965 upon the retirement of Mr. Maurice E. Marlette.

(c) The Honorable T. Werth Thagard has been Judge of the Second Judicial Circuit of Alabama for at least five years.

(d) Responsibility for selecting persons to be listed on the Lowndes County jury roll and placed in the Lowndes County jury box rests with the defendant members of the Jury Commission, assisted by the defendant Clerk and subject to the direction of the defendant Circuit Judge.

4. Alabama Law states the following qualifications for jury service:

The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

5. Lowndes County, as of the 1960 Census, had an adult male population of 3,171 of which 889 were white and 2,282 Negro.

6. The Jury Commissioners exclude from the jury box the names of persons who are teachers, preachers, and over 65 years of age.

7. The Jury Commissioners have not always required literacy as a qualification for jury service. Names of illiterate persons are now and have been in the past in the jury box.

8. In the selection of potential jurors the Jury Commissioners repeatedly selected the same white individuals which resulted in the systematic inclusion of a relatively small group of white persons. The names of 670 persons have appeared on venire lists since Spring 1953 a total of 2,748 times. Two hundred and eleven of these 670 individuals have had their names in the box 6 or more times, accounting for 66.5% of the appearances on venires.

9. Negroes are systematically excluded from jury service in Lowndes County, Alabama because of their race.

(a) No Negro has ever sat on a petit jury in Lowndes County, Alabama.

(b) Between Spring, 1953 and August 25, 1965, the date on which this suit was filed, the Jury Commission selected 7 Negroes for potential jury service. Subsequent to August 25, 1965, and prompted by the filing of this suit, the Jury Commission selected an additional 19 Negroes for potential jury service.

(c) The primary source of names used by the Jury Commission in filling the jury box is the list of persons qualified to vote in Lowndes County maintained by the Lowndes County Probate Office. Approximately 98% of the names selected by the Jury Commission were taken from these lists. Prior to March 1, 1965 no Negroes were registered to vote in Lowndes County, hence no names of Negroes appeared on these lists. The Jury Commissioners used no lists other than Qualified Voter lists as sources for names of qualified jurors. Members of the Jury Commission knew that no names of Negroes appeared on the Qualified Voter Lists.

10. Women are totally excluded from jury service by Alabama law on account of their sex.

PROPOSED CONSLUSIONS OF LAW

1. This court has jurisdiction of this action under 28 U.S.C. §§1331, 1343 (3), 2201, 2281, and 2283.

2. This suit was properly brought as a class action pursuant to Rule 23(a), Fed. R. Civ. Pro.

3. The Attorney General is authorized to intervene in this action under 42 U.S.C. 2000h-2 (Section 902 of the Civil Rights Act of 1964).

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. When a state employs the jury system in its administration of justice, no person can be excluded on account of his race from the jury selection process.

5. The Equal Protection Clause of the Fourteenth Amendment makes unlawful the complete exclusion of women from jury service because of sex. Therefore, the statutes and laws of Alabama, insofar as they bar women from jury service in Alabama, deny to women the equal protection of the laws, and to the extent that they so bar women are null and void.

6. The fact that the defendant Jury Commissioners approved the qualifications of only 7 Negroes for jury service in the twelve years prior to the date on which this suit was filed in a county where Negroes make up 72.0% of the adult male population and the fact that the defendant Jury Commissioners knowingly used as their primary source of names for jury service lists on which the names of no Negroes appear, together prove that these defendants purposefully and systematically excluded Negroes from jury service in Lowndes County on account of their race.

7. This being a case in equity, this Court has the power and duty to fashion such specific and comprehensive relief as will insure the nondiscriminatory functioning of the jury system in Lowndes County, Alabama.

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GARDENIA WHITE, et al.,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA, by)	
Nicholas deB. Katzenbach,)	CIVIL ACTION NO. 2263-N
Attorney General of the)	
United States,)	<u>PLAINTIFF-INTERVENOR'S</u>
)	<u>PROPOSED ORDER AND</u>
Plaintiff-Intervenor,)	<u>DECREE</u>
)	
v.)	
)	
BRUCE CROOK, et al.,)	
)	
Defendants.)	
)	

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

1. It is ADJUDGED, DECREED and DECLARED that the statutes and laws of Alabama insofar as they bar women from jury service in Alabama deny to women the equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution, and to the extent that they so bar women, are null and void, and shall henceforth be of no effect in the State of Alabama.

2. It is ORDERED, ADJUDGED and DECREED that the defendants, Bruce Crook, Henry Barganier, and J. H. Jackson, individually and as members of the Jury Commission

of Lowndes County, Alabama, Mrs. Kelly D. Coleman, individually and as Clerk of the Jury Commission of Lowndes County, Alabama, and Clerk of the Second Judicial Circuit of Alabama (Lowndes County), and the Honorable T. Werth Thagard, as Judge of the Second Judicial Circuit of Alabama (Lowndes County), 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 Lowndes County, Alabama. It is specifically ORDERED that:

(a) The jury box shall be emptied forthwith. No names shall be drawn therefrom until the jury box is refilled. The jury box shall be refilled before the Spring Term of Court, 1966, in the Second Judicial Circuit of Alabama (Lowndes County) and thereafter by the following procedures.

(b) On or before 30 days from the date of this decree Mrs. Kelly D. Coleman, as Clerk of the Second Judicial Circuit of Alabama (Lowndes County) and Clerk of the Jury Commission of Lowndes County, Alabama shall examine the current Qualified Voters List of Lowndes County, Alabama, the current Tax Assessor's List of Lowndes County, Alabama, and the lists compiled by federal

examiners in Lowndes County, Alabama pursuant to the Voting Rights Act of 1965, Public Law 89-110 filed with the Probate Judge of Lowndes County on or before the date of this decree and shall compile a comprehensive alphabetical list therefrom, to be known henceforth as the "Clerk's Comprehensive List," showing the name and address of all persons listed on the said Qualified Voter List, the Tax Assessor's list, and the federal examiners' lists. A copy of this list shall be filed with the Court on or before 35 days from the date of this decree.

(c) The Jury Commissioners shall meet regularly to pass on the qualifications of persons named on the Comprehensive List. If the number of names on the Comprehensive List is 999 or less, the Jury Commissioners shall consider the qualifications of all persons listed. If the number of names exceeds 999, the qualifications of persons named on the list shall be considered in accordance with the following schedule:

Number of Names on the Comprehensive List	Commissioners shall consider
1000 - 1499	every 2nd name
1500 - 1999	every 3rd name
2000 - 2499	every 4th name
2500 - 2999	every 5th name
3000 - 3499	every 6th name
3500 - 3999	every 7th name
4000 - 4499	every 8th name
4500 - 4999	every 9th name
5000 - 5499	every 10th name
5500 - 5999	every 11th name
6000 - 6499	every 12th name
6500 - 6999	every 13th name
7000 - 7499	every 14th name
7500 - 7999	every 15th name
8000 - 8499	every 16th name
8500 - 8999	every 17th name
9000 - 9499	every 18th name
9500 - 9999	every 19th name
10,000 or more	every 20th name

(d) The Jury Commissioners shall select from the names so considered all persons who meet the following qualifications and no others:

- (i) the person is a resident of Lowndes County, Alabama;
- (ii) the person is a citizen over 21 years of age;
- (iii) the person is not an habitual drunkard;
- (iv) the person is not unfit to discharge the duties of a juror by reason of a permanent disease or physical weakness;
- (v) the person has not been convicted of any offense involving moral turpitude;
- (vi) the person can read English. If the person cannot read English, he or she may be considered qualified if he or she is a freeholder or householder.

If a person otherwise qualifies for jury service, the Jury Commissioners shall not disqualify that person from jury service on the ground that he or she cannot read English unless that person is

objectively determined to be unable to fill out a simple form seeking his or her name, address, and occupation, and unless the same standards and tests of literacy are being applied equally to all prospective jurors. Any person who is unable to read and fill out the form shall be asked to sign it or make a mark upon it and the form thus signed or marked shall be preserved as a record of the Court. The form to be used by the Jury Commissioners shall first be submitted to and approved by this Court.

(e) If a person considered by the Jury Commissioners in accordance with the above standards and procedures is found by them to be unqualified for jury service, the Jury Commissioners shall proceed to consider the qualifications of the person immediately following the disqualified person on the Clerk's Comprehensive List, and if that person is disqualified, the Clerk shall proceed to the next name on the list.

(f) As soon as the Jury Commission has qualified at least 500 persons, the names so selected by the Jury Commissioners shall be placed by them or at their direction on the jury roll and in the jury box. Cards in the jury box shall show no designation of race.

Names of qualified persons entitled to exemptions under Alabama law, including teachers, and persons over 65 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.

(g) The names of women appearing on the Clerk's Comprehensive List and considered by the Jury Commission who, but for sex, would be qualified for jury service under Alabama law shall be placed on the jury roll and in the jury box without distinction with regard to sex.

(h) The defendant Judge of the Second Judicial Circuit of Alabama may excuse a woman called for jury service only upon a showing of good cause.

(i) At least once every two years 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, including the compilation of a new Clerk's Comprehensive List. In selecting names for subsequent jury boxes, the Commission shall begin the selection by starting with the second name, or third name on the Clerk's Comprehensive List depending upon the number of times the Commission has made selections.

3. It is further ORDERED that the defendant Jury Commissioners, the Clerk of the Jury Commission and of the Second Judicial Circuit of Alabama (Lowndes County) and the Judge of the Second Judicial Circuit of Alabama (Lowndes County) submit to the Clerk of this Court in writing, with a copy sent to the Plaintiff-Intervenor, within fourteen days following each meeting of the Lowndes County Jury Commission at which names of prospective jurors are selected, a report. This report shall include:

- (a) A copy of the Clerk's Comprehensive List, marked by said defendants to show (i) the race of each person on the list; and (ii) the names of the persons considered by the Jury Commissioners pursuant to paragraph 2(c) of this Decree;
- (b) A separate listing of those persons on the Clerk's Comprehensive List who were considered by the Jury Commissioners and found by them to be unqualified for jury service; this listing shall also show the person's race and sex, and shall give a detailed and specific description of the reason or reasons why each such person was found to be unqualified.

If the disqualification was for inability to read English, a copy of the form required by paragraph 2(f) of this decree shall be appended to the report. If the disqualification was for conviction of a crime involving moral turpitude, the report shall state the nature of the crime and the date of the conviction.

4. It is further ORDERED that defendant Kelly D. Coleman as Clerk of the Second Judicial Circuit of Alabama (Lowndes County) and as Clerk of the Lowndes County Jury Commission shall submit to the Clerk of this Court in writing, with a copy sent to the Plaintiff-Intervenor, a notice showing the date, time and place at which the next regular drawing from the Lowndes County jury box is to be made by the Judge of the Second Judicial Circuit of Alabama (Lowndes County). This notice must be sent at least ten days prior to the time when each such drawing takes place.

5. 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 agents of the United States at any reasonable time:

- (a) Complete jury roll books;
- (b) Civil Minutes showing the venires made up for each civil week of court, the

name, race, address, and occupation of each person on the venire; 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 or petit jury service and the reason for the excuse;

- (c) State Minutes showing the venires made up for each criminal week of Court; the name, race, address and occupation of each person on the venire; 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 jury service and the reason for the excuse;
- (d) Records for each separate civil and criminal case tried before a jury in Lowndes County, Alabama showing the panel from which the jury for the case was struck,

the persons struck from the panel, the attorneys who struck each person with specific indication which attorney struck which person, the business address of each attorney, and if an attorney is employed by the State or County, an indication to that effect.

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 _____, 1966.

United States Circuit Judge

United States District Judge

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief and Appendices, Proposed Findings of Fact and Conclusions of Law, and Proposed Order for Plaintiff-Intervenor has been served by official U. S. mail in accordance with the rules of this Court to the attorneys for plaintiffs and defendants, addressed as follows:

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This 23rd day of December, 1965.

JOHN DOAR
Assistant Attorney General
Department of Justice