

**HOW FAR HAVE WE COME SINCE THE MAGNA CARTA: JURY OF ONE'S PEERS,  
JURY PANELS, MINORITIES, AND THE THIRD AND FOURTH  
JUDICIAL DISTRICTS**

**CAPITAL DISTRICT BLACK BAR ASSOCIATION  
Randolph F. Treece, President  
Dona Bullock, Vice President  
Ralph Byrd, Treasurer  
J. Mark Hannibal, Secretary**

## Appendix 6

### Racial and Ethnic Background

#### By Zip Code for Albany, Rensselaer, Schenectady and Saratoga Counties

Since the residents, to whom the initial juror qualification questionnaires are sent to monthly by the Office of Court Administration on behalf of the counties, are randomly selected on the basis of their zip codes, we requested data showing racial and ethnic distributions by zip code in the study area. This information was graciously provided in both tabular and graphical form by the Albany County Planning Commission for the four counties identified above.

For purposes of simplicity, we provide following this narrative only: (i) the tabular breakdown for each of these counties, (ii) a zip code map for each of these counties and (iii) a color-coded map showing the distribution of the minority population throughout each county on a zip code basis with the proportional representation of minorities within zip codes.

These tables and graphs illustrate that, based on the 1990 census, the minority population in each of these counties is as follows:



	<u>TOTAL COUNTY MINORITY POPULATION*</u>		<u>POPULATION</u>
	<u>Number</u>	<u>Percent</u>	<u>Number</u>
Albany	24,379	10.60%	229,974
Rensselaer	6,627	5.64	117,587
Schenectady	6,997	6.08	115,032
Saratoga	4,075	3.02	134,781

\* Defined as Total Population less Non-Hispanic Whites.

In Albany County, which of the four counties has the largest number of minority residents, there appear to be several zip codes with significant concentrations of minorities.

These are identified below.

	<u>NUMBER</u>	<u>PERCENT OF ZIP CODE POPULATION</u>
12202	3,638	42.75%
12203	3,079	10.54
12204	1,048	18.87
12206	4,302	32.53
12207	1,156	57.46
12208	1,642	8.88
12210	<u>3,388</u>	45.34
TOTAL	18,253	

These seven zip codes, all located in the City of Albany, contain approximately 75% of the County's minority population. Zip code "12205", which in another part of this report we called a non-minority area, has a fair number of minority residents itself (1,174), though these residents make up only 5.73% of the zip code's population.

None of the other three counties has as many "pockets" of minority population concentration as Albany. Approximately 73% (10.78% of the zip code's population) of Rensselaer County's minority population reside in one zip code, 12180, which includes the City

of Troy. Another 9% (4.28% of the zip code population) or so reside within zip code 12144, which includes the City of Rensselaer.

Schenectady which, of the other counties, most closely approximates Albany County, has the following urban zip codes representing the greatest concentrations of its minority population.

	<u>NUMBER</u>	<u>PERCENT OF ZIP CODE POPULATION</u>
12304	1,346	9.74%
12305	754	13.09
12307	<u>2,071</u>	36.27
TOTAL	4,171	

These three zip codes, which are all in the City of Schenectady, contain about 60% of the County's minority population.

Saratoga, which like Rensselaer County, does not have any proportionally significant zip code based concentrations, nevertheless, has approximately 80% of its minority population based in only four zip codes.

	<u>NUMBER</u>	<u>PERCENT OF ZIP CODE POPULATION</u>
12020	395	2.12%
12065	855	3.72
12831	851	8.22
12866	<u>1,077</u>	4.57
TOTAL	3,178	

Although no data was obtained with respect to the other three counties studied for this report, it is probably a safe bet that their minority populations are concentrated as well in only a few of the zip codes contained in that particular county, and that these zip codes are more than likely to be "urban" zip codes.

What this data suggests is that minority representation on jury venires could possibly be enhanced by concentrated mailings of the qualification questionnaire to designated zip codes. As reported earlier in this report, however, deficiencies in the juror system data with respect to these zip codes, owing to the apparently more transitory nature of the minority population in these areas, need to be addressed in order to maximize the response rate.

ALBANY COUNTY VOTING AGE POPULATION 1990  
ETHNIC AND RACIAL DISTRIBUTION BY ZIP CODES

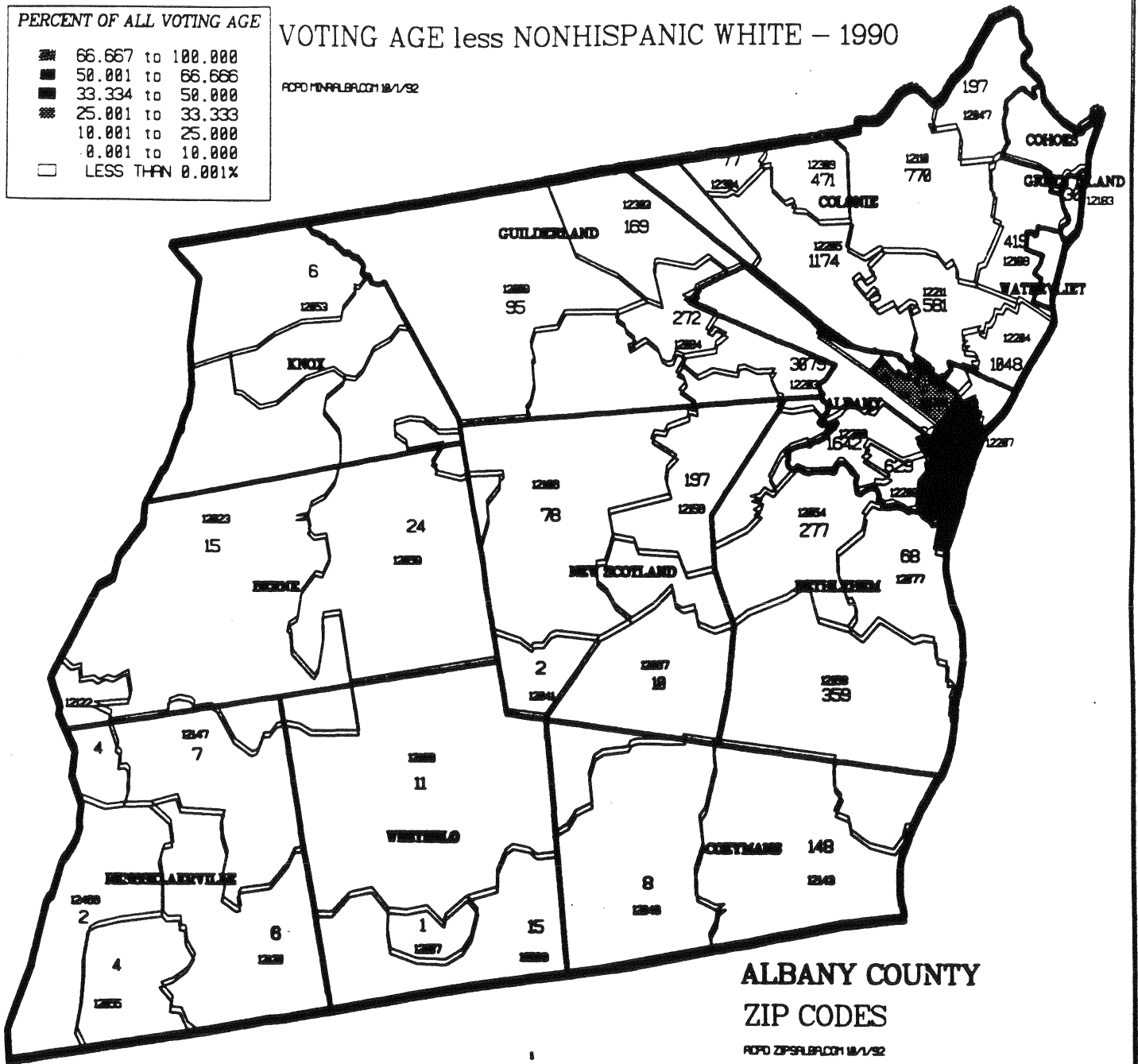
ZIP CODE	VOTING AGE PERSONS									
	TOTAL	BLACKS			HISPAN	BLACK AND HISPANIC		NON HISPANIC WHITES	ALL EXCEPT FOR NON HISPANIC WHITES	
		SUBTOT	PCT VOT	NONHIS		SUBTOT	PCT VOT		SUBTOT	PCT VOT
12007	171	0	0.00%	0	0	0	0.00%	170	1	0.58%
12009	4207	48	1.14%	47	32	79	1.88%	4112	95	2.26%
12023	1468	10	0.68%	10	2	12	0.82%	1453	15	1.02%
12041	274	0	0.00%	0	1	1	0.36%	272	2	0.73%
12046	684	0	0.00%	0	4	4	0.58%	676	8	1.17%
12047	14594	65	0.45%	61	74	135	0.93%	14397	197	1.35%
12053	567	1	0.18%	1	2	3	0.53%	561	6	1.06%
12054	11614	73	0.63%	71	85	156	1.34%	11337	277	2.39%
12055	343	0	0.00%	0	0	0	0.00%	339	4	1.17%
12059	1615	11	0.68%	11	9	20	1.24%	1591	24	1.49%
12067	829	5	0.60%	5	2	7	0.84%	819	10	1.21%
12077	3133	19	0.61%	18	15	33	1.05%	3065	68	2.17%
12083	737	0	0.00%	0	13	13	1.76%	722	15	2.04%
12084	3422	136	3.97%	132	47	179	5.23%	3150	272	7.95%
12110	15920	222	1.39%	218	162	380	2.39%	15150	770	4.84%
12120	479	2	0.42%	2	2	4	0.84%	473	6	1.25%
12122	55	0	0.00%	0	4	4	7.27%	51	4	7.27%
12143	4373	83	1.90%	81	51	132	3.02%	4225	148	3.38%
12147	396	0	0.00%	0	4	4	1.01%	389	7	1.77%
12158	4423	265	5.99%	251	84	335	7.57%	4064	359	8.12%
12159	4119	62	1.51%	60	46	106	2.57%	3922	197	4.78%
12183	1942	2	0.10%	2	14	16	0.82%	1912	30	1.54%
12186	5289	15	0.28%	15	29	44	0.83%	5211	78	1.47%
12189	12868	200	1.55%	194	110	304	2.36%	12449	419	3.26%
12193	1363	1	0.07%	1	7	8	0.59%	1352	11	0.81%
12202	8509	3169	37.24%	3100	329	3429	40.30%	4871	3638	42.75%
12203	29220	1436	4.91%	1361	832	2193	7.51%	26141	3079	10.54%
12204	5555	858	15.45%	842	116	958	17.25%	4507	1048	18.87%
12205	20500	610	2.98%	597	235	832	4.06%	19326	1174	5.73%
12206	13225	3679	27.82%	3611	403	4014	30.35%	8923	4302	32.53%
12207	2012	994	49.40%	982	66	1048	52.09%	856	1156	57.46%
12208	18489	893	4.83%	867	335	1202	6.50%	16847	1642	8.88%
12209	8125	396	4.87%	387	117	504	6.20%	7496	629	7.74%
12210	7472	2997	40.11%	2949	274	3223	43.13%	4084	3388	45.34%
12211	9479	202	2.13%	198	115	313	3.30%	8898	581	6.13%
12303	6491	54	0.83%	54	54	108	1.66%	6322	169	2.60%
12304	1888	48	2.54%	48	17	65	3.44%	1811	77	4.08%
12309	3997	376	9.41%	361	53	414	10.36%	3526	471	11.78%
12469	127	0	0.00%	0	2	2	1.57%	125	2	1.57%
ALBANY	229974	16932	7.36%	16537	3747	20284	8.82%	205595	24379	10.60%

PERCENT OF ALL VOTING AGE

- 66.667 to 100.000
- 50.001 to 66.666
- 33.334 to 50.000
- 25.001 to 33.333
- 10.001 to 25.000
- 0.001 to 10.000
- LESS THAN 0.001%

VOTING AGE less NONHISPANIC WHITE - 1990

POPO MINRFLR.COM 10/1/92



ALBANY COUNTY  
ZIP CODES

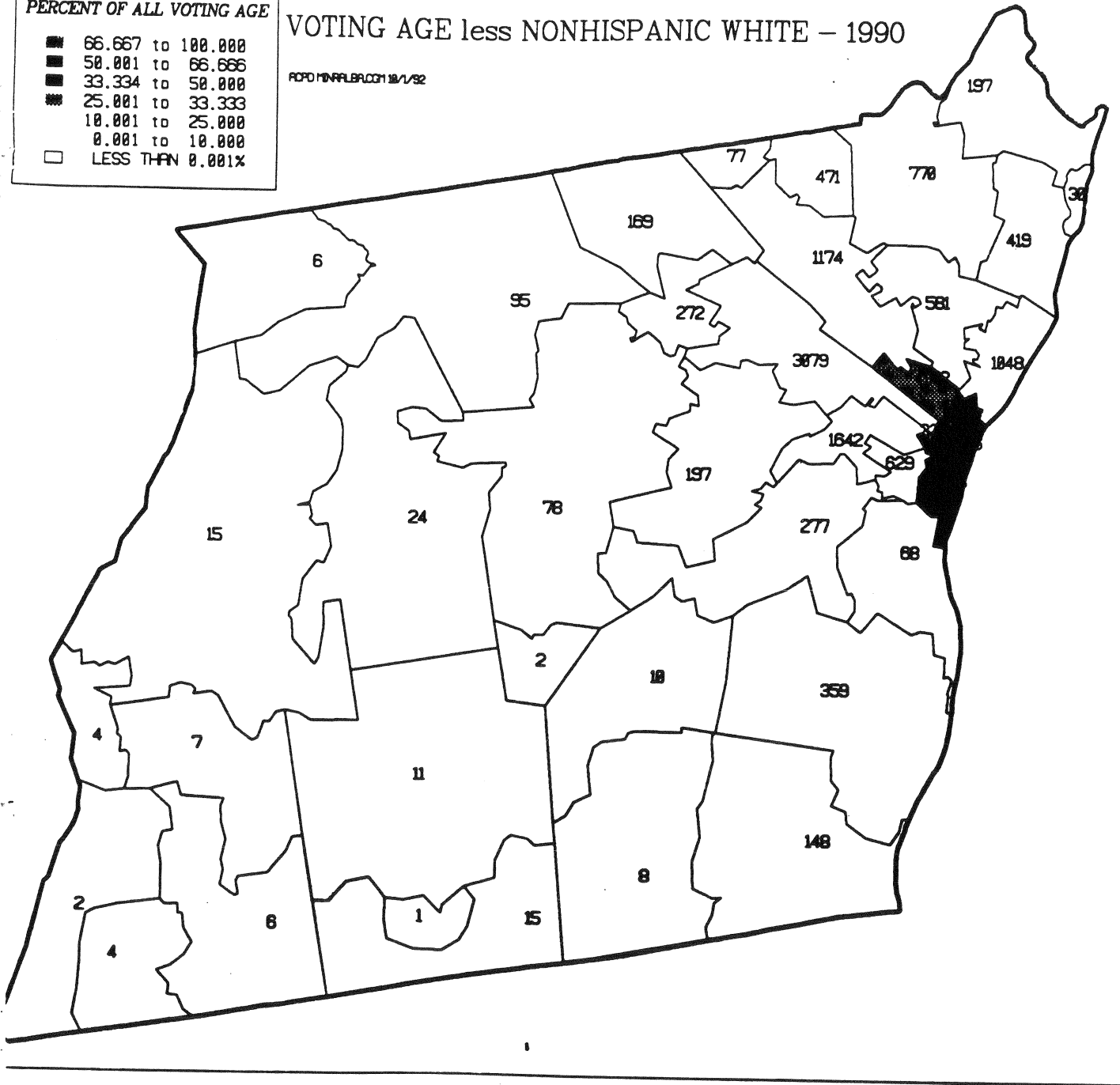
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PERCENT OF ALL VOTING AGE

- 66.667 to 100.000
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VOTING AGE less NONHISPANIC WHITE - 1990

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RENSSELAER COUNTY VOTING AGE POPULATION 1990  
ETHNIC AND RACIAL DISTRIBUTION BY ZIP CODES

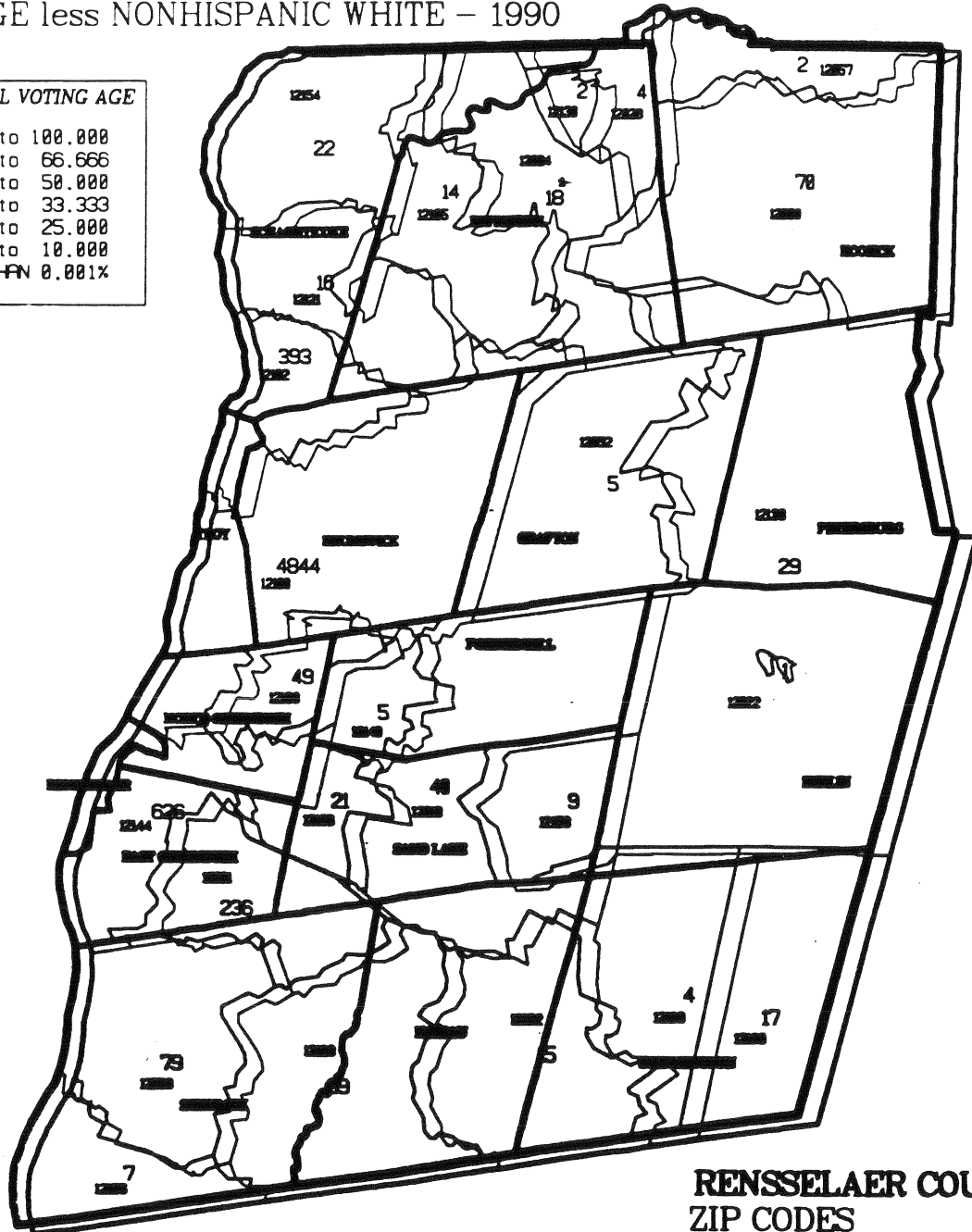
ZIP CODE	VOTING AGE PERSONS									
	TOTAL	BLACKS			HISPAN	BLACK AND HISPANIC		NON HISPANIC WHITES	ALL EXCEPT FOR NON HISPANIC WHITES	
		SUBTOT	PCT VOT	NONHIS		SUBTOT	PCT VOT		SUBTOT	PCT VOT
12018	4737	5	0.11%	5	19	24	0.51%	4697	40	0.84%
12022	191	0	0.00%	0	1	1	0.52%	190	1	0.52%
12028	363	0	0.00%	0	4	4	1.10%	359	4	1.10%
12033	5296	20	0.38%	19	41	60	1.13%	5217	79	1.49%
12052	971	0	0.00%	0	3	3	0.31%	966	5	0.51%
12057	606	0	0.00%	0	0	0	0.00%	604	2	0.33%
12061	5511	78	1.42%	76	70	146	2.65%	5275	236	4.28%
12062	1306	11	0.84%	11	3	14	1.07%	1291	15	1.15%
12090	4324	26	0.60%	24	30	54	1.25%	4254	70	1.62%
12094	1387	1	0.07%	1	3	4	0.29%	1369	18	1.30%
12121	1450	7	0.48%	7	6	13	0.90%	1434	16	1.10%
12123	4068	43	1.06%	40	40	80	1.97%	3969	99	2.43%
12130	211	1	0.47%	1	1	2	0.95%	209	2	0.95%
12138	2735	4	0.15%	4	8	12	0.44%	2706	29	1.06%
12140	1405	0	0.00%	0	3	3	0.21%	1400	5	0.36%
12144	14638	365	2.49%	357	135	492	3.36%	14012	626	4.28%
12153	624	1	0.16%	0	4	4	0.64%	615	9	1.44%
12154	1880	3	0.16%	3	10	13	0.69%	1858	22	1.17%
12156	539	1	0.19%	1	4	5	0.93%	532	7	1.30%
12168	433	1	0.23%	1	3	4	0.92%	429	4	0.92%
12169	1172	7	0.60%	7	4	11	0.94%	1155	17	1.45%
12180	44925	2636	5.87%	2572	757	3329	7.41%	40081	4844	10.78%
12182	11164	249	2.23%	238	97	335	3.00%	10771	393	3.52%
12185	1162	5	0.43%	5	6	11	0.95%	1148	14	1.20%
12196	1827	7	0.38%	7	10	17	0.93%	1806	21	1.15%
12198	4662	16	0.34%	16	17	33	0.71%	4613	49	1.05%
RENSSEL	117587	3487	2.97%	3395	1279	4674	3.97%	110960	6627	5.64%

# VOTING AGE less NONHISPANIC WHITE - 1990

POP: MIN:REN:CO:11/1/92

## PERCENT OF ALL VOTING AGE

- 66.667 to 100.000
- 50.001 to 66.666
- 33.334 to 50.000
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- 0.001 to 10.000
- LESS THAN 0.001%



**RENSSELAER COUNTY**  
**ZIP CODES**  
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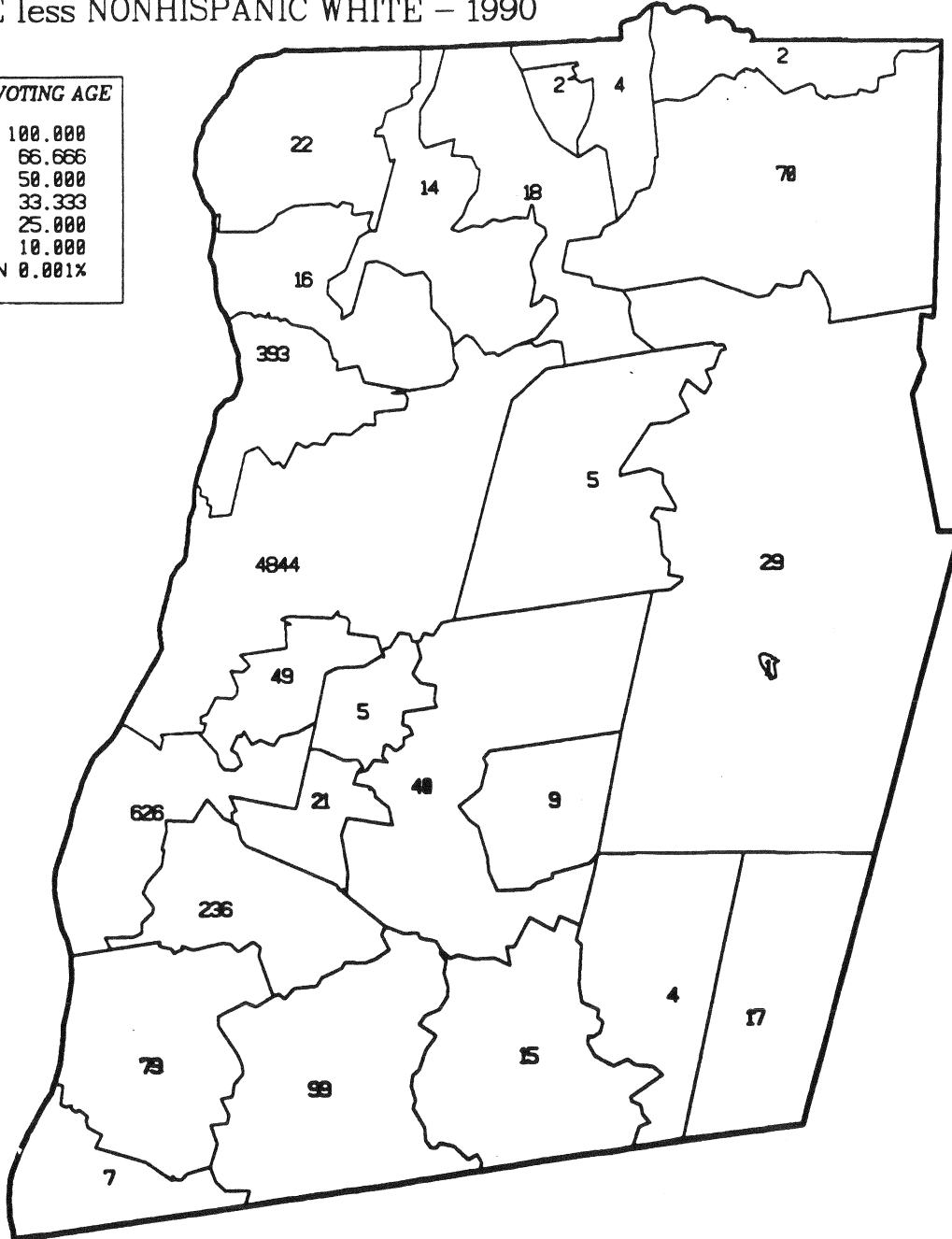


# VOTING AGE less NONHISPANIC WHITE - 1990

POPD MINNENSD01 10/1/92

## PERCENT OF ALL VOTING AGE

- 66.667 to 100.000
- 50.001 to 66.666
- 33.334 to 50.000
- 25.001 to 33.333
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- 0.001 to 10.000
- LESS THAN 0.001%



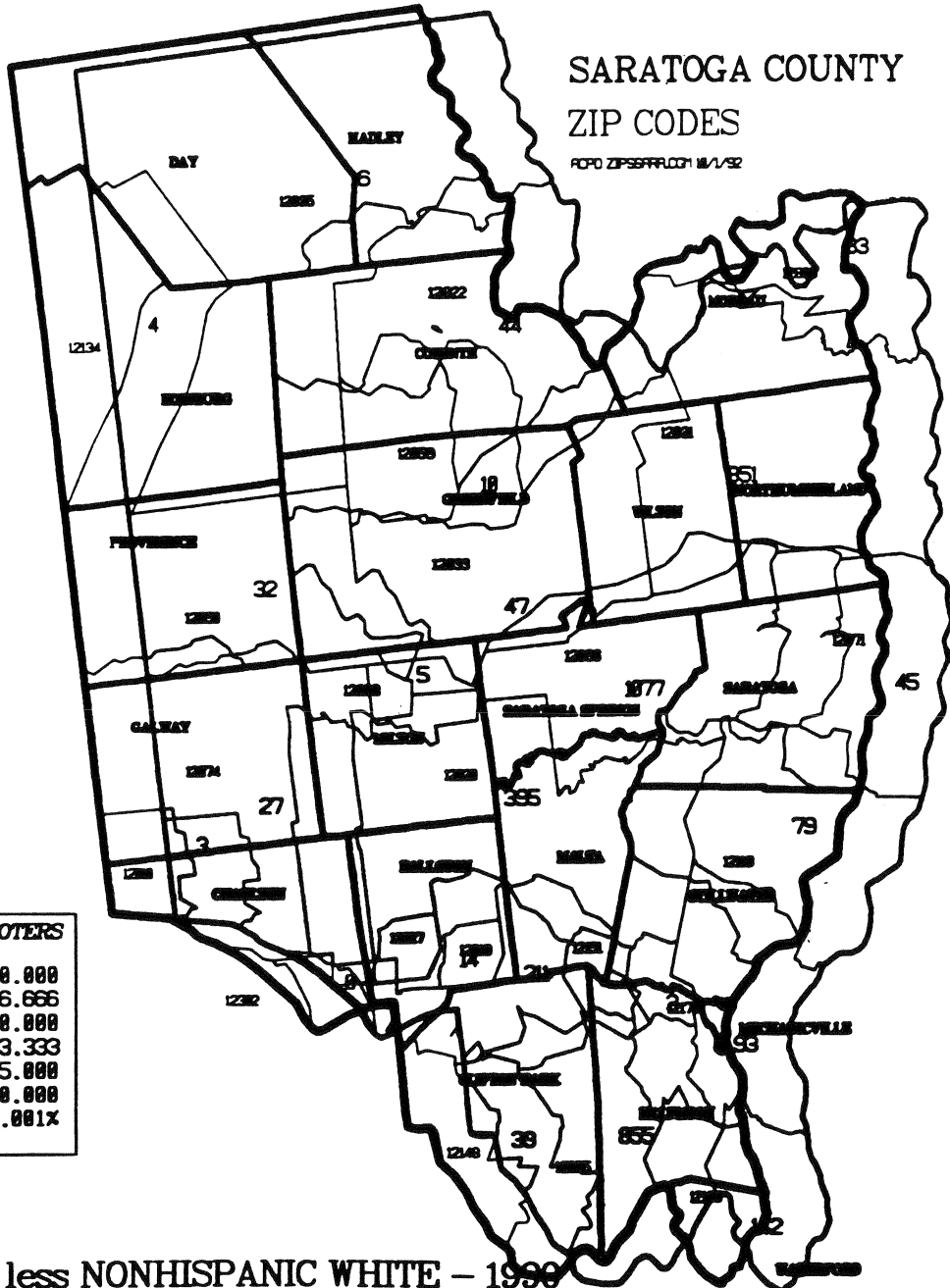
**SARATOGA COUNTY VOTING AGE POPULATION 1990  
ETHNIC AND RACIAL DISTRIBUTION BY ZIP CODES**

ZIP CODE	VOTING AGE PERSONS									
	TOTAL	BLACKS			HISPAN	BLACK AND HISPANIC		NON HISPANIC WHITES	ALL EXCEPT FOR NON HISPANIC WHITES	
		SUBTOT	PCT VOT	NONHIS		SUBTOT	PCT VOT		SUBTOT	PCT VOT
12010	277	0	0.00%	0	2	2	0.72%	274	3	1.08%
12019	11179	61	0.55%	58	77	135	1.21%	10968	211	1.89%
12020	18624	146	0.78%	143	164	307	1.65%	18229	395	2.12%
12027	697	3	0.43%	3	6	9	1.29%	683	14	2.01%
12065	22969	229	1.00%	221	208	429	1.87%	22114	855	3.72%
12074	2937	5	0.17%	5	17	22	0.75%	2910	27	0.92%
12118	4221	16	0.38%	15	36	51	1.21%	4142	79	1.87%
12134	564	0	0.00%	0	2	2	0.35%	560	4	0.71%
12148	1694	3	0.18%	3	11	14	0.83%	1655	39	2.30%
12151	337	2	0.59%	1	2	3	0.89%	334	3	0.89%
12170	7074	4	0.06%	4	72	76	1.07%	6981	93	1.31%
12188	8867	29	0.33%	27	56	83	0.94%	8725	142	1.60%
12302	154	0	0.00%	0	0	0	0.00%	154	0	0.00%
12803	6706	22	0.33%	22	39	61	0.91%	6623	83	1.24%
12822	4665	8	0.17%	8	22	30	0.64%	4621	44	0.94%
12831	10357	512	4.94%	444	350	794	7.67%	9506	851	8.22%
12833	3319	11	0.33%	8	21	29	0.87%	3272	47	1.42%
12835	1359	6	0.44%	6	1	7	0.52%	1343	16	1.18%
12850	1235	10	0.81%	10	10	20	1.62%	1203	32	2.59%
12859	720	3	0.42%	3	4	7	0.97%	710	10	1.39%
12863	425	1	0.24%	1	4	5	1.18%	420	5	1.18%
12866	23550	636	2.70%	613	287	900	3.82%	22473	1077	4.57%
12871	2851	18	0.63%	17	20	37	1.30%	2806	45	1.58%
SARATO	134781	1725	1.28%	1612	1411	3023	2.24%	130706	4075	3.02%

# SARATOGA COUNTY

## ZIP CODES

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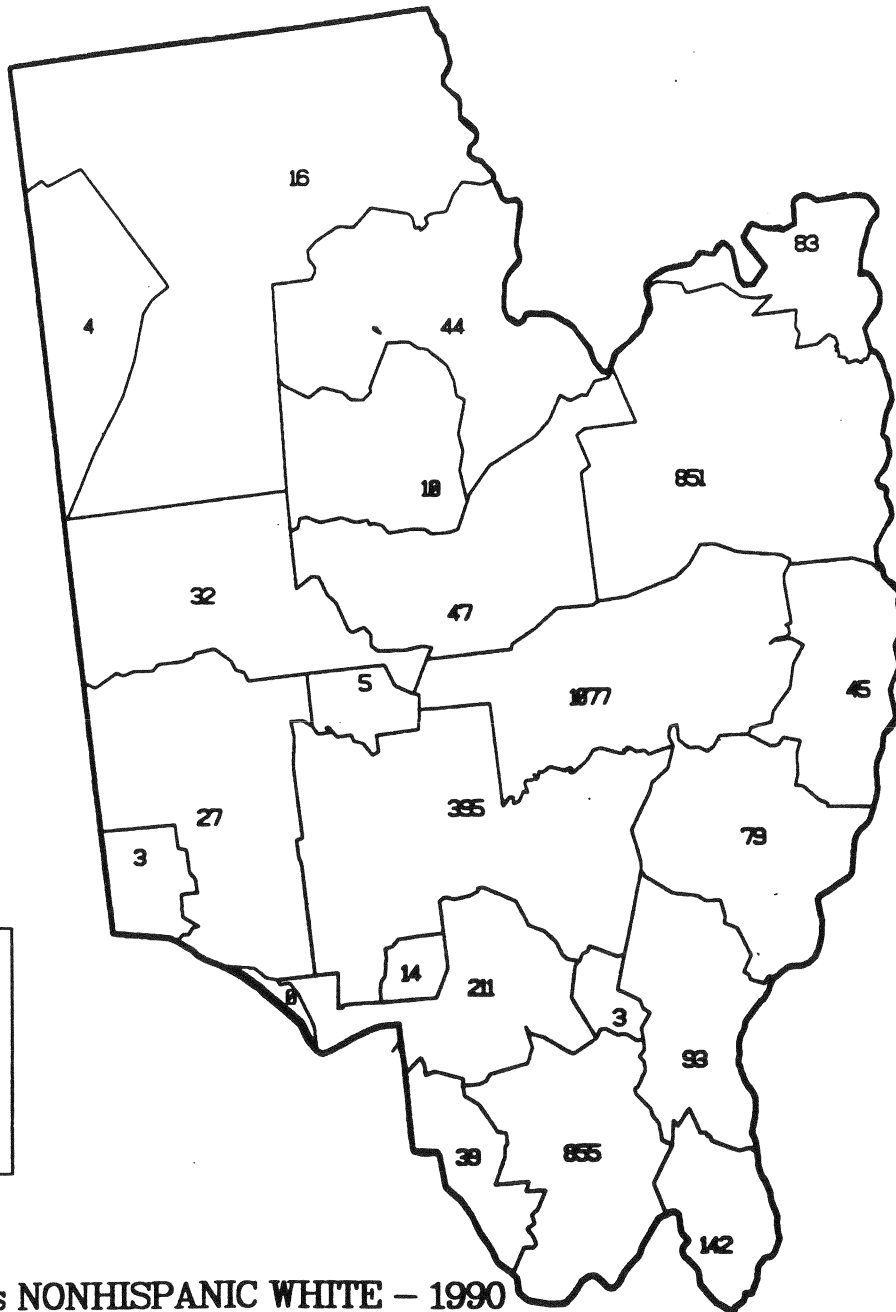


**PERCENT OF ALL VOTERS**

■	66.667 to 100.000
■	50.001 to 66.666
■	33.334 to 50.000
■	25.001 to 33.333
■	10.001 to 25.000
■	0.001 to 10.000
□	LESS THAN 0.001%

POPO ZIPSSFRLOC1 11/1/92

**VOTING AGE less NONHISPANIC WHITE - 1990**



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VOTING AGE less NONHISPANIC WHITE - 1990

**SCHEENECTADY COUNTY VOTING AGE POPULATION 1990  
ETHNIC AND RACIAL DISTRIBUTION BY ZIP CODES**

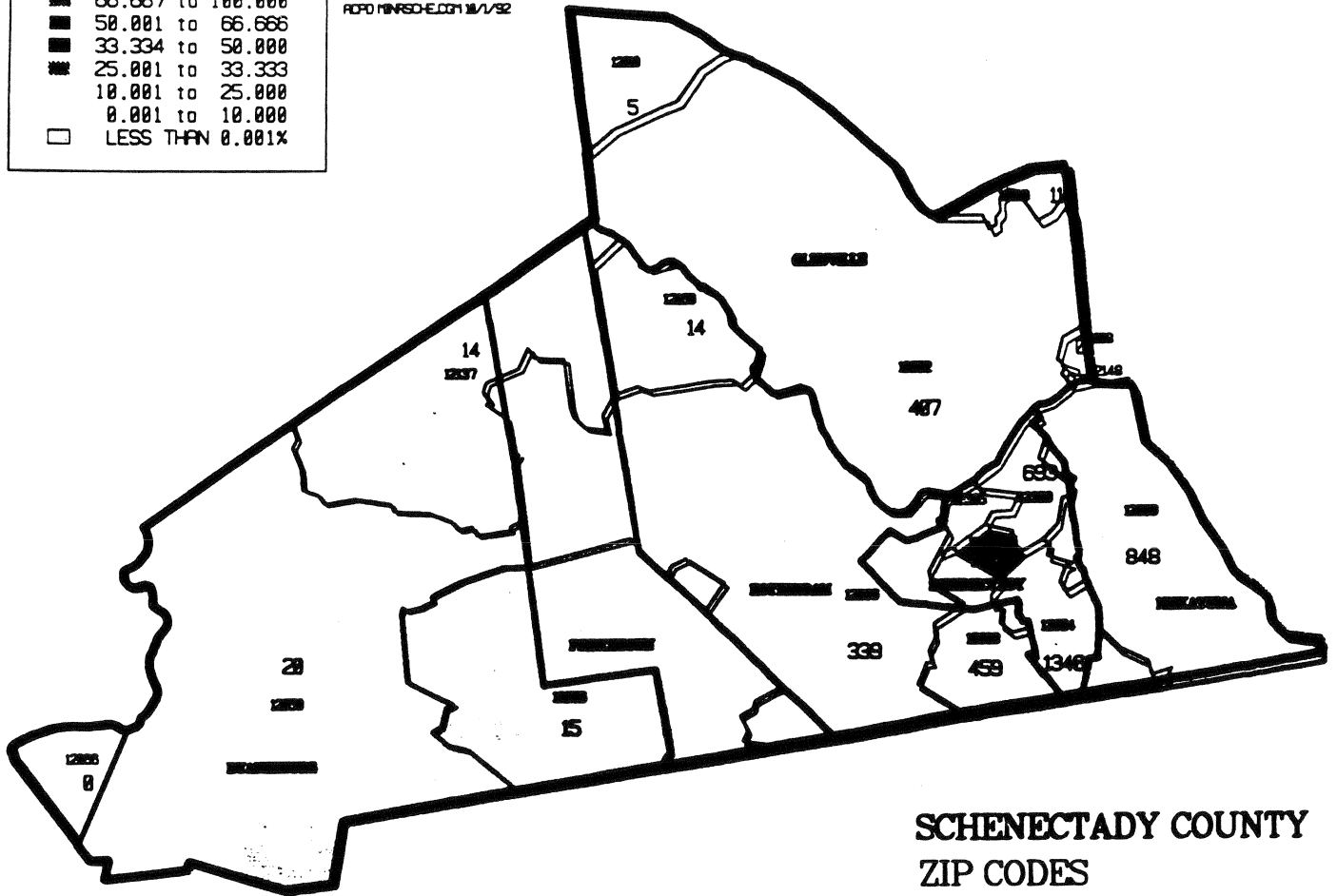
ZIP CODE	VOTING AGE PERSONS									
	TOTAL	BLACKS			HISPAN	BLACK AND HISPANIC		NON HISPANIC WHITES	ALL EXCEPT FOR NON HISPANIC WHITES	
		SUBTOT	PCT VOT	NONHIS		SUBTOT	PCT VOT		SUBTOT	PCT VOT
12008	250	0	0.00%	0	0	0	0.00%	250	0	0.00%
12010	148	0	0.00%	0	5	5	3.38%	143	5	3.38%
12019	622	3	0.48%	3	1	4	0.64%	611	11	1.77%
12053	2284	8	0.35%	8	10	18	0.79%	2264	20	0.88%
12056	1936	0	0.00%	0	9	9	0.46%	1921	15	0.77%
12066	43	0	0.00%	0	0	0	0.00%	43	0	0.00%
12137	1004	5	0.50%	5	4	9	0.90%	990	14	1.39%
12148	70	0	0.00%	0	0	0	0.00%	69	1	1.43%
12150	831	6	0.72%	6	7	13	1.56%	817	14	1.68%
12302	20852	113	0.54%	110	137	247	1.18%	20445	407	1.95%
12303	15314	210	1.37%	195	176	371	2.42%	14855	459	3.00%
12304	13814	906	6.56%	888	241	1129	8.17%	12468	1346	9.74%
12305	5762	476	8.26%	457	166	623	10.81%	5008	754	13.09%
12306	18157	110	0.61%	105	161	266	1.46%	17818	339	1.87%
12307	5710	1665	29.16%	1624	314	1938	33.94%	3639	2071	36.27%
12308	10984	396	3.61%	382	191	573	5.22%	10291	693	6.31%
12309	17251	231	1.34%	229	160	389	2.25%	16403	848	4.92%
<b>SCHENEC</b>	<b>115032</b>	<b>4129</b>	<b>3.59%</b>	<b>4012</b>	<b>1582</b>	<b>5594</b>	<b>4.86%</b>	<b>108035</b>	<b>6997</b>	<b>6.08%</b>

**PERCENT OF ALL VOTING AGE**

- 66.667 to 100.000
- 50.001 to 66.666
- 33.334 to 50.000
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**VOTING AGE less NONHISPANIC WHITE – 1990**

POP HINRSCH.E.D01 10/1/92



**SCHENECTADY COUNTY  
ZIP CODES**

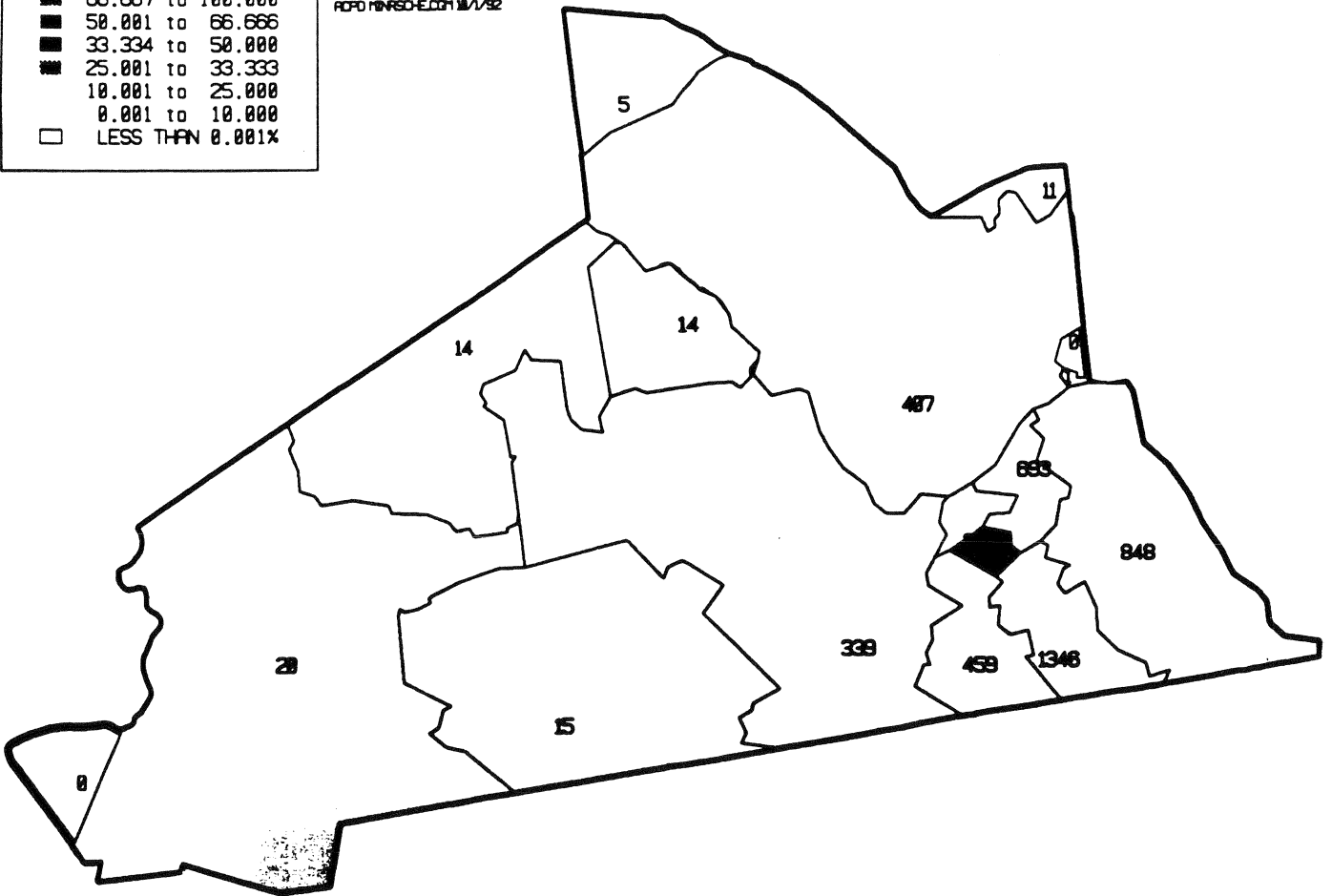
POP ZIPSD.E.D01 10/1/92

PERCENT OF ALL VOTING AGE

- 66.667 to 100.000
- 50.001 to 66.666
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- 25.001 to 33.333
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- LESS THAN 0.001%

VOTING AGE less NONHISPANIC WHITE - 1990

POPD HINRSD-E.COM 10/1/92



## Appendix 7

### Commissioner of Jurors Interviews

- A. Albany County
- B. Columbia County
- C. Greene County
- D. Rensselaer County
- E. Saratoga County
- F. Schenectady County
- G. Ulster County



REPORT OF VISIT WITH  
ALBANY COUNTY COMMISSIONER OF JURORS AND  
THIRD DISTRICT ADMINISTRATIVE JUDGE

The visit was conducted on July 20, 1992 with the Albany County Commissioner of Jurors, Paul O'Brien, and the Administrative Judge for the Third Judicial District, Hon. Anthony Cardona. These two officials demonstrated a great deal of concern with the issue of minority participation on Albany County juries and genuine interest in hearing recommendations for increasing the levels of such participation. Commissioner O'Brien further indicated that commissioners of jurors throughout New York State are concerned about the low levels of minority participation on juries and that such concern is an annual topic of discussion at the yearly statewide conferences of these officials.

SURVEY

1. How much of the jury pool is generated from jury registration? How successful is jury registration?

Jury registration, i.e., the enrollment of persons who volunteer for jury service, has not been very successful in Albany County. However, no serious attempts at such enrollment of volunteers has been made in the past few years.

2. Do you possess census or demographic racial breakdowns for your county?

Albany County has approximately 8.6% of its population represented by minority groups.

3. What has been your success rate in obtaining minorities for your jury panel?

Typical jury panels in Albany County contain from 2-5.6% minority representation.

4. Have you conducted any studies on this particular issue? Are you willing to share the with us?

The Commissioner of Jurors office has not conducted any formal studies into the issue of minority representation on Albany County juries.

5. What persons generally seek exemption or excuse from jury duty?

The groups that tend to request deferment or excuse from juror service most frequently in the opinion of Commissioner O'Brien are the elderly, minorities and persons from certain nationalities who claim trouble understanding the English language.

6. How frequently do minorities seek exemption or excuse from jury duty?

Minorities apparently seek excusal from jury service fairly frequently; however, no statistics on this issue are available.

7. How do you promulgate juror's obligation to serve and requirements to the various communities?

No active educational or outreach programs at the present time.

8. When choosing a jury panel, do you attempt to balance the pool based upon gender?

B. based upon race?

No attempt is ever made to balance the juror pool on the basis of race or sex.

9. If yes to question 8, how do you do this?

See response to question 8

10. Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

No formal mechanism; however, this could be accomplished to a certain extent on the basis of zip codes (for race) and names (for gender).

11. How are changes implemented to the selection process i.e., use of different lists to generate a jury pool? Is it by the commissioner of jurors, or OCA?

OCA maintains the database/information system from which the juror lists are drawn. OCA would have to approve any changes to the selection system.

12. Are there different experiences in selected grand jury panels? What are they?

Grand jury panels are drawn from the same pool of qualified jurors as are petit jury panels.

13. How many different jury panels are selected each trial term?

The number of jury panels selected for a given term of court could depend on the number of court parts operating for that term.

14. How do other political subdivisions such as towns or cities select jurors? What role do you play in this selection process?

For cities and other political subdivisions outside the City of Albany, the Commissioner of Jurors will provide lists of potential jurors for use by the courts of such jurisdictions. In the Albany City Courts, the Commissioner of Jurors will actually supply jurors who are residents of the City of Albany who have been empaneled from the county pool.

15. How frequently do you update your lists of potential jurors?

Lists maintained by OCA are updated every two years. The County's own qualified juror pool is updated monthly.

16. After a juror has served, how long are they disqualified to serve, i.e., 4 years or 2 years?

After having served, a juror in Albany County is disqualified from subsequent service for a period of four years.

17. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc?

Commissioner O'Brien believes the use of any additional lists as a source of names for potential jurors would have to be approved by OCA.

18. What problems do you see in using these types of lists?

See response to question 17.

19. What recommendations do you suggest to increase minority representation on your jury panels?

Commissioner O'Brien believes that minority representation on Albany County jury panels could potentially be increased by the employment of certain outreach and education programs and, also, possibly by eliminating certain of the automatic exemptions.

Further discussion with Commission O'Brien and Judge Cardona revealed that there is a significant drop-off in potential candidates for juror service at the qualification stage. A large number of questionnaires are returned each month as "non-deliverable" and large number are simply not returned at all, implying that they were received by the addressees and just ignored. Because we suspected that this "drop-off" could affect the pool of qualified minority candidates, we asked Commissioner O'Brien and Judge Cardona if they would be willing to quantitatively analyze for a given month the disposition of the 5,000 persons juror questionnaire mailing. First,

we wanted to know "the mailing" to which zip codes and in what numbers. Then, we were interested in finding out (i) from what zip codes and in what numbers the "not deliverable" questionnaires were received, (ii) from what zip codes and in what numbers questionnaires were not returned at all after the first mailing, second and third mailings, (iii) what were the zip codes of those claiming exemptions, (iv) what were the zip codes of those requesting to be excused from jury service and (v) what were the zip codes of those actually qualified as jurors of the original 5,000 questionnaires mailed.

Since race is not known at the time the questionnaires are mailed, we thought zip code would be (albeit not perfect) the best available indicator for this factor, since Albany County has two fairly large minority enclaves, each bounded, for the most part, by its own zip code. We requested this type of study because we believed it would help identify part of the problem in generating minority candidates for juror service and, accordingly, help dictate the remedial approaches that should be taken. Both Commissioner O'Brien and Judge Cardona believe such a study could be worthwhile in terms of shedding light on the problem. However, at the time of the survey they did not know whether they had sufficient resources to deploy to such a study.

We also discussed a very preliminary stage with them, the possibility of increasing the qualification of mailings and doing targeted mailings. These were concepts, especially the latter, they wished to consider further.

On a final note, Commissioner O'Brien called the authors subsequent to our meeting to inform us that he had done an informal analysis of the qualification questionnaires mailed in July and "returned as non-deliverable." He found that for the two predominantly minority zip codes he studied, the number of non-deliverable were twice as large as in the one "non-minority" zip

code. These findings were echoed with respect to the August mailing, as well. This suggests that minorities are twice as likely not to be entered into the qualified pool of juror and, therefore, are more likely than non-minorities not to be called as potential jurors.

REPORT OF VISIT WITH  
COLUMBIA COUNTY  
COMMISSIONER OF JURORS

The Commissioner John Hillard, is a young, affable and astute politician. Besides being the Commissioner of Jurors, he was elected County Clerk. Through campaigns, political involvement and just being a visible public servant, he seems to know most of the people throughout his county and has listened attentively to their concerns. Similar to the other Commissioners, he is interested in having a diversified jury pool. He has pondered ways to increase the numbers of minorities serving as jurors and would like to institute a change. Mr. Hillard was candid and informative. His responses are set forth herein below:

1. How much of the jury pool is generated from jury registration?

How successful is jury registration?

Relatively few jurors were obtained by jury registration.

2. Do you possess census or demographic racial breakdowns for your county?

62,292 people reside in his county, per the 1990 census figures. 3,093, or 5% of the population are non-white. Further, his county is rural, poor and adversely affected by the recession. 15,842 families (38%) live below the poverty level and 448 female head of households are below the poverty level. These factors contribute to the small numbers of responding persons.

3. What has been your success rate in obtaining minorities for your jury panel?

The Commissioner has been bewildered by the lack of minorities on his juries. Although he is seeing numbers compatible with the 1990 census percentages, it just does not seem to be adequate. There is at least one minority on every panel.

4. Have you conducted any studies on this particular issue?

The Commissioner has not performed any studies. If authorized by OCA, he would consider analyzing returned questionnaires by zip codes to determine how minorities who live in specific code areas response vis-a-vis other communities.

In 1986, after an attorney challenged a pool because there were no minorities, the county decided to target an area in Hudson, Bliss Towers, where it is known that a large concentration of minorities reside. 500 to 1,000 questionnaires were sent out to residents of this area. Not one questionnaire was returned. The Commissioner understands how past treatment may create political apathy; and he realizes the difficulty of being a minority in a predominantly white community. This may have affected this disappointing lack of response.

5. & 6. How often do minorities seek exemption  
from jury duty?

The Commissioner observes a cross-section of his community seeking exemption of jury duty. He believes that minorities are not bashful in asking for exemption from service. The most reoccurring request for exemption is the parental exemption (primary caretaker of a child/children 16 and younger). He believes too many are disingenuous in claiming this exemption. Minorities seem to raise work-related excuses.

7. How do you promulgate jurors' obligations and requirements to  
serve to the various communities?



Unfortunately, this question was overlooked and not discussed.

- 8, 9 & 10. When choosing a jury panel, do you attempt to balance the pool based upon gender? Based upon race? How do you do this? Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

The Commissioner does not balance jury panels by gender or race and does not want to. He believes this is hand picking jurors and contrary to the random selection process now employed.

11. How are changes implemented in the selection process, i.e., use of different lists to generate a jury pool?

This question did not generate fruitful discussion.

12. Are there different experiences in selecting grand jury panels? What are they?

The composition of the grand jury is similar to the petite jurors. Approximately 300 names are listed for the upcoming year in October. These persons undergo greater scrutiny to determine if they will serve. A criminal background check is conducted by the County District Attorney. Remember, those with felony convictions cannot serve.

13. How many different panels are selected each trial term?

Unfortunately, this issue was not discussed with the Commissioner.

14. How do other political subdivisions such as towns or cities select jurors? What role do you play in this selection process?

The Commissioner provides annually to the town justices a list of approximately 50 names of persons to serve on their respective juries. Starting September, 1992, City Court's jury will come from County or Supreme Court jury panels. This was prompted by attorneys exercising challenges for cause or peremptorily because the questioned jurors knew the litigants and litigators. This happened so frequently that the City Court jury pool was always running short of jurors. The Commissioner hopes using the County pool will alleviate this dilemma.

15. How frequently do you update your lists of potential jurors?

The Commissioner updates his list annually. He acquires an updated list from his County Board of Elections and forwards it to the OCA along with the volunteered jury registrations.

16. After a juror has served, how long is he/she dis-qualified from serving, i.e., four years?

A juror is disqualified for four years after service. The Commissioner is seeking permission from OCA to reduce the four years to two years.

17. & 18. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc.? What problems do you see in using these types of lists?

The Commissioner favors the use of utility, telephone, and high school graduation lists. These would be expanded sources of potential jurors. Moreover, he concurs with Ulster County Commissioner, Robert Jordan, that Social Service lists would be a significant source of names. Notwithstanding the concern of confidentiality, he believes OCA could maintain confidentiality. It is just one confidential source going to another confidential source without violating privacy

safeguards.

19. What recommendations do you suggest to increase minority representation on your jury panels?

Besides expanding the sources of names, the Commissioner advocates, as does Commissioner Jordan, increasing the state jury fees to an amount equal to the federal jury fees. He believes more money can go a long way toward reform and attracting responsible jurors.

During our discussion of including other types of lists, the Commissioner observes that the present sources missed approximately a third of his County who are mostly poor and probably a minority, and he gives reasons. Generally, poor people do not file tax returns, do not own a cars to register motor vehicles or obtain licenses, and more times than not, do not register to vote because of perceived disenfranchisement, a sense of powerlessness and political apathy. Realizing these observations, he is persuasive in his advocacy for other sources which would invariably include more lower-income persons.

Lastly and inexplicably, he has noticed more women serving as jurors than men. He has not arrived at any conclusions for this phenomenon. But, he believes an elimination of some exemptions may change this trend.

The Commissioner is genuinely concerned about minority representation on his juries, and to the degree that he can, wants to contribute to the turnaround in this problem. He states that his door is open for any discussion and suggestions and would champion this cause at the State Commissioner of Juror's next meeting.

REPORT OF VISIT WITH  
GREENE COUNTY  
COMMISSIONER OF JURORS

Answers to the CDBBA questionnaire were given during an interview with Lucille C. O'Ko, who is the Greene County Clerk and the part-time Commissioner of Jurors for Greene County, on Tuesday, August 4, 1992 at 3 p.m. at the Greene County Courthouse, Catskill, New York. Greene County does not have a computerized juror selection system, but participates through the Rensselaer County computerized system which is part of the Office of Court Administration Jury Management System. The OCA Jury Management System maintains prospective juror selection data in a centralized computer system at Albany, New York. The computerized system generates computer printout sheets which identify prospective jurors by name and address and specifically lists the numbers of male and female jurors listed on the computer generated printout. The Greene County commissioner stated that she receives a computerized list of approximately 1,500 prospective jurors per month whose names are drawn from a base of approximately 3,400 potential jurors from Greene County.

1. How much of the jury pool is generated from jury registration?

Approximately 10% or less of the jury pool is generated from jury registration, according to this commissioner. There is no juror registration drive or campaign and this commissioner understands that advertising juror registration apparently is prohibited, although the source and nature of prohibition was not discussed.

Juror registration success is hard to gauge because there is no program soliciting juror registration. The same persons tend to serve as jurors more frequently than in more populous regions of the state. Many senior citizens have an interest in serving as jurors.

2. Do you possess census or demographic racial breakdowns for your county?

Unknown, according to this commissioner, whether there are any and whether they are available.

3. What has been your success rate in obtaining minorities for your jury panel?

Without statistical information it is hard to gauge. Perhaps "very seldom" participation in a jury pool is a fair characterization, according to this commissioner.

4. Have you conducted any studies on this particular issue?

No studies have been conducted on this issue by this commissioner.

5. How often do minorities seek exemption from jury duty?

The Commissioner is not sure how often minorities seek exemption, but has noticed Firemen and certain religious groups such as Jehovah's Witnesses frequently seek exemption.

6. How do you promulgate juror's obligations and requirements to serve to the various communities?

Commissioner states they are prohibited from advertising for jury service and that they follow OCA rules and mandates, generally. Impression of the interviewer is that commissioner indicates that OCA does not require local commission to promulgate same, but no known restrictions has been ascertained.

7. When choosing a jury panel, do you attempt to balance the pool based upon gender. Based upon race? How do you do this? Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

Greene County does not try to engineer the composition of jury pools to balance or not balance based on gender or race. First names of prospective jurors on computerized prospective

juror lists enable gender identification if necessary, but no mechanism present to identify race.

8. How are changes implemented in the selection process?

OCA does this, if and when they do.

9. Are there different experiences in selecting grand jury panels?

Same process as is used for grand and for trial jurors.

10. How many different panels are selected each trial term?

One panel is selected each trial term and each panel sits for one week. The panel used to be a monthly panel. The grand jury panel sits as needed (1, 2 or 3 months), and is called periodically at the request of the District Attorney.

11. How do other political subdivisions such as town or cities select jurors?

The 14 towns in Greene County receive names of prospective jurors who are residents of their township from the Greene County commissioner, who draws them from the Rensselaer County computerized printout list. The town then selects jurors from the list of potential jurors provided by Greene County commissioner, and the town issues summonses to the selected jurors. There are 5 villages in Greene County. Each receives a list of potential jurors for their village from the Greene County commissioner and each village selects and issues summonses to the selected jurors.

12. How frequently do you update your lists of potential jurors?

Once per year, each year.

13. After a juror has served, how long is he/she disqualified from serving?

Two years.

14. How do you feel about names taken from high school graduation lists, telephone lists, utility lists?

These lists would be a welcomed source of names. High school graduates may not be available because many graduates will be attending college out of town.

15. What recommendations do you suggest to increase minority representation on you jury panels?

Educational efforts such as high school presentations would be helpful.

Greene County does not have a computerized system of its own, but relies upon the Rensselaer County computer system for its prospective juror lists. Neighboring Columbia County also has a computerized system, but that is not used for Greene County juror purposes.

REPORT OF VISIT WITH  
RENSSELAER COUNTY  
COMMISSIONER OF JURORS

This report is submitted following a meeting with James S. Minehan, Commissioner of Jurors for Rensselaer County and Onnie L. Barnes, member, Capital District Black Bar Association's (CDBBA) Committee on Criminal Justice. Commissioner Minehan has been the Commission of Jurors for Rensselaer County for well over a decade, during such time, he has and continues to make every available effort to increase minority representation of juries.

1. How much of the jury pool is generated from jury registration? B. How successful is jury registration?

A. A substantial portion of Rensselaer County's jury pool is generated from jury registration. In addition to placing an ad in the Troy Record, Commissioner Minehan also sends out 3,000 questionnaires per month. He also meets with the local NAACP chapter in an attempt to encourage more minorities to participate in the jury process.

B. The jury registration is very successful. Commissioner Minehan's office usually receives a tremendous response. In the past, Commissioner Minehan has targeted low income housing by obtaining a housing print out from Robert Hayes, Director of Troy Housing Authority.

2. Do you possess census or demographic racial breakdowns for your county?

Commissioner Minehan does not possess a current demographic racial breakdown of Rensselaer County. However, about two (2) years ago a census was conducted indicating that minorities composed 4% of Rensselaer County, 6% in the city of Troy out of a total population of 182,000.



3. What has been your success rate in obtaining minorities for your jury panel?

The percentage of the minority population in the County is usually reflected in the pool of jurors, however, because this percentage is so small, the number of actual jurors making a panel appears much smaller.

4. Have you conducted any studies on this particular issue? Are you willing to share the with us?

Commissioner Minehan has conducted several studies in the past and is willing to share his finding with the committee.

5. What persons generally seek exemption or excuse from jury duty?

Commissioner Minehan feels that people who may have had negative experiences with law and law enforcement may possess inherent prejudices against the judicial system and therefore are more likely to seek exemption or excuse from jury duty.

There is also a trend with younger people to seek exemption from jury duty.

6. How frequently do minorities seek exemption or excuse from jury duty?

For Rensselaer County, minorities seek exemption at about the same rate as non-minorities. Commissioner Minehan indicated that because there are fewer minorities, the rate at which they seek exemption seems falsely greater than non-minorities.

7. How do you promulgate juror's obligation to serve and requirements to the various communities?

Commissioner Minehan follows his jury questionnaires with a series of certified letters indicating that a fine could be incurred for failure to respond.

8. When choosing a jury panel, do you attempt to balance the pool based upon gender? based upon race?

Rensselaer County has no mechanism in place, nor does Commissioner Minehan attempt to balance the jury pool based upon gender or race.

9. Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

No.

10. How are changes implemented to the selection process i.e., use of different lists to generate a jury pool? Is it by the commissioner of jurors or OCA?

The generation of alternate lists for jury pool comes from OCA, however, Commissioner Minehan has attempted to increase his pool of potential jurors by targeting specific areas of his county.

11. Are there different experiences in selected grand jury panels? What are they?

Yes. Grand jury pools are selected for the upcoming year in December of the previous year and potential jurors are selected from this pool every two (2) months until the pool is exhausted. There is not deferment granted for grand jurors. Potential petit jurors are selected on a weekly basis.

12. How many different jury panels are selected each trial term?

For petit juries, 52 panels are selected yearly. For grand juries, 6 panels are selected. Jurors on petit juries serve a total of one week and grand jurors serve for about two months.

13. How do other political subdivisions such as towns or cities select jurors? What role do you play in this selection process?

Rensselaer County encompasses a number of towns and cities and Commissioner Minehan's office services all of these communities. The selection of jurors for other political subdivisions is the same as Rensselaer County.

14. How frequently do you update your lists of potential jurors?

The list for potential jurors is constantly updated.

15. After a juror has served, how long are they disqualified to serve, i.e., 4 years or 2 years?

In Rensselaer County, if a potential juror is selected for a jury panel, but never actually serves on the panel, he/she is disqualified for two (2) years. If, however, the juror serves, he/she is disqualified for four (4) years.

16. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc?

Commissioner Minehan welcomes as many lists as are available.

17. What problems do you see in using these types of lists?

Commissioner Minehan foresees no problem from using different types of lists.

18. What recommendations do you suggest to increase minority representation on your jury panels?

To increase minority representation on jury panels, Commissioner Minehan recommends that other Commissioners take an active role in their counties to recruit minorities. As an example of his efforts, Commissioner Minehan indicated that he works closely with Nan

Goldsberry, Head of the Human Rights Commission of Troy to this end.

Commissioner Minehan was genuinely sensitive to the issue discussed herein and expressed heartfelt concern at seriously addressing this problem. In addition to his duties as Commissioner of Jurors, Mr. Minehan is also the Commissioner of Civil Service for Rensselaer County. In this capacity, Commissioner Minehan also actively attempts to encourage minorities to register and participate in the civil service examination process, in an effort to increase minority representation in the civil service arena. Commissioner Minehan indicates, the problem is not getting minorities in his county through the initial registration and application stages, however, the difficulties rest in getting potential jurors to follow through, to actually attend the jury orientation and commit actually serving on a jury.

Commissioner Minehan concluded this interview with a request for as much input and assistance as possible from the committee. The Commissioner's staff consists of himself and his secretary. In addition to this two-person team servicing the entire Rensselaer County, Commissioner Minehan's office also serves as a hub for and assists Green County to facilitate their jury system. It is this members' opinion that Commissioner Minehan supports the Committees' mission totally and wishes to play an active role in assisting the facilitation of that goal.

REPORT OF VISIT WITH  
SARATOGA COUNTY  
COMMISSIONER OF JURORS

1. How much of the jury pool is generated from jury registration? How successful is jury registration?

A very small number of jurors are obtained through voluntary registration.

2. Do you possess census or demographic racial breakdowns for your county?

Yes. She obtained a copy of U.S. census data for Saratoga county by race from the Capital District Regional Planning Commission. Saratoga county has approximately 3.02% of its population represented by minority groups.

3. What has been your success rate in obtaining minorities for your jury panel?

While she has no specific numbers she does not believe the county has had much success in getting minority jurors.

4. Have you conducted any studies on this particular issue?

No.

5. What persons generally seek exemption or excuse from jury duty?

She frequently excuses mothers for child care, people for health reasons and volunteer firemen.

6. How frequently do minorities seek exemption or excuse from jury duty?

She could not judge how frequently minorities request to be excused because the questionnaire does not specify race.

7. How do you promulgate juror's obligation to serve and requirements to the various communities?

She has spoken at Rotary Club and League of Women Voters meetings.

8. When choosing a jury panel, do you attempt to balance the pool based upon gender?

Based upon race?

Saratoga does not attempt to balance the jury pool by gender and race is not designated on questionnaires.

9. Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

No.

10. How are changes implemented to the selection process i.e., use of different lists to generate a jury pool? Is it by the commissioner of jurors, or OCA?

Changes are typically made in consultation with OCA; they are usually receptive to suggestions from the commissioners.

11. Are there different experiences in selecting grand jury panels? What are they?

The only difference is that people are more interested in serving on grand juries because they feel they can participate more in the process.

12. How many different jury panels are selected each trial term?

Saratoga has a term every two weeks throughout the year. She sends out 200 summonses every two weeks; 65-70 jurors are required for each term. Jurors usually serve 2 days on average.

13. How do other political subdivisions such as town or cities select jurors? What role do you play in this selection process?

For many of the towns she draws the panel and then sends the town the master list, ballots and mailing labels. The towns mail out the summonses. For other towns she sends the ward list and they do everything themselves.

14. How frequently do you update your lists for potential jurors?

The lists are continually updated; she uses a rip off part on the summons that people can use to update information.

15. After a juror has served, how long are they disqualified to serve, i.e., 4 years or 2 years?

Residents are currently disqualified for 2 years; she thinks the county will go to 4 years this year.

16. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc?

She would be willing to approach OCA about using additional lists. She thinks they would be receptive and she sees no inherent problem with using other lists.

17. What recommendations do you suggest to increase minority representation to jury panels?

She is willing to give questionnaires to community organizations and have them distribute them to increase the minority response rate.

REPORT OF VISIT WITH  
SCHENECTADY COUNTY  
COMMISSIONER OF JURORS

Information on the workings of the Office of the Schenectady County Commissioner of Jurors was collected from Commissioner Elizabeth Carroll at meetings held June 24, 1992 and August 24, 1992 at the Schenectady County Courthouse. The meetings were called by the Jury Board of the county of Schenectady consisting of Supreme Court Judge Robert E. Lynch, County Court Judge Clifford T. Harrigan and Raymond C. Zanta, Chairman of the Judiciary Committee of the Schenectady County Legislature and several local community leaders including, but not limited to Reverend Carl B. Taylor, Chairman of the Schenectady County Committee for Social Justice and Joseph Allen, President of the Schenectady NAACP. Also present were Martin Cirincione, Esq., Schenectady County Public Defender and Ralph Byrd, Esq. on behalf of the Center for Law and Justice and the Capital District Black Bar Association. Randolph Treece, Esq. was present at the August 24, 1992 meeting along with Ralph Byrd on behalf of the CDBBA. The purpose of the meeting was to explore ways to make juries in Schenectady County more representative of the county's diverse racial and ethnic population.

Discussions with Commissioner Carroll revealed the following answers to the CDBBA survey questions:

1. How much of the jury pool is generated from jury registration?

Approximately an eighth of the jury pool for Schenectady County is generated from volunteers for jury service.

2. Do you possess census or demographic racial breakdown for your community?

Demographic breakdowns of the population of Schenectady County are maintained by the



Schenectady County Planning Commission and are made available to the Commissioner of Jurors. Minorities constitute approximately six percent of the county.

3. What has been your success rate in obtaining minorities for your jury panel?

Commissioner Carroll states that her outreach efforts have increased the presence of members of minority groups in the Schenectady County jury pools.

4. Have you conducted any studies on this particular issue?

No studies have been conducted to verify the effectiveness of her efforts. Informal observations seem to indicate some success.

5. How often do minorities seek exemption from jury duty?

Commissioner Carroll states a smaller number of questionnaires mailed to zip codes known to contain large numbers of members of minority groups are completed and returned than questionnaires mailed elsewhere in the county. Among those who do complete the questionnaires, however, Commissioner Carroll states her observations reveal no indications of one group seeking exemptions more than another.

6. How do you promulgate juror's obligations and requirements to serve to the various communities?

A juror's obligations are explained on the questionnaire.

7. When choosing a jury panel, do you attempt to balance the pool based upon gender? Based upon race?

No efforts are made to balance by gender or by race, although the ability to do so is present. The questionnaire asks male or female, but there is no corresponding inquiry of race.

8. How are changes implemented in the selection process?

Commissioner Carroll believes OCA would have to approve any changes in the present jury pool system before she could adopt it.

9. Are there different experiences in selecting grand jury panels?

No. Grand juries sit for 2 months; petty juries for 2 weeks.

10. How many different panels are selected each trial term?

Usually there are twelve trial terms with two panels for each term.

11. How do other political subdivisions such as towns or other cities select juries?

Commissioner Carroll supplies the names of jurors for the localities.

12. How frequently do you update your lists of potential jurors?

Commissioner Carroll updates her lists of potential jurors monthly. She monitors what is available daily.

13. After a juror has served, how long is he/she disqualified from serving?

After a juror has served in Schenectady County the juror is exempt for 2 years.

14. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc.?

Commissioner Carroll believes utility lists would not be a good source of names because they do not always reflect the true identity of the resident for whom the utility is paid. She thinks the use of telephone lists would be a good idea.

15. What recommendations do you suggest to increase minority representation on your jury panels?

Commissioner Carroll strongly supports efforts to encourage volunteerism as well as including telephone lists and lists of high school graduates.

REPORT OF VISIT WITH  
ULSTER COUNTY  
COMMISSIONER OF JURORS

Commissioner Robert W. Jordan has served in this capacity for more than sixteen (16) years. Furthermore, he serves as a town justice. His knowledge of his constituency, his county and its history, the judiciary law relative to jury selection, the system and its systemic problems was astounding. An assertive personality who does not wait, but charges ahead into the fray, was well-prepared for this discussion. His sincerity was equal to his enthusiasm because, it seems, Mr. Jordan has been grappling with the issue of how to get more potential jurors, particularly and specifically, more minorities, to serve for a decade or more. This has been a genuine, but perplexing interest of his for many years. His interest and enormous efforts to address this matter and to provide a solution to the dearth of minorities sitting on juries in his county has been chronicled in many news articles.

The discussion furnished the following information:

1. How much of the jury pool is generated from jury registration? How successful is jury registration?

The Commissioner was not able to identify a percentage of the jury pool which was due to jury registration. This Commissioner works assiduously to get people to register for jury duty. He has caused articles to be printed in the local newspapers requesting jury registration; he speaks at every conceivable civic, social, charitable organization and church about jury registration and solicits their participation in getting potential jurors registered. He obtains lists of newly naturalized citizens every six months and attempts to persuade these new American citizens to register. He believes this is one of his greater missions and pursues it zealously;

however, the results do not always measure up to his efforts. Nonetheless, the lack of respective success does not deter or discourage him.

2. Do you possess census or demographic racial breakdowns for your county?

blacks constitute 4.1% and other minorities represent 2.9% of the county's population.

3. What has been your success rate in obtaining minorities for your jury panel?

The commissioner agrees that the success rate should be better, but the number of blacks and other minorities serving on juries is representative of the demographics. Empirically, the Commissioner has confirmed the racial parity and noted that most blacks who serve are middle-class because Ulster County has several large employers such as IBM, Central Hudson Gas & Electric Corporation and Central Hudson Railroad who pay their employees their salaries while they serve as jurors.

4. Have you conducted any studies on this particular issue?

No official studies have been conducted. Commissioner Jordan pays keen attention to these issues and lodges his empiricism firmly within his head. However, some time ago, he gave 1000 questionnaires to the Ulster County Rainbow Coalition. Only 26 were returned and of these, 15 had previously completed questionnaires, one had a significant medical handicap and one had a felony conviction precluding him from serving. Further, the Commissioner has requested statistical data from the larger employers within his county with the intent of locating minorities and including them in the county's jury pool. These employers faithfully complied with the request and provided helpful data to the Commissioner.

5. & 6. How often do minorities seek exemption from jury duty?

Empirically, minorities seek exemptions at the same rate and for the same reasons as others. Excuses are across the board. The most frequent excuse is that they cannot afford to serve the entire term, generally because of economic reasons.

7. How do you promulgate jurors' obligations and requirements to serve to the various communities?

The Commissioner has employed various devices. He has had articles printed in the newspaper, attended civic organization and church functions to inform the public, as well as using radio announcements.

8. & 9. When choosing a jury panel, do you attempt to balance the pool based upon gender? Based upon race? How do you do this?

This Commissioner does not balance jury panels by gender or race and had not given this concept much thought. However, in his opinion, he would prefer not to because then the selection process would not be random as required by the law, or, fraught with the claim that he would be doing what the system was designed to avoid, i.e. exclusive selection.

10. Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?

There is no such mechanism, although gender, generally speaking, can be determined by first names.

11. How are changes implemented in the selection process, i.e., use of different lists to generate a jury pool?

Different lists other than those authorized by OCA are not used. However, new jury registrant's information received by the Commissioner is forwarded to OCA to be included in the master list.

12. Are there different experiences in selecting grand jury panels? What are they?

In terms of minority representation on the grand jury, there is racial parity within the demographics. 800 to 900 names are drawn from the OCA's list. These questionnaires and social security #'s of the prospective juror are sent to the Division for Criminal Justice Service (DCJS) to check for criminal convictions. Generally after the screening, 700 to 750 people are deemed qualified to serve on the grand jury.

13. How many different panels are selected each trial term?

There are three one-month terms and five two-month terms. Four of the terms are County Court terms and four are Supreme Court terms.

14. How do other political subdivisions such as towns or cities select jurors? What role do you play in this selection process?

The Commissioner provides the town justices with jury panels for their respective towns for an entire year. City court juries are selected from the entire county panel, expanding the pool beyond the city limits. This panel for the city, which has been used for years, has never been challenged.

15. How frequently do you update your lists of potential jurors?

The Commission is constantly and continuously updating the OCA list with new registrants.

16. After a juror has served, how long is he/she disqualified from serving, i.e., four years?

Four years.

17. & 18. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc.? What problems do you see in using these types of lists?

The Commissioner had different responses to the various proposed lists. He thought utility and telephone lists would be appropriate. He did not feel the same way about high school and college lists. He believes students in this age group to be too transitory to obtain sufficient and current data. Moreover, he thinks that these young people's notions of civic responsibility are not quite intact and, in all likelihood, they would avoid at all cost serving as jurors. Previously, the Commissioner sought lists from area colleges, focusing especially on minority students. Employing these lists did not generate a significant number of registrants, either minority or non-minority. Understandably, college students cannot afford to lose a week of classes, thus another reason for such a low response rate.

19. What recommendations do you suggest to increase minority representation on your jury panels?

The Commissioner was not reluctant to share his recommendations with us. Notwithstanding more minority registration, he had two significant suggestions which he has been actively lobbying for over the past several years. Presently, employers are obligated to pay their



employees only \$15 a day for the first three days of a juror's jury term. Obviously, the subsequent 27 days or up to 57 day's as grand jurors, and 2+ day's as a trial juror are covered by the \$15.00 per day jury fee. The Commissioner believes that if employers continue to pay their employees' full wages while they serve and take the costs as a deduction, more persons will serve. He lobbied Assemblyman Weprin and others to sponsor such legislation. A bill was drafted but never reported out of committee, stymied by a greater business lobbying effort. Second, he proposes that the State pay the same rate as the federal government pays it's jurors. Apparently, federal jurors are paid \$40 a day and 26¢ a mile for travel. The Commissioner believes money can correct some of the ills, particularly in terms of greater minority participation.

The Commissioner attempted to get the County's Department of Social Services' lists to be incorporated into the present jury list. He sought legal opinions from the County Attorney, OCA and the New York State Department of Social Services. Unanimously, these agencies stated that the Social Service lists are confidential pursuant to State and federal law. The Commissioner argues that the OCA jury lists are confidential, too, so taking one confidential list and merging it into another confidential list does not breach privacy concerns. Ostensibly, this argument has not persuaded the agencies to reconsider their position.

The Commissioner shared his budget with us. 27% of his costs are administrative and the balance covers jury fees. He serves full time and he has two part-time employees. Another full-time employee would be of great assistance to him.

The Commissioner knows his jurors. At the beginning of each term, he--not the judges-- meets and instructs the jurors of their duties and answers their questions. He speaks with them after they serve to get their impressions of how the system is working, their experiences, and how things can improve. I submit that he is doing a fine job.

## Appendix 8

### New York State Questionnaire

OFFICE USE

Page 1

STATE OF NEW YORK COUNTY OF ULSTER

(Please make corrections)

Name \_\_\_\_\_

Address \_\_\_\_\_ Apt. # \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_ CALL (914) 339-5680 FOR QUESTIONS

PLEASE ANSWER ALL QUESTIONS ON BOTH SIDES OF THIS FORM, SIGN, AND RETURN IN THE ENCLOSED ENVELOPE

- 1. I reside in the Township of \_\_\_\_\_, Village of \_\_\_\_\_, City of \_\_\_\_\_
- 2. Date of Birth \_\_\_\_\_ 3. Sex \_\_\_\_\_ 4. Home Telephone \_\_\_\_\_ 5. Bus. Telephone \_\_\_\_\_
- 6. Birthplace \_\_\_\_\_ 7. Education \_\_\_\_\_ 8. Occupation \_\_\_\_\_
- 9. Employer \_\_\_\_\_ 10. Spouse's Name \_\_\_\_\_

- YES  NO  11. Are you a citizen of the U.S.?
- YES  NO  12. Are you a resident of the above named county? If not, what county? \_\_\_\_\_
- YES  NO  13. Are you 18 years or older?
- YES  NO  14. Can you read, write, speak, and understand English?
- YES  NO  15. Do you have any mental or physical condition, or a combination of these, which prevents you from performing in a reasonable manner the duties of a juror? If "YES" please attach a letter from your doctor.
- YES  NO  16. Have you ever been convicted of a felony? Give details in Question 28.
- YES  NO  17. Have you served on jury duty within the past 4 years in any state, federal, or local court within New York State? Date \_\_\_\_\_ Location \_\_\_\_\_
- YES  NO  18. Are you claiming any exemptions as listed in Section A - Exemptions on Page 3? If "YES" state exemption \_\_\_\_\_ Provide details on back.
- YES  NO  19. Is your position listed in Section D - Disqualifications on Page 4? If "YES" state disqualification \_\_\_\_\_ Provide details on back.

↓ (TEAR OFF ALONG PERFORATION) ↓

Fold here ↑ in center.

(OVER)

20. Marital Status: Single  Married  Widowed  Give any other last names you have used \_\_\_\_\_
21. Did you register for the last election  YES  NO Where did you live then? \_\_\_\_\_
22. Number of Children \_\_\_\_\_ Ages of Children under 16 \_\_\_\_\_, in this County? \_\_\_\_\_
23. How long living at present address? \_\_\_\_\_, in New York State? \_\_\_\_\_ When/where naturalized? \_\_\_\_\_
24. If not American born, how did you become citizen? \_\_\_\_\_ Business address \_\_\_\_\_
25. Employed at Present  YES  NO How Long? \_\_\_\_\_ Spouse's address \_\_\_\_\_
26. Spouse's address \_\_\_\_\_ Spouse's occupation \_\_\_\_\_ Spouse's phone \_\_\_\_\_
27. Have you ever been denied listing as a qualified juror or been stricken from any list of jurors?  YES  NO  
If yes, please explain \_\_\_\_\_
28. Have you ever been convicted of a crime?  YES  NO If yes, where \_\_\_\_\_  
When? \_\_\_\_\_ What crime? \_\_\_\_\_
29. Has any judgment been entered against you in a civil court on allegations of fraud or misconduct?  YES  NO  
If yes, give details \_\_\_\_\_
30. Have you ever served as a juror or grand juror?  YES  NO Where and when? \_\_\_\_\_
31. Have you ever filled out a juror questionnaire in this County?  YES  NO Date \_\_\_\_\_

Reason for Exemption or Disqualification \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE MAKING OF A FALSE STATEMENT IN THIS CERTIFICATE IS A CRIME PUNISHABLE BY FINE OR IMPRISONMENT (§ 210.00 Penal Law)

X \_\_\_\_\_ DATE  
SIGNATURE

**Appendix 9**

**Federal Questionnaire**

OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

GEORGE A. RAY  
CLERK

January 22, 1993

100 S. CLINTON STREET  
P.O. BOX 7367  
SYRACUSE, NEW YORK 13261-7367  
(315) 423-5549

Albert William Brooks  
6 Fairlawn Avenue  
Albany, New York 12203

Dear Mr. Brooks:

Pursuant to your letter of January 15, 1993 I have enclosed a copy of the Juror Qualification Questionnaire, promulgated by the Administrative Office of the United States Courts. This questionnaire, in various forms, is utilized by federal courts nationwide.

The Juror Qualification Questionnaire is sent to randomly selected registered voters within the 32 counties comprising the Northern District of New York. Also enclosed is a copy of the Amended Plan for the United States District Court for the Northern District of New York for the Random Selection of Grand and Petit Jurors, revised February 6, 1992.

Regarding your request for a report which provides the ethnic composition of the current jury wheel, I refer you to the third enclosure (provided by the Administrative Office of the United States Courts) which indicates the racial composition of the population in our district. No other report is currently available; however, if you wish to inquire further please contact me and I will refer you to the proper department at the Administrative Office.

Please let me know if I may be of further assistance.

Sincerely,

GEORGE A. RAY, CLERK



Layne Yranian  
Jury Administrator

enclosures

**13 EXEMPTIONS**

ARE YOU EMPLOYED ON A FULL TIME BASIS AS A PUBLIC OFFICIAL OF THE UNITED STATES, STATE, OR LOCAL GOVERNMENT WHO IS ELECTED TO PUBLIC OFFICE OR DIRECTLY APPOINTED BY ONE ELECTED TO OFFICE? YES NO

MEMBER OF ANY GOVERNMENTAL POLICE OR REGULAR FIRE DEPT. (NOT INCLUDING VOLUNTEER OR M.N.G.O.V. ENVIRONMENTAL DEPARTMENTS)

MEMBER IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES

**14 GROUNDS FOR REQUESTING EXCUSE** 14

PART 2 OF THE ATTACHED LETTER OF INSTRUCTIONS DESCRIBES CERTAIN CATEGORIES OF PERSONS WHO MAY BE EXCUSED BY THE COURT FROM SERVICE AS A JUROR IF YOU ARE A PERSON IN ONE OF THESE CATEGORIES AND YOU WISH TO BE EXCUSED WRITE THE NUMBER OF YOUR CATEGORY HERE

OR IF YOU WISH TO SERVE DO NOT SHOW ANYTHING HERE PERSONS SHOWING A CATEGORY OF EXCUSE WHICH REQUIRES MORE INFORMATION MUST GIVE IT ON THE OTHER SIDE UNDER "REMARKS".

IF ANOTHER PERSON FILLED OUT THIS FORM PLEASE GIVE YOUR NAME AND ADDRESS ON THE OTHER SIDE OF FORM AND EXPLAIN THE REASON YOU GAVE ASSISTANCE

OFFICIAL USE ONLY

**11 SHOW THE EXTENT OF YOUR EDUCATION BY GIVING THE NUMBER OF YEARS COMPLETED ABOVE GRADE SCHOOL**

In High School  Above High School  Trade/Vocational School

**10. RACE**

TO ASSIST IN ENSURING THAT ALL PEOPLE ARE REPRESENTED ON JURIES, PLEASE INDICATE WHICH OF THE FOLLOWING APPLIES TO YOU, NOTHING DISCLOSED WILL AFFECT YOUR SELECTION FOR JURY DUTY (SEE NOTE 10 ON REVERSE).

BLACK  AMERICAN INDIAN  WHITE  ASIAN  OTHER (SPECIFY) \_\_\_\_\_

Are you Hispanic?  Yes  No

**12 OCCUPATION (SEE NOTE ON REVERSE SIDE)**

ARE YOU NOW EMPLOYED?  NO  YES

YOUR USUAL OCCUPATION, TRADE OR BUSINESS

YOUR EMPLOYER'S NAME

BUSINESS OR EMPLOYER'S ADDRESS

**15. I declare under penalty of perjury that all answers are true and correct to the best of my knowledge and belief.**

SIGN HERE MR.  MRS.  MISS

DATE

IF YOUR NAME OR PERMANENT ADDRESS IS NOT CORRECT, PLEASE CHECK  AND SHOW CORRECTIONS ON REVERSE

COUNTY YOU NOW LIVE IN

**16. FROM TO**

RETURN THIS FORM IN THE ENCLOSED ENVELOPE TO: UNITED STATES DISTRICT COURT

JURY ADMINISTRATION  
P.O. BOX 7367  
SYRACUSE, NY 13261

**10. MARK A "YES" OR "NO" BOX FOR EACH QUESTION**

1. ARE YOU A CITIZEN OF THE UNITED STATES? YES NO

2. ARE YOU 18 YEARS OF AGE OR OLDER? GIVE YOUR AGE [.....] YES NO

3. HAVE YOU LIVED FOR THE PAST FULL YEAR IN THIS STATE, IN THE SAME COUNTY? YES NO

4. DO YOU READ, WRITE, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE? YES NO

5. ARE ANY CHARGES NOW PENDING AGAINST YOU FOR A VIOLATION OF STATE OR FEDERAL LAW PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? YES NO

6. HAVE YOU EVER BEEN CONVICTED, EITHER BY YOUR GUILTY OR NOLO CONTENDERE PLEA OR BY A COURT OR JURY TRIAL, OF A STATE OR FEDERAL CRIME FOR WHICH PUNISHMENT COULD HAVE BEEN MORE THAN ONE YEAR IN PRISON? YES NO

7. IF ANSWER TO QUESTION #6 IS "YES", WERE YOUR CIVIL RIGHTS RESTORED? (IF "YES", EXPLAIN ON REVERSE SIDE) YES NO

8. DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITY THAT WOULD INTERFERE WITH OR PREVENT YOU FROM SERVING AS A JUROR? (IF "YES", EXPLAIN UNDER REVERSE SIDE) YES NO

9. PHONE HOME WORK (INCL. EXTENSION) AREA CODE NUMBER AREA CODE NUMBER & EXT.

**JUROR QUALIFICATION QUESTIONNAIRE** PRINT OR TYPE YOUR ANSWERS

**PLEASE READ LETTER AND OTHER SIDE**



**NOTES REGARDING THE QUALIFICATION FORM**

Question 3 - RESIDENCE. If you answered "NO", that you have not lived in the same state or same county for the past year, name the other states and counties where you lived, and give dates.

Question 5 and 6 - CRIMINAL RECORD. If your answer to either question 5 or 6 is "YES", please show under "Remarks": a) date of the offense, b) date of the conviction (or date of pending charge), c) the sentence imposed (if a conviction), and d) the name of the court. One is disqualified from jury service only for criminal offenses punishable by imprisonment for more than one year, but it is the maximum penalty, and not the actual sentence, which controls.

Question 8 - YOUR HEALTH. If you claim a mental or physical disability please explain and give evidence of it either under "Remarks" section or by attaching a separate letter.

NOTE - Do not ask the court to call your doctor. Any doctor's statement you obtain regarding your physical condition must be sent to the court by you rather than by the doctor.

Question 10 - RACE. Federal law requires you as a prospective juror to indicate your race. This answer is required solely to avoid discrimination in juror selection and has absolutely no bearing on qualifications for jury service. By answering this question you help the federal court check and observe the juror selection process so that discrimination cannot occur. In this way the federal court can fulfill the policy of the United States which is to provide jurors who are randomly selected from a fair cross section of the community.

Question 12 - OCCUPATION. Federal law requires that you answer the questions about your occupation so that the Federal Courts may determine promptly whether you fall within an excuse or exemption category. (See Questions 13 & 14).

Question 14 - GROUNDS FOR EXCUSE. If you have indicated that you wish to be excused because you belong to one of the categories of persons that may be excused, please make sure you give, under "Remarks", such additional information as may be requested in the Instructions Letter where it describes the excuse category. For example, if you claim an excuse because you are "Over 70 Years of Age" you must show under "Remarks" the Month, Day and Year of your birth.

Box Number 15 - YOUR SIGNATURE. Be sure you have signed the form. If another person had to fill out this questionnaire for you, that person must indicate his or her name, address and reason why under "Remarks".

before mailing — fold along these vertical red lines

FOR OFFICIAL USE ONLY			
1 QUALIFIED	4 EXEMPT		
2 DISQUALIFIED	5 EXCLUDED		
3 EXCUSED	6 OTHER		

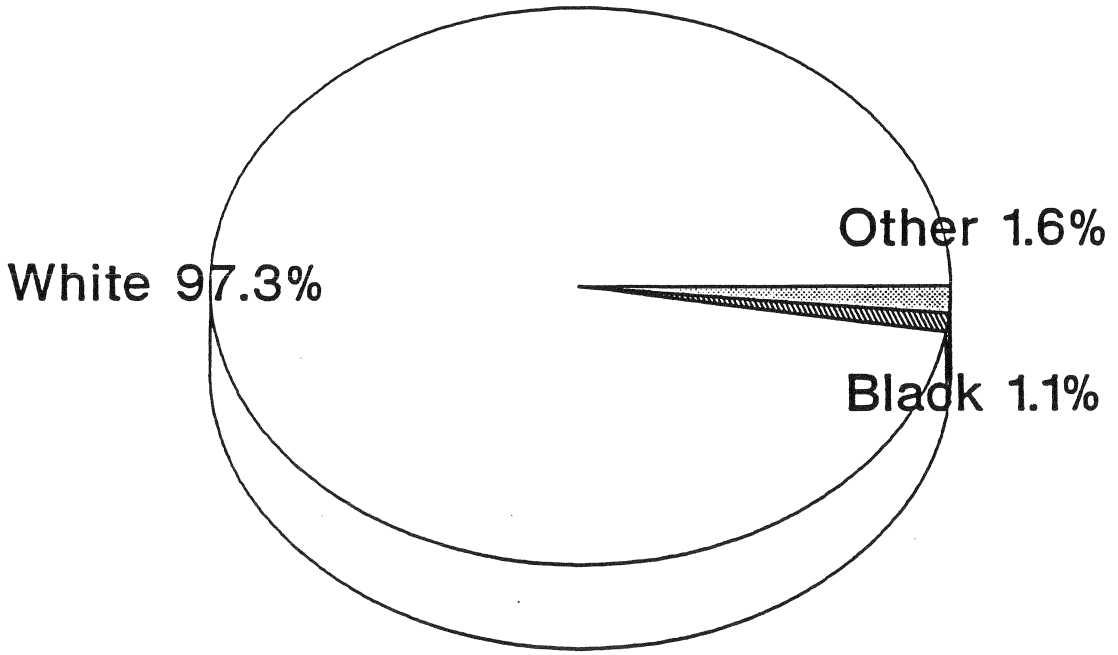
PLEASE READ LETTER OF INSTRUCTION AT BACK OF ENVELOPE

**REMARKS**

USE SPACE BELOW TO COMPLETE ANY ANSWERS ON QUESTIONNAIRE WHICH REQUIRE MORE INFORMATION OR MORE SPACE. SHOW THE NUMBER(S) OF QUESTIONS TO WHICH YOU ARE FURTHER RESPONDING

(fold lines)

# Northern District of New York Racial Composition of Population



Other includes American Indian, Asian and Hispanic  
1989 Census Bureau Data--County Data Book

JURY PLAN

APPENDIX A  
REGISTERED VOTERS AS OF JANUARY, 1990  
NORTHERN DISTRICT OF NEW YORK

<u>DIVISIONS:</u>	<u>REGISTERED VOTERS</u>
ALBANY DIVISION	
ALBANY	164,370.
CLINTON	35,094.
COLUMBIA	30,921.
ESSEX	20,667.
GREENE	22,424.
RENSSELAER	74,400.
SARATOGA	91,097.
SCHENECTADY	78,745.
SCHOHARIE	14,527.
ULSTER	80,680.
WARREN	30,854.
WASHINGTON	26,335.
TOTAL	<u>670,118.</u>
AUBURN DIVISION	
CAYUGA	37,301.
CORTLAND	21,582.
TOMPKINS	37,245.
TOTAL	<u>96,128.</u>
BINGHAMTON DIVISION	
BROOME	100,207.
CHENANGO	23,331.
DELAWARE	22,915.
OTSEGO	27,884.
TIOGA	24,415.
TOTAL	<u>198,752.</u>
SYRACUSE DIVISION	
MADISON	29,841.
ONONDAGA	234,073.
OSWEGO	56,302.
TOTAL	<u>320,216.</u>

JURY PLAN

APPENDIX A CONTINUED

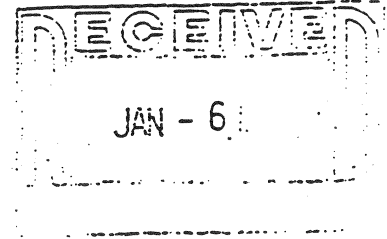
<u>DIVISIONS:</u>	<u>REGISTERED VOTERS</u>
UTICA DIVISION	
FULTON	26,647.
HAMILTON	4,828.
HERKIMER	32,882.
MONTGOMERY	25,861.
ONEIDA	120,459.
<b>TOTAL</b>	<b><u>210,677.</u></b>
WATERTOWN - MALONE DIVISION	
FRANKLIN	21,467.
JEFFERSON	39,315.
LEWIS	11,764.
ST. LAWRENCE	46,405.
<b>TOTAL</b>	<b><u>118,951.</u></b>

**Appendix 10**

Office of Court Administration,  
Matthew Crosson' Affidavit  
Dated July 16, 1992  
Submitted in People v. Addison,  
N.Y.L.J., August 20, 1992 at 26  
col 2 (Suffolk County Court 1992)



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
(OFFICE OF COURT ADMINISTRATION)  
270 BROADWAY  
NEW YORK, NEW YORK 10007  
(212) 417-2000



THEW T. CROSSON  
Administrator of the Courts

MICHAEL COLODNER  
Counsel

January 4, 1992.

Kennard R. Strutin, Esq.  
New York State Defenders Association  
Public Defense Backup Center  
11 North Pearl Street, 18th Floor  
Albany, N.Y. 12207

Dear Mr. Strutin:

Pursuant to your request of December 15, 1992, attached please find a copy of the affidavit of Chief Administrator Crosson that was filed in the cases you referenced.

Very truly yours,

A handwritten signature in cursive script that reads "John Eiseman".

John Eiseman  
Deputy Counsel

JE:hm

Attach.

STATE OF NEW YORK  
COUNTY COURT: COUNTY OF SUFFOLK  
-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Ind. No. 1012-91  
Court Case No. 1567-91

- against -

VERTIS ADDISON,

AFFIDAVIT IN OPPOSITION  
TO MOTION

Defendant.

-----X

STATE OF NEW YORK )  
                              ) ss.:  
COUNTY OF NEW YORK )

MATTHEW T. CROSSON, being duly sworn, deposes and says:

1. I am the Chief Administrator of the Courts of the Unified Court System, and am responsible, on behalf of the Chief Judge of the State of New York, for supervision of the administration and operation of the Unified Court System. I make this affidavit in opposition to defendant's motion for an order declaring unconstitutional the jury selection procedure "as applied in practice" in Suffolk County. The facts set forth in this affidavit are based on my own personal knowledge, the books and records of the Office of Court Administration, and conversations with officers and employees of the Unified Court System.

2. The procedure for identifying and summoning prospective jurors in Suffolk County is generally the same as it is for the other counties of the State. Pursuant to section 506 of the Judiciary Law and section 128.3 of the Uniform Rules for the Jury System, each county has a merged, or master, list of prospective jurors. The merged list is derived primarily from three sources: a list of the registered voters in the county; a list of persons in the county to whom state income tax forms have been mailed; and a list of licensed motor vehicle operators in the county. The source lists are updated on a regular basis, usually annually. The merged list may also include the names of people who have volunteered for jury service. The merged list for each county is stored within the Office of Court Administration's central computer. The computer eliminates the duplication that arises when a person's name appears on more than one of the source lists.

3. The central staff of the Office of Court Administration mails a juror qualification questionnaire to persons whose names are on the merged list. The completed questionnaires are then returned to the Commissioner of Jurors, whose staff screens the questionnaires to determine if there are any reasons for disqualifying or exempting the persons from jury service. The grounds for disqualification and exemption are set forth in sections 511 and 512 of the Judiciary Law.



4. Those persons who are not disqualified or exempted are included in the county's qualified list. The Commissioner of Jurors conducts a random computer selection of names from the qualified list when summoning prospective jurors for service.

5. We believe that our system for identifying prospective jurors, through the use of the three source lists, is fair, efficient and effective. Indeed, our system may be more extensive than that used by any other state in the country. According to research compiled by the National Center for State Courts, many states use only a list of registered voters, and most others use only a list of registered voters and a list of licensed motor vehicle operators (see "Source Lists Used for Jury Selection," prepared by National Center for State Courts, August 6, 1991, attached as Exhibit A). Upon information and belief, the federal courts also select prospective jurors from state voter registration and licensed motor vehicle operators. Thus, by supplementing the voter registration and driver license lists with a list of persons to whom state income tax forms have been mailed and with volunteers, our system in New York for identifying prospective jurors is among the most far-reaching efforts in the country.

6. Contrary to defendant's suggestion (see Affirmation of William A. DeVore, dated June 5, 1992, ¶¶ 28, 29), adding lists of persons receiving public assistance and utility

subscribers to the merged list would not be a practical means of increasing the number of blacks on the merged list. Lists of persons receiving public assistance are confidential, and both federal and state law would prohibit their disclosure for this purpose. See 42 U.S.C. §602(a)(9); Soc. Serv. Law §§2(18), 136. As for lists of utility subscribers, experience has shown that such lists frequently provide only the name of the male head of the household, and thereby would create a male bias if used as a source of identifying prospective jurors. In addition, utility lists often provide only the name of the owner of a building, who may live elsewhere, and they are extremely duplicative of the three sources that we do use.

7. Finally, defendant complains of the lack of effective enforcement procedures in Suffolk County regarding persons who fail to respond to a summons to jury duty and he maintains that this particularly harms black prospective jurors. That is because, defendant contends, blacks change residences more frequently than non-blacks, and thus a higher proportion of blacks will never actually receive a jury summons when it is mailed to them (see DeVore Affidavit, ¶26). This contention, however, overlooks the fact that the three source lists that we use are updated regularly. Thus, if a prospective juror moves to a new address, the new address will in most situations be reflected in the updated source lists, so that subsequent

State	Method	only	drivers only	voters and drivers	other lists	state support
ALABAMA	permissive	5 cty.				
ALASKA	permanent fund		62 cty			yes
ARIZONA	vtd					yes
ARKANSAS	voters					no
CALIFORNIA	vtd					no
COLORADO	vtd					no
CONNECTICUT	vtd					no
DIST OF COLUMBIA	vtd					yes
DELAWARE	vtd					yes
FLORIDA	drivers (eff 8/27)					yes
GEORGIA	voters + others	now voters only				?
HAWAII	vtd				name #	no
IDAHO	vtd					no
ILLINOIS	vtd (eff 7/1/80)					yes
INDIANA	voters					no
IOWA	vtd + others					no
KANSAS	permissive	45 cty		most cty		no
KENTUCKY	vtd (eff 7/90)			58 cty		no
LOUISIANA	voters				property ?	no
MAINE	drivers plus id cards + volunteer added to source list					no
MARYLAND	voters					yes
MASS.	state census				some use both	no
MICHIGAN	drivers					yes
MINNESOTA	vtd (eff 1/1/81)					no
MISSISSIPPI	voters					yes
MISSOURI	public lists or lists					no
MONTANA	voters			most us both		yes
NEBRASKA	vtd (eff 2/22/85)					no
NEVADA	permissive					no
NEW HAMPSHIRE	voters	others	Clark & Washoe			no
NEW JERSEY	vtd					no
NEW MEXICO	vtd (eff 2/8/81)					no
NEW YORK	voters + others					no
NORTH CAROLINA	vtd		voters + drivers + tax list			yes
NORTH DAKOTA	vtd + others					yes
OHIO	voters					no
OKLAHOMA	drivers (eff 1/1/88)			most of state		no
OREGON	vtd			Mont. Cty		no
PENNSYLVANIA	permissive	22 cty	5 cty	11 cty	23 cty	yes
RHODE ISLAND	voter					?
SOUTH CAROLINA	voter					no (planned)
SOUTH DAKOTA	vtd (eff 1/82)					no
TENNESSEE	voters	now				no
Texas	vtd (eff 1/82)					yes
Utah	voters opt, drivers mandatory					no
VERMONT	voters			most		no
VIRGINIA	vtd permissive					no
WASHINGTON	vtd (eff 8/37)			45 cty use both		no
WEST VIRGINIA	vtd	now voters only				yes
WISCONSIN	permissive					yes
WYOMING	voter	most		a few		yes
						?
						no

**Appendix 11**

Rensselaer County Jury Commission  
Newspaper Coupon

**Appendix 11**

**Rensselaer County Jury Commission  
Newspaper Coupon**

# County seeks a few good jurors

BY JOE PICCHI  
Staff writer

TROY — Wanted. Additional Rensselaer County jurors for four big murder trials.

County Judge M. Andrew Dwyer Jr. and Peter Minihan, commissioner of jurors, have resurrected a coupon system first used in the middle 1980s to obtain a larger jury pool over the next several months.

"There's no emergency," said Minihan. "We are just looking for a bigger jury pool."

Dwyer said hundreds of requests to be on a panel were received the last time the coupon was used in 1984. Both Dwyer and Minihan are hopeful they will obtain similar results this time around.

The coupon was initially designed by Minihan's office, but Dwyer added some wording, including the requirement that potential jurors not have any felony convictions.

Dwyer said he believed a larger pool of candidates will give a more demographic balance to juries. "How would a 20-year-old defendant feel about a jury that all looks like his grandparents," said Dwyer.

"This way we will have more ethnic and racial balance too," added Dwyer.

Dwyer said county residents filling out the coupon will be sent an application to determine if they are

## I WANT TO BE A JUROR

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

*I would like to be placed on the jury eligibility list. I am at least 18 years old, a resident of Rensselaer County and have no felony convictions.*

Send to: Commissioner of Jurors, Rensselaer County  
Courthouse, Troy, NY 12180

eligible to be jurors.

"A citizen has a duty to serve on a jury just as he or she has a duty to vote," said Dwyer. More than 200 persons were selected for a jury panel last spring, said Dwyer, and only about 60 showed up.

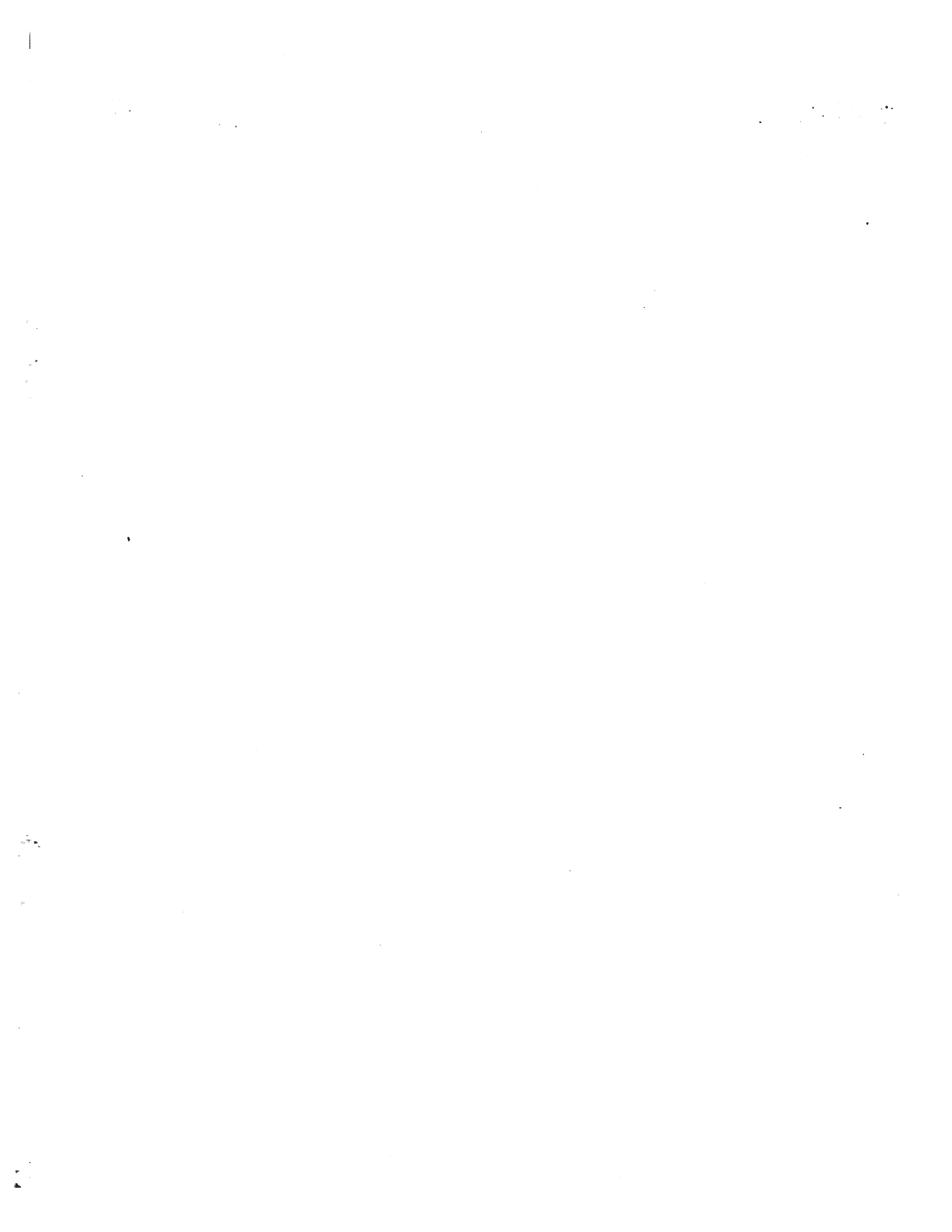
The judge pointed out that the highly publicized John Ramahlo murder trial begins soon and that it may be difficult finding jurors who haven't read about the case in the newspapers or been exposed to it on television and haven't formed an opinion. The trial is tentatively scheduled for Feb. 1.

A month later, the third trial for

Eugene Mullins, convicted in the 1982 slaying of a young woman, is also scheduled for county court. His previous two murder convictions were overturned.

The court calendar also includes another retrial for David Maynard, accused in a 1984 murder of Benjamin "Buddy" Friedman. Jury selection is to begin Jan. 19 in the trial of 23-year-old James N. Myers, charged with murder in the 1991 shooting of Carlos DeJesus of Albany.

"We are just trying to stave off an emergency situation," said Minihan.



**HOW FAR HAVE WE COME SINCE THE MAGNA CARTA: JURY OF ONE'S PEERS,  
JURY PANELS, MINORITIES, AND THE THIRD AND FOURTH  
JUDICIAL DISTRICTS**

**This Report is dedicated to Thurgood Marshall who was our hero, savior, mentor,  
and continues to be our Guiding Light.**

**The members of the CDBBA who participated in the drafting of this report:**

**Randolph F. Treece**

**Ralph Byrd**

**Robert Balachandran**

**Onnie L. Barnes**

**Sharon Bowles**

**Albert Brooks**

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## PRELIMINARY STATEMENT

1992 will no doubt take its place in the annals of history as a year of profound and far-reaching change in world events. One need only consider the end of the cold war and the birth of new republics, historic treaties reducing nuclear and other arms and after twelve years of Republican control, the change in political parties in the White House. Yet, arguably, one of the defining events not just of this year, but of any year, symbolizes injustice. That event, of course, is the verdict in the Rodney King police brutality trial and the devastating aftermath of the Los Angeles riots. For the overwhelming majority of minorities, particularly African-Americans, and indeed for many non-minority Americans, the verdict presented in dramatic, almost surreal fashion, the case that there are two systems of justice: one for blacks and minorities and one for whites.

The belief that minorities do not "get a fair shake" in the courts of America, particularly in the criminal courts, is neither new nor novel. Many claim, based upon an undeniable historical precedent, that there still exists a conspiracy of deliberate exclusion.<sup>1</sup> Studies conducted by organizations with impeccable credentials have found a general perception of bias in the court system and a high level of mistrust among the black and Hispanic persons surveyed. The New York State Judicial Commission on Minorities (the "Commission"), established in 1988 by then Chief Judge Sol Wachtler, found that the perception of bias coincides with actual bias in the administration of justice in the New York State courts. Locally, groups such as The Fund for the Modern Courts, a watchdog organization that uses volunteer court monitors, the Committee for Social Justice, community leaders, members of the bench and bar, editorials and articles have called for measures to address the imbalance in the representation of minorities on juries.<sup>2</sup> The

Vada Hogg's case in Schenectady, also highlighted the problem of credibility in the face of a public perception that minorities are excluded from participation in evaluating the guilt or innocence of members of their communities.

While there are many facets to the problem of the dual-nature of justice in America, this report will examine one aspect: the underrepresentation of minorities on juries. That minorities are in fact underrepresented on juries has been well established by all who have taken even a cursory examination of the courts in the state.<sup>3</sup> The Commission has added its considerable resources to research this issue and has reached the same conclusion; this report will not attempt to duplicate the research and statistical documentation contained elsewhere. Rather, this report seeks to place the issue of fair representation of minorities on juries in a historical context and examine various means to reduce the present inequities.

Before proceeding, one may well ask why the composition of juries is so pivotal and worthy of further research and study. Ordinary citizens, those who voluntarily or involuntarily participate in the court system, as well as legal scholars and interested community and civil rights groups understand that what is at stake is the legitimacy of the jury system. The exclusion, intentional or unintentional, of members of the community from jury service tends to undermine the credibility of the legal system. Participation by all segments of our society is critical to ensure fair treatment to all in the legal system, particularly in the criminal justice system.

Specifically, this report will first examine the historical and legal underpinning of trial by jury. The devolution of the historic and basic Anglo-American ideal of a right to a trial by a "jury of one's peers" to the current rule of a jury from "a fair cross-section of the community" will be explored. This report will also describe and examine the current sources for potential

jurors and how jurors are qualified and exempted from service, to understand the make-up of the jury pool. A seven-county survey of commissioner of jurors was undertaken for comparison purposes. While state law sets certain procedures, individual counties have some latitude in how they fulfill their responsibilities. As the reader will understand, the primary responsibility of the county commissioner of jurors is to meet the constitutional and statutory obligation of providing all litigants, grand and petit juries, selected at random from a "fair cross-section of the community."

Once a pool of potential jurors has been established, there remains the issue of who actually gets picked to sit on any particular jury. Past and present practice in the use of peremptory challenges will be examined to understand under what circumstances minorities were excluded from the jury pool, and how that has changed. Despite case law prohibiting the use of racial grounds for peremptory challenges, there is substantial evidence that underrepresentation persists as determined attorneys assert non-racial grounds to exclude minorities.

After a discussion of the many approaches that have been suggested to address the myriad of issues, this report offers a number of recommendations. While some of our recommendations require further study or legislative action there are others that can be acted on immediately with little cost and potential great benefit. As we challenge the administrators of the justice system, lawyers, judges, legislators, and community members, we also challenge ourselves. As lawyers we have a special responsibility to assiduously work to make the system fulfill its highest ideals', however, we also recognize that each and every citizen has a duty to participate in our democratic process to the best of their ability. The outcome rests with each of us. It is hoped that the outrage triggered by recent events will not be spent solely on violent reprisals, but will

instead fuel long-overdue changes in one of the institutions whose viability is critical to a democratic, free society: the court system, and the community's perception of it.

## HISTORY

### "Jury of One's Peers"

The concept of having a trial by a "jury of one's peers" can be traced back to the days of early England. In the ninth century, William the Conqueror created a system to determine the wealth of his kingdom called an inquest. To enforce the inquest, king's barons would ride into the countryside and seize important men from the communities to question them about the communities financial affairs. While this procedure was mainly used for determining the relative wealth of the countryside, the inquest was also often used for the determination of criminal matters.<sup>4</sup>

The next development of the jury in England occurred during the reign of King Henry II who was responsible for laying the foundation for the modern jury.<sup>5</sup> He instituted the use of a jury comprised of 16 lawful men of the county, to consider criminal cases and accuse those suspected of committing crimes. While the jury was left to determine if the accused should be charged with the crime, the guilt or innocence of the accused in criminal matters was left up to barbaric and brutal forms of adjudication. Trial by battle and by ordeal were two methods of adjudication used in early England.<sup>6</sup> Obviously, both of these methods would usually result in the death of the accused, and not justice.

During this period, the use of a jury was erratic. It was not until the signing of the Magna Carta by King John in 1215 that the concept of using a jury consisting of one's peers was first guaranteed.<sup>7</sup> The Magna Carta provided that, "no free man shall be taken or imprisoned or [dispossessed] or outlawed or exiled or in any way destroyed...except by the lawful judgement

of his peers and the law of the land."<sup>8</sup> While the promise of a jury by one's peers was clearly set forth, the jury was not actually taken from the community at large, but was instead comprised of the knights and barons of England who forced King John to sign the document. Additionally at this time, the use of trials by ordeals had lessened and was replaced by trials by a jury.<sup>9</sup>

During the early fourteenth century, the trial jury and the grand jury were bifurcated to be comprised of different jurors. The grand jury was responsible for determining whether or not there was sufficient evidence to bring charges against the accused, while the trial jury was left to hear the evidence during the trial and render a verdict.<sup>10</sup>

While the Crown appeared to relinquish its control over the juries with the signing of the Magna Carta, full jury independence and sovereignty was not achieved until many centuries later.<sup>11</sup> For example, a jury's verdict could be overturned by a special jury called a "Jury of Attaint", which would review the decision of the original jury. If the verdict was reversed, the original jurors would be subjected to fines or imprisonment.<sup>12</sup> Thus it can be seen that despite the increased use of the jury system in early England, the threat of recriminations to the jurors appeared to undermine the entire jury system.

It was not until the late seventeenth century that the jury received immunity from punishment and independence in rendering its verdict. This milestone occurred as a result of the trial of William Penn and William Mead, who in 1670, were charged with conducting an unlawful religious assembly in London.<sup>13</sup> When the jury found the two men innocent of the charges, the judges pressured them for several days to reverse their verdict. When the jurors refused, the judges fined and imprisoned the jurors. The jurors remained in prison until a writ of habeas corpus was heard by the Court of Common Pleas. Chief Justice Vaughn in an historic



opinion, freed the jurors and declared that jurors could no longer be punished for their decisions.<sup>14</sup>

The jury system, as it developed in England, was adopted by the governments of the early American colonists and became a highly treasured safeguard of the colonial American legal system. While all of the colonies specifically provided for trials by jury in each of their respective charters, the methods of selection, size of the vicinage, and the extent of its use, differed from colony to colony.<sup>15</sup> During the years leading up to the American Revolution, references to trial by a jury of ones peers could be found in the discussions held by the First Continental Congress of 1774, and in the Declaration of Independence.<sup>16</sup>

After the ratification of the United States Constitution in 1789, the only provision relating to jury trials was found in Article III, Section 2 of the Constitution.<sup>17</sup> The above referenced section provided that, "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed."<sup>18</sup> However, many of the Constitution's opponents felt that this sole provision did not adequately protect the concept of having a jury picked from the peers of the accused's community.<sup>19</sup>

In response to these concerns the Bill of Rights was adopted which, via the Fifth, Sixth, and Seventh Amendments, further defined the rights of a trial by jury. The Fifth Amendment requires that a person may not be criminally charged without first being indicted by a grand jury.<sup>20</sup> The Sixth Amendment guarantees that a person accused of a crime has the right to have a trial "...by an impartial jury of the State and district wherein the crime shall have been committed."<sup>21</sup> Lastly, the Seventh Amendment guarantees the right to a jury trial in civil cases where the amount in controversy exceeds twenty dollars.<sup>22</sup> These federal Constitutional jury

protections have been echoed and/or expanded by the states in their respective state Constitutions.<sup>23</sup>

Notwithstanding the protections set forth in the Bill of Rights, these protections were not afforded to blacks until the late Eighteen hundreds.<sup>24</sup> Because blacks were not considered persons but instead were considered property or chattel, the Constitutional jury protections did not apply to them. In New York for example, when a slave was charged with a criminal offense he could not demand a regular jury, but was instead forced to be judged by a jury comprised of two justices and five freeholders. In many states, blacks could not conduct voir dieres of the potential jurors.<sup>25</sup> Moreover, blacks were prohibited from serving on juries.<sup>26</sup> If a slave owner permitted his slave to be impaneled as a juror, a constructive manumission would have occurred, and the slave owner would have forfeited his right of ownership of that slave.<sup>27</sup>

The lack of enforcement of African-American's fundamental right to serve on juries continued unabated in New York until 1895, fifteen years subsequent to the landmark case of Strauder v. West Virginia.<sup>28</sup> In that year, the State Legislature enacted civil rights legislation that finally guaranteed blacks the right to serve on state juries.<sup>29</sup>

Nationally, many states had either enacted laws preventing blacks from serving on juries after the Reconstruction or did not attempt to reconcile their pre-existing exclusionary laws with the Fourteenth Amendment of the Constitution. Then, in 1880, the United States Supreme Court was faced with a petition from Strauder, a "colored man" who was indicted for murder in West Virginia. He requested the Court to remove his murder trial from West Virginia's State Court to a federal court, because West Virginia law excluded "coloreds" from juries. Only white men were eligible to be summoned for jury duty. The Supreme Court, with only one dissent, found

the West Virginia statute contrary to the Fourteenth amendment, and granted petitioner Strauder the relief he sought.

In deciding Strauder, Justice Strong wrote eloquently about the inhuman plight of blacks and the virtue of the Fourteenth amendment to restore dignity to an oppressed people. Further, Justice Strong wrote that a "peer" of the accused comprised a class of persons who were the "...neighbors, fellows, associates, persons having the same legal status in society as that which he (the accused) holds."<sup>30</sup> Thus at first sight, it appears that the term "peer" is very simply defined, consistent with the intent of the Magna Carta and its evolution in common law.<sup>31</sup> However, this definition has been revised: what was "jury of one's peers" is now a "fair cross-section of the community."

#### "Fair Cross Section"

The familiar concept of the "jury of one's peers," as described above, evolved into a Federal constitutional guarantee of the right to trial by an "impartial" jury. This guarantee is also set forth in various provisions of the New York State Constitution. However, while the notion of trial by an impartial jury has long been generally accepted as a cornerstone of the American judicial system, the achievement of this ideal has involved a continuing developmental process in the law, and many would argue has yet to be realized in any constant practical fashion in the courts of our nation. The United States Supreme Court, over the next one hundred or more years, laid bare the many obstacles which stood firmly in the way of African-American's exercise of their right to a jury trial and the right to be a member of a jury.

So too, did the concept of a "jury of one's peers" fall prey to evolution. In several landmark cases, the U.S. Supreme Court determined that the guarantee of an impartial jury is best secured by the requirement that juries represent a "fair cross-section of the community."

In New York, this requirement is expressed statutorily by section 500 of the Judiciary Law:

It is the policy of this state that all litigants in the courts of this state entitled to a trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the county or other governmental subdivision wherein the court convenes; and that all eligible citizens shall have the opportunity to serve on grand and petit juries in the courts of this state, and shall have an obligation to serve when summoned for that purpose, unless exempted, disqualified or excused.<sup>32</sup>

In Smith v. Texas,<sup>33</sup> which was decided in 1940, the Court invalidated a rape conviction of a black defendant because it found that black's were systematically excluded from service on the grand jury which handed down his indictment. The Court found that the Texas statute governing the selection of grand juries was capable of being effectuated in a non-discriminatory fashion, but it gave wide discretion to the county jury commissioner who used this latitude to effectively proscribe blacks from serving on the grand jury. Thus, in rendering the decision, the Court found it necessary to state: "The fact that the written words of a state law holds out a promise that no...discrimination will be practiced is not enough...[t]he Fourteenth Amendment requires that equal protection to all must be given...not merely promised."<sup>34</sup>

In the 1968 case of Duncan v. Louisiana,<sup>35</sup> which extensively details the historical importance of the right to trial by jury, the Court stated:

The framers of the constitutions [i.e., Federal and State] strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to trial

by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased or eccentric judge.<sup>36</sup>

It further said "[t]hose who emigrated to this country from England brought with them this great privilege as their birthright and inheritance, 'as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power.'"<sup>37</sup> The right to a trial by a jury of one's peers in criminal actions, therefore has long been thought necessary to prevent oppression by the government. Accordingly, in Duncan, wherein a black Louisiana defendant contested the state trial court's denial of his request for a jury trial in the action against him for simple assault, which at that time was punishable by a maximum of two years imprisonment and a \$300 fine, it was held that the right to trial by jury in criminal trials involving serious offenses is a fundamental right. The Court further held that the guarantee of the right to an impartial jury contained in the Sixth Amendment is binding upon the states by virtue of the Fourteenth Amendment.

In 1975, in Taylor v. Louisiana,<sup>38</sup> the Supreme Court examined the more pointed question whether the presence of a "fair-cross section of the community" on venires, panels, or lists from which petit juries are drawn is essential to the fulfillment of the Sixth Amendment's guarantee of an impartial jury trial in criminal prosecutions.

In Taylor, a defendant charged with kidnapping sought to quash the petit jury venire from which his jury was selected. He argued that women had been systematically excluded from the venire, thus depriving him of his constitutional right to a fair trial by an impartial jury. The paucity of females on the venire had resulted from the operation of Louisiana constitutional and statutory provisions (which were later repealed) which excluded women from jury service unless

they had previously filed a written declaration of their desire to be subject to jury service.

In reviewing its prior cases, the Court found that over the years, it had "unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a "fair cross-section of the community".<sup>39</sup> Citing Smith v. Texas, the Court stated that "it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community" and "[t]o exclude racial groups from jury service [is]... to be at war with our basic concepts of a democratic society and representative government."<sup>40</sup>

Holding that the fair cross-section requirement is fundamental to the jury trial guarantee of the Sixth Amendment, the Court stated that the purpose of the jury is to guard against the exercise of arbitrary power and that this "prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool."<sup>41</sup>

In the earlier case of Peters v. Kiff<sup>42</sup> decided in 1972, wherein the fair cross-section requirement was applied in a case where the constitutional protection was claimed by a white criminal defendant on the basis that blacks were excluded from the grand jury that indicted him and the petit jury that convicted him, Justice Marshall expressed the view that:

[w]hen any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude. . . that their exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.<sup>43</sup>

In Peters, a plurality of the Court found that a state criminal defendant has standing to challenge a jury selection system which excludes the members of any race as a deprivation of due process of law.

The collective experience innate to the representative jury panel that Justice Marshall spoke about has also been held essential to the assurance of a "diffused impartiality".<sup>44</sup> In recognizing the importance of this diffused impartiality, however, the Court in Taylor went on to point out that there is no requirement that any given petit jury or, by extrapolation, grand jury must "mirror the community and reflect the various distinctive groups in the population", i.e., "[d]efendants are not entitled to a jury of any particular composition".<sup>45</sup> What is required is that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.<sup>46</sup>

This point was emphatically driven home in the 1965 case of Swain v. Alabama.<sup>47</sup> The Court in this case, affirmed the rape conviction of a black defendant despite evidence to the effect that no black person had ever sat on a petit jury in Talladega County, where the criminal trial was held. The Court held that purposeful discrimination is not shown by a small proportional underrepresentation of a particular group from petit jury venires. The Court in Swain also found the evidence insufficient to establish the prosecution's employment of peremptory challenges as a perversion of the jury system notwithstanding the historical absence of any actual service by blacks on any petit jury in the county.

In order to establish a prima facie violation of the fair cross-section requirement at the state level, it must be shown that (i) the group alleged to have been excluded is a distinctive group in the community, (ii) that the representation of this group in the pool from which jurors are selected is not fair and reasonable in relation to the number of such persons in the community, and (iii) that the representation was the result of a systematic exclusion of the group in the jury selection process.<sup>48</sup> However, as explained in 1979 by the Supreme Court overturning a conviction in Duren v. Missouri,<sup>49</sup> an automatic exemption from jury service provided to women at their request only served to deny the defendant's right to trial by a jury chosen from a "fair cross-section of the community". The demonstration of a prima facie "fair cross-section" violation is not the end of the inquiry into whether a constitutional violation has occurred.<sup>50</sup> Rather, at that point, the burden shifts to the State to demonstrate that the jury selection process which resulted in the disproportionate exclusion of a distinctive group, "manifestly and primarily" advances a significant state interest.

In People v. Guzman,<sup>51</sup> decided in 1983, the black and Hispanic defendants argued that their rights to due process and equal protection were denied by the underrepresentation of Hispanics in the grand jury pool, the source from which the grand jury was constituted. However, in analyzing the due process claim, the New York Court of Appeals found that the underrepresentation was not the result of any systematic exclusion but rather was due to lower response rates by Hispanics to juror qualification questionnaires and summons to serve, the instruments used to form the grand jury panels. The Court felt that the lower number of responses could not be attributed to the selection process. The Court also found that Hispanics were exempted and disqualified from service in a greater percentage than non-Hispanics, owing



to English literacy problems and child care responsibilities, factors which also could not be blamed on the selection process.

With respect to the equal protection claim, the Court stated that a prima facie case is made out by showing that the underrepresented group is a "recognizable, distinct class" which has received different treatment under the law. A showing that the selection process is "susceptible to abuse" or is not racially neutral supports a presumption of discrimination.<sup>52</sup> Therefore, it need not be shown that the discrimination was due to systematic exclusion. To rebut the inference of discriminatory intent, the State has to show that the underrepresentation was caused by non-discriminatory factors or by permissible racially neutral selection criteria and procedures. Citing the same factors identified above in the due process analysis, as being responsible for the underrepresentation, the Court found that the selection process in general is racially neutral and that the underrepresentation in Guzman was not caused by intentional discrimination.

## NEW YORK STATE ARTICLE 16 OF THE JUDICIARY LAW

### Selection of Jurors

Article 16 of the Judiciary Law sets forth the policy and procedures which govern the selection of jurors in New York State.<sup>53</sup> These statutory provisions are further supported by regulations promulgated by the Chief Judge of the Court of Appeals, who is charged with administering the State's Unified Court System.<sup>54</sup> These regulations are denominated "Uniform Rules For the Jury System", and are set out at 22 NYCRR, Part 128 (hereinafter the "Uniform Rules"). Section 501 of the Judiciary Law makes clear that the provisions of Article 16 and, by implication, Part 128 apply to all the courts of this State, whether of record or not of record.

This chapter of the Report will outline the procedures which have been prescribed for the selection of jurors.<sup>55</sup>

Section 500 of the Judiciary Law, which, as noted above expressly sets forth the State's "fair cross-section" requirement with respect to the selection of jurors, is captioned as a policy declaration and pronounced as such in the statute itself. However, it is much more. It constitutes a very strong legislative mandate grounded on a long history of common and constitutional law jurisprudence. It provides, *inter alia*, a statutory basis for attacking any juror selection system in the State which is not truly representative.

Parsing the elements of §500, we can see that it affirmatively requires random selection of jurors and that all eligible citizens be given the opportunity to serve.<sup>56</sup> Section 500 also provides that, when summoned, the prospective juror has a duty to serve, unless exempted, disqualified or excused. Thus, §500 contains both rights and duties of citizens.

Section 502 of the Judiciary Law provides for the office of commissioner of jurors in each of the counties of the State, except counties within cities having a population of one million or more. In such counties, the county clerk is to exercise the duties and have the powers of the commissioner of jurors.

The commissioner of jurors is an officer of all the courts located in the county in which he or she acts. He or she is charged with taking all steps necessary to enforce the laws and rules regarding the drawing, selecting, summoning and impanelling of jurors. He or she is also authorized to administer oaths or affirmations as to any matter relating to his other duties.<sup>57</sup>

Each county of the State has a jury board.<sup>58</sup> The county jury board is typically comprised of both judicial and county legislative members. The commissioner of jurors of each county acts as the secretary to the particular county jury board. County jury boards must meet at least annually.<sup>59</sup> Except in New York City, county jury boards hold the authority to appoint commissioners of jurors and to fill vacancies in such office.<sup>60</sup>

Section 506, captioned "Source of names" provides:

The commissioner of jurors shall cause the names of prospective jurors to be selected at random from the voter registration lists, and from such other available lists of the residents of the county as the chief administrator of the courts shall specify, such as lists of utility subscribers, licensed operators of motor vehicles, registered owners of motor vehicles, state and local taxpayers, and persons who have volunteered to serve as jurors by filing with the commissioner their names and places of residence.

Section 128.3 of the Uniform Rules supplements this language by providing that in addition to voter registration lists, names are to be selected from lists of licensed motor vehicle operators in the State, lists of persons to whom State income tax forms have been mailed and lists of persons who have volunteered to serve in accordance with Section 506. "Resident of a

county or municipality" is defined in section 128.4 of the Uniform Rules to mean a person who maintains a fixed permanent and principal home within that county or municipality to which such person, wherever temporarily located, always intends to return.

Consequently, there are three primary lists which are currently used as the source of names of potential jurors: (i) voter registration, (ii) licensed motor vehicle operators and (iii) lists of people to whom the State Department of Taxation and Finance has mailed income tax forms.<sup>61</sup> Section 507 requires that the names of prospective jurors be selected at random from these lists.

These primary lists are merged into a centralized, Statewide source list which is maintained on the Office of Court of Administration ("OCA") computers. This merged list forms the primary database for the State's Automated Juror Management System. Duplications among the lists are deleted on the merged list. Address data is retained for each record, however, and this allows OCA to provide county-based mailings monthly of the juror qualification questionnaire on behalf of commissioners of jurors. It is also our understanding that particular zip codes can be targeted for concentrated mailings through the automated system.

The primary lists are updated annually on the system and the new merged list is compared to the prior year's list to correct any anomalies. While a study conducted for purposes of this report might suggest a different conclusion, staff of the Automated Jury Management System believe that the list which is created from merger of the aforementioned primary lists includes around 90% of the State's eligible juror population.<sup>62</sup>

The "qualification questionnaire" is the initial correspondence that a prospective juror receives from the commissioner of jurors. It is on the qualification questionnaire, which asks certain demographically based questions, that the potential juror may request an exemption from service.

In order to qualify as juror, Section 510 provides that a person must:

1. Be a citizen of the United States, and a resident of the county;
2. Be not less than eighteen years of age;
3. Not have a mental or physical condition, or combination thereof, which causes the person to be incapable of performing in a reasonable manner the duties of a juror;
4. Not have been convicted of a felony and
5. Be intelligent, of good character, able to read and write the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification questionnaire, and be able to speak the English language in an understandable manner.

Section 511 provides that each of the following persons is disqualified from serving as a juror:

1. Members in active service in the armed forces of the United States;
2. Elected federal, state, city, county, town or village officers;
3. The head of a civil department of the federal, state, city, county, town or village government, members of a public authority or state commissioner or board, and the secretary to the governor and
4. A federal judge or magistrate or a judge of the Unified Court System.

Finally, Section 512 provides that each of the following persons is exempt from service as a juror upon claiming the exemption therefrom:

1. A member of the clergy or Christian Science practitioner officiating as such and not following any other calling;
2. A licensed physician, dentist, pharmacist, optometrist, psychologist, podiatrist, registered nurse, practical nurse, embalmer or a Christian Science nurse exempt from licensing by subdivision g of section sixty-nine hundred eight of the education law, regularly engaged in the practice of his profession;
3. An attorney regularly engaged in the practice of law as a means of livelihood;
4. A police officer as defined in section 1.20 of the criminal procedure law, or correction officer of any state correctional facility or of any penal correctional institution who is defined as a peace officer in subdivision twenty-five of section 2.10 of the criminal procedure law, or a member of a fire company or department duly organized according to the laws of the state or any political subdivision thereof and performing duties therein; or an exempt volunteer fireman, as defined in section two hundred of the general municipal law;
5. A sole proprietor or principal manager of a business, firm, association or corporation employing fewer than three persons, not including such proprietor or manager, who is actually engaged full-time in the operation of such business as a means of livelihood;
6. A person seventy years of age or older;
7. A parent, guardian or other person who resides in the same household with a child or children under sixteen years of age, and whose principal responsibility is to actually and personally engage in the daily care and supervision of such child or children during a majority of the hours between eight a.m. and six p.m., excluding any period of time during which such child or children attends school for regular instruction;
8. A person who is a prosthetist or an orthotist by profession or vocation and
9. A person who is a licensed physical therapist regularly engaged in the practice of his or her profession.

Section 509 provides that the commissioner of jurors is to determine the qualifications of a prospective juror based on the information provided in the qualification questionnaire, but he or she may also consider other information such as that obtained from public agencies concerning previous criminal convictions.<sup>63</sup> The completed questionnaire is to be returned to the

commissioner within ten days of its initial mailing. If the questionnaire is not returned or properly completed or if the commissioner otherwise determines that an interview is necessary, he may summon the prospective juror to appear before him or her for the purpose of examining the juror as to his or her competence, qualifications, eligibility and liability to serve as a juror and to examine any claims presented for exemption or disqualification.

The commissioner must maintain a record of all persons found not qualified or disqualified or who are exempted or excused, and the reasons therefor. The returned qualification questionnaires and records maintained pursuant to this statute are deemed confidential and not disclosable, except to the county jury board which has the power to review any determination of the commissioner.

A person claiming disqualification or exemption from jury service pursuant to Sections 511 or 512 may be required by the commissioner of jurors to file an affidavit, certificate or questionnaire stating the facts entitling him to the disqualification or exemption.<sup>64</sup> If the disqualification or exemption is not granted, the person claiming it may present the claim to the court when drawn for jury service or may seek to have such refusal reviewed in a Civil Practice Law and Rules (CPLR) Article 78 proceeding.<sup>65</sup> In the case where the claim is made to the trial court or the court having supervision of the grand jury, Section 518 requires that the person be discharged from service where it satisfactorily appears to the court that he or she is not qualified or is disqualified or is exempt.

Section 514 provides that prospective grand jurors are to be drawn at random from the list, pool or reservoir of persons qualified as jurors in the county and that the qualifications for service as a grand juror shall be the same as that for a petit juror.<sup>66</sup> The commissioner may,

however, require the fingerprinting of all persons drawn for grand jury service. As in the case of petit jurors, the commissioner is required to maintain a record of the persons called for service as grand jurors who are found not qualified or disqualified or who are exempted or excused, along with the reasons therefor. Similarly, the county jury board has the power to review any determination of the commissioner as to qualifications, disqualifications, exemptions and excuses. The qualified grand jury pool, once established, is to be kept separate from the pool of qualified petit jurors.

Section 508 provides that the commissioner of jurors shall draw at random, from the pools of qualified jurors, that number of petit and grand jurors he or she believes to be necessary, unless it is otherwise specified by order of the relevant appellate division or judge appointed to hold the particular part or term of court.<sup>67</sup> The summons may be served by mail or the commissioner may direct the sheriff to serve the summons personally or by leaving it at the juror's residence or place of business with a person of suitable age and discretion.<sup>68</sup>

Section 517 gives the commissioner of jurors the discretion to excuse a prospective juror, who applies for such, from part or all of his jury service or to defer the time of his service. Where the commissioner denies such application, the prospective juror may apply to the trial court or the court having supervision over the grand jury, as the case may be, which may also grant or deny the application. The standard provided in section 517 to be used in determining to grant the application or not is whether the attendance would cause undue hardship or extreme inconvenience to the applicant, a person under his care or supervision, or the public.



Persons summoned to serve as jurors, who notify their employers of such fact prior to the commencement of their terms of service, may not be discharged or penalized on account of their absence from employment by reason of such jury service.<sup>69</sup> An employer may, however, withhold wages of any such employee serving as a juror during the period of such service. If the employer employs more than ten persons, however, he may not withhold the first fifteen dollars of such juror's daily wages during the first three days of jury service. Violation of the withholding provisions of Section 519 is punishable as criminal contempt of court.

Trial jurors drawn for service may serve as juror in any term or part of the same court when it sits in terms or parts or in any court in the same county or, under certain circumstances, judicial district.<sup>70</sup>

Section 521 provides for a payment of fifteen dollars per day to trial and grand jurors for each day they physically attend court (except in town and village courts), during their term of service as jurors. Moreover, if a juror is required to physically attend for more than thirty days, he becomes entitled to an additional allowance of six dollars per day for each day in excess of thirty days.<sup>71</sup> However, jurors that are employed are not entitled to the per diem allowance from the county for any of the first three days of such attendance, if his or her employer is, pursuant to Section 519, prohibited from withholding the first fifteen dollars of the wages of such person during such period. The employer pays the per diem for those three days. Further, for any workday on which an employed juror's wages are not withheld and jury service is rendered, no per diem allowance is payable. All jurors are entitled to travel expenses incurred in attending court during their service as jurors. All such fees and expenses, and any other actually and necessarily incurred in providing food and lodging for jurors, is payable by the State.<sup>72</sup>

A person who has served on a grand or petit jury in any court of record or in a federal court is not competent to serve again as a trial or grand juror in any State court for a period of four years.<sup>73</sup> However, the commissioner of jurors may, after consultation with the district administrative judge, or in the New York City counties the deputy chief administrative judge, reduce the period of incompetency to two years if the four year period proves impracticable.

Section 525 provides that the duration of service of trial jurors shall be no more than five court days actual attendance unless such period of jury service has been extended by the commissioner of jurors after consultation with and concurrence of the district administrative judge or deputy chief administrative judge, as appropriate.<sup>74</sup> Actual attendance in this context means actual physical attendance in the court or attendance by way of a telephone standby system, whereby a juror remains available to report for jury service upon notification. Of course, the service of any trial juror shall continue until the conclusion of any trial in which such juror may be engaged.

Service of grand jurors is for the duration of the term for which they have been drawn, unless sooner discharged. However, if the court having supervision of the grand jury extends its term, then the juror's service continues until the discharge of the grand jury.<sup>75</sup>

Finally, Section 527 empowers commissioners of jurors to bring a proceeding for the imposition of a civil penalty against persons who fail to respond to juror qualification questionnaires or summons.<sup>76</sup>

## COMMISSIONER OF JURORS INTERVIEW

The Capital District Black Bar Association (CDBBA) interviewed all of the Commissioners of Jurors in the Third Judicial District and two from the Fourth Judicial District. Altogether, seven Commissioners were personally interviewed, using a list of twenty-four questions (Appendix 1). The Commissioners' responses were reduced to writing (Appendix 7), collated, digested and evaluated.

CDBBA made particular note of the Commissioners' candor, some Commissioners' effort to analyze and solve these issues, and others willingness to assist us in our study. CDBBA found, generally speaking, that six out of the seven commissioners had experienced a similar lack of success in getting greater numbers of minorities on their panels. Four of the seven noted a significant number of returned questionnaires from targeted minority communities. All had dismal returns of completed questionnaires from their respective minority communities. Similarly, jury registration generated some names, but without overwhelming results.

The Commissioners understand why the perception of deliberate exclusion survives, present law notwithstanding, and they genuinely want to correct this perception and gain a more visible proportional representation of their community on their juries. Rensselaer County's Commissioner uses newspaper coupons to attract registrants (Appendix 11). Albany, Ulster, Columbia and Schenectady Commissioners have visited and spoken at churches and civil rights organizational meetings seeking new registrants. Robert Jordan, Ulster County Commissioner

of Jurors uses radio spots to appeal to the community, gathers naturalized citizens lists, and recruits daily new jury registrants. In fact, he has been a tireless advocate for a fresh approach to obtaining greater minority participation: i.e., social service lists, increased jury fees, and employers bearing the full salary expense for its employees' jury service.

Several tests were conducted, which deserve mention, at this juncture. After our interview, Schenectady County's Commissioner, Elizabeth Carroll, did a concentrated mailing of questionnaires to zip codes encompassing its minority community. She did this mailing at considerable risk and she was subsequently chastised by OCA for targeting communities, an approach that apparently does not comply with its policies. Nonetheless, the concentrated mailing did not produce the desired result. To the contrary, the majority of the questionnaires were returned with no forwarding address, and only a nominal number of questionnaires were completed and returned. Also, the Commissioner, at the suggestion of community leaders, left a number of jury registrations at the County's Department of Social Services office. Within a day or two, the Commissioner found many of the registration forms strewn throughout the streets. Moreover, she was unable to identify one completed questionnaire from this lot of delivered questionnaires to the Department (Appendix 7F). Likewise, Columbia County had similar results with targeting a minority community with questionnaires for a particular trial. The Commissioner did not receive one completed questionnaire (Appendix 7B).

In July and August, Albany County Commissioner of Jurors, Paul J. O'Brien, at our request, documented and kept track of the qualification questionnaires mailed by the Office of Court Administration to the residents of three Albany County zip codes: (i) 12202, which bounds a portion of the "South End" in the City of Albany; (ii) 12205, which bounds one of the areas

in Colonie and (iii) 12210, which bounds a portion of Arbor Hill in the City of Albany. These zip codes were picked because the South End and Arbor Hill are thought of as minority enclaves, while Colonie is typically thought of as a predominately white area. The population breakdown by race for these three zip codes are:

	<u>Non-Hispanic Whites</u>		<u>All Other</u>	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
12202	4,871	57.25%	3,638	42.75%
12205	19,326	94.27	1,174	5.73
12210	4,084	54.66	3,388	45.34

Commissioner O'Brien indicated to us that of the 5,500 questionnaires mailed to residents in the County in July and August, the following numbers went to the three study zip codes. The ultimate dispositions of these mailings are also given.

JULY

12202

	<u>Number</u>	<u>Percent</u>
Zip Code Population	8,509	
Mailed	213	
No Reply	42	19.7
Returned by Post Office	134	62.9
Qualified	13	6.1

12205

	<u>Number</u>	<u>Percent</u>
Zip Code Population	20,500	
Mailed	506	
No Reply	112	22.1
Returned by Post Office	176	34.8
Qualified	105	20.8

	<u>12210</u>	
	<u>Number</u>	<u>Percent</u>
Zip Code Population	7,472	
Mailed	251	
No Reply	56	22.3
Returned by Post Office	169	67.3
Qualified	14	5.6

AUGUST

	<u>12202</u>	
	<u>Number</u>	<u>Percent</u>
Zip Code Population		
Mailed	178	
No Reply	42	23.6
Returned by Post Office	108	60.6
Qualified	11	6.2

	<u>12205</u>	
	<u>Number</u>	<u>Percent</u>
Zip Code Population		
Mailed	524	
No Reply	129	24.6
Returned by Post Office	170	32.4
Qualified	113	21.6

	<u>12210</u>	
	<u>Number</u>	<u>Percent</u>
Zip Code Population		
Mailed	264	
No Reply	45	17.0
Returned by Post Office	189	71.6
Qualified	18	6.8

The analysis provided by Commissioner O'Brien is instructive on a number of grounds. First, it shows that notwithstanding the different sizes of the mailings, the percentage of non-

responses is practically the same across the zip codes. Because the months studied are summer months, it is not clear if the approximately twenty percent average non-response rate is due to seasonal factors, such as vacations, or if that rate prevails throughout the year.

Second, it shows that the rate at which the questionnaires are returned by the Post Office as non-deliverable (i.e., incorrect address) is, on the average, twice as great in the two minority zip codes as in the non-minority zip code. This is astounding! This suggests (since the address data sources are the same throughout the State) that the population in these areas is more transitory. If this is indeed so, then it would appear that greater effort must be put forth to obtain accurate data for minority communities. Perhaps more frequent updating of the address data by use of a fourth data source is a possible solution.

This analysis also suggests that perhaps the mailings to minority communities should be weighted in some fashionable time to overcome the problem of a more transitory population. This need is borne out by reference to the juror's qualification rates for the two months, where it is shown that the non-minority community's rate of qualification is at least three times that of the two minority communities studied. What makes these numbers even more astounding is the fact that the rates of rejection (about 11% versus about 4%) and exemption (about 8% versus 2.5%) for the two months studied are much greater in the non-minority community.

To put this region's racial demographics in better perspective, CDBBA directs your attention to Appendix 6, containing maps of the region which have a breakdown, by areas and zip codes, and showing the dispersment of minorities throughout parts of the Third and Fourth Judicial Districts. This information and maps were generously provided by the Albany County Planning Commission.

Many of the Commissioners made recommendations which are incorporated into this report. For example, they collectively suggest expanding the source of names as the most beneficial tool to obtaining minority jurors. They would also like to see greater jury registration from the minority community. They believe education may eliminate many misconceptions about the process, and may attract more registrants, particularly minorities.

The actual interviews are set forth in the Appendix 7. Overall, CDBBA concludes that these Commissioners of Jurors have assiduously pursued their official responsibilities.



## PEREMPTORY CHALLENGES

Juxtaposed to the claim that the jury venire selection process results in de facto discrimination, and generating similar concern, is the attorneys' employment of peremptory challenges premised upon racial stereotypes. The perception by minorities, which is recognized by jurists and some legal scholars<sup>77</sup>, is that once they have arrived at the court house door, ready, willing and able to serve as jurors, they will be denied this opportunity, nonetheless, because of surreptitious, racially motivated contrivance. Minorities feel, whether justifiably or not, that courts and attorneys do not want them to serve because they suspect that there are doubts about their qualifications and even more insidious, that the system has devised another method of precluding them from participating as jurors, i.e. peremptory challenges. History bears witness to this fear as attorneys indiscriminately exercised the peremptory challenge against minorities and blacks particularly, usually based upon racial stereotypes and guarded prejudices. Indubitably, this would and has eroded minorities' confidence in the court system and adds kindling wood to conspiracy theories of deliberate, systematic exclusion.<sup>78</sup>

A peremptory challenge becomes instrumental during the jury selection process of a particular trial, commonly known as a *voir dire*. After questions are addressed to the potential jurors by either the court or the attorneys or both concerning their qualification to serve on a jury, the attorneys can essentially strike from the jury, a potential juror "without no reason assigned."<sup>79</sup> The exercise of peremptory challenge is an art, although many attorneys and jury selection experts would argue that scientific principles reverently shroud its use. However, once

the veil is lifted, one sees that peremptory challenge has its genesis in folklore and its foundation in group association.<sup>80</sup> Uncannily, these attorneys steadfastly assert that certain racial and ethnic groups have predetermined and predictable characteristics to such a degree that an attorney, attuned to these peculiarities, can surmise how a juror would ultimately vote in his/her case. For example, the purported predicate nature of blacks, as jurors, is that they are more liberal and therefore more lenient on criminal behavior, particularly if the defendant is black, and more generous in doling out damages in civil law suits.<sup>81</sup> Thus, an exercise of the peremptory challenge would remove such a person who may be so disinclined against the attorney's position of the case, essentially, because of unconscious, but preconceived prejudices the attorney surmises lies within the potential juror.

The true underpinning of the peremptory challenge is intuition or hunch or just a whim that the person is unsuitable for the lawyer's version of the case, rather than scientific premises. Often this intuition is flawed by the attorney's preconceived prejudices. Invariably, the potential juror, especially if he or she is a minority, is denied an opportunity to participate without having a chance to convince the litigators that he or she is able and willing to serve. However, the power of the peremptory challenge is not sacrosanct.

An attorney's right to exercise a peremptory challenge is not a fundamental constitutional right recognized in either the United States or New York's Constitution, but it is a privilege granted by the legislature.<sup>82</sup> Under the common law of England, which New York State adopted, the right to exercise peremptory challenges was granted, later terminated, then eventually restored by the Crown. Similarly, New York enacted statutes which granted peremptory challenges, then limited or terminated the privilege to prosecutors, and then ultimately restored

the privilege so that both sides of a criminal matter have the same number of peremptory challenges.<sup>83</sup> Presently, the right to exercise peremptory challenge in both criminal and civil cases is statutorily granted.<sup>84</sup> This brief history illustrates that peremptory challenges do not rise to constitutional dimensions and may not be an "essential part of the mechanism for obtaining an impartial jury."<sup>85</sup> And, this is the basis for the erosion, in part, of the use of peremptory challenge for racially discriminatory reasons.

The present day law is that peremptory challenges cannot be used to exclude a potential juror based solely upon race. This rule having its genesis in Strauder v. West Virginia.<sup>86</sup> evolved over one hundred and ten years of tedious and methodical circumspection. Beginning with Strauder, the Supreme Court struck down a state statute which allowed only white men the privilege of serving on a jury. Eventually, this court struck down state statutes that created barriers to women who desired to serve on juries.<sup>87</sup> The Supreme Court has addressed a host of other cases pertaining to race and jurors, and now, it has begun to review the exercise of peremptory challenges solely for racial motives as a violation of a potential juror's constitutional right.

Ruling repeatedly that such discriminatory exercise of peremptory challenges violated the Fourteenth Amendment of the United States Constitution, the Supreme Court has stated that in criminal cases prosecutors and defense attorneys alike, cannot challenge a prospective minority venire person without assigning a race neutral reason, even if the defendant is white.<sup>88</sup> The Court extended this rule to civil cases as well.<sup>89</sup> Although acting similarly on this issue as the United States Supreme Court, The New York State Court of Appeals relied heavily, but not exclusively upon the New York State Constitution and civil rights statutes,<sup>90</sup> and found that

racially motivated peremptory challenges were pernicious and inimical to a person's right to sit as a juror in criminal cases no matter who exercises the challenge.<sup>91</sup>

To establish a prima facie case of a racially discriminatory peremptory challenge, the contesting party must show that the potential juror is a member of a cognizable racial group, the peremptory challenge resulted in the exclusion of a member of this cognizable racial group, and argue that relevant circumstances raise the inference that the use of the challenge was for discriminatory purposes.<sup>92</sup> When the objection is made it "is entitled to the benefit of the proposition that peremptory challenges permit those inclined to discriminate to do so."<sup>93</sup> Once the objection has been made, which can be made at any time,<sup>94</sup> the burden shifts to the attorney who exercised the challenge to present to the court a racially neutral explanation which is not a pretext for discrimination.<sup>95</sup> A claim of good faith or an assertion that the stricken juror would be biased because he or she is the same race as the party<sup>96</sup> or that there is already proportional representation or inclusion of the same racial group on the jury<sup>97</sup> will not overcome the burden. However, if a race-neutral, non pre-textual reason (and there are many)<sup>98</sup> is proffered, the juror will be stricken. But, if the court is not swayed by the explanation, the juror found improperly challenged will be seated.<sup>99</sup>

So it seems that recognizable minority groups can take comfort that once they have decided to participate in this highest form of our democratic tradition, they will not be turned away because of their race. But we must take heed and temper this victory with the portent issued by Justice Thomas; "... I am certain that black criminal defendants will rue the day that this court ventured down this road that inexorably will lead to the elimination of the peremptory strikes,"<sup>100</sup> that were used in the past to ferret out and remove a prospective juror, who the

attorney believed or had a hunch, harbored an unspoken prejudice that would effect his/her impartiality as a juror.<sup>101</sup>

## DISCUSSION

Previously, we have discussed the origins of the fundamental thesis, "jury of one's peers," a concept revered as being implicit in our democratic notion of ordered liberty, which has evolved into the more modern precept, a "fair cross-section of the community." We have highlighted our courts' constitutional struggle and analysis to bring a sense of fairness and justice to our jury system, and the development of a bias-neutral statutory framework for the selection of our juries. Still, despite this evolution, we painfully observe the absence of a segment of our society that has known, all too well, the stings of exclusion from participation in this most noblest of democratic principles. The problem of inclusion and the perception of exclusion still remain.

The near invisibility of minority jurors not only in this region, but throughout the State, obviously cries out for corrective measures and implementation of new concepts and approaches in obtaining greater minority participation, while adhering to the concept of a "fair representative cross-section of the community." The following discussion demonstrates that there are no quick fixes or easy solutions.

### Sources of Potential Jurors

As previously mentioned, OCA has relied primarily upon voter registration lists, motor vehicle generated lists, New York State tax rolls and volunteer jury registrations as the sources of persons who may qualify to sit on a jury venire.<sup>102</sup> This reliance has passed constitutional

muster and remains unaltered.<sup>103</sup> However, without substantiated disagreement to the contrary, these lists have fallen short in providing a representative cross-section of our diverse community. These source lists most telling short-coming is that they miss the most visible segment of our community, the poor, which indisputably contains significant numbers of minorities. As Columbia County Commissioner of Jurors, John Hillard observed, poor people do not register to vote, generally do not own cars or motor vehicles licenses, and probably do not file tax returns.<sup>104</sup> Nearly one-third of our communities may not be identified as potential jurors by employing only these lists. Recently, a trial judge for Rensselaer County noted, as he looked over the "sea of faces, names and backgrounds" of those who may be jurors, what was most obviously missing the most was the poor.<sup>105</sup> Those organizations and scholars who have attempted to analyze the dearth of the poor and minorities on jury panels unanimously advocate employing other sources of names.<sup>106</sup>

Utility and telephone lists seem to be the consensus choice, as the most facile lists to be incorporated into the present system, that include minorities and the poor.<sup>107</sup> Oddly enough, the legislature specifically mentioned utility lists as a source of names, but OCA has not yet availed itself of this source.<sup>108</sup> It is submitted that these two lists are probably far more inclusive than the present sources, but obviously and unequivocally, they are another supplemental source of names of those inadvertently excluded from the primary source list. Further, the real advantage of these lists is that they are current. Arguably the poor and minorities are a more transitory population than other segments. Since the other sources are not updated as frequently as utility lists, the return of mailed questionnaires as undeliverable has been particularly high, especially in the minority communities.<sup>109</sup> A significant segment of the

community is missed entirely. Utility and telephone lists will be more helpful in providing current and comprehensive information on this presumed impermanent community.

Nonetheless, these lists are not without problems. They may not include all adult members of a particular household and may include corporate and business subscribers. Using current technology, corporate and business names can be easily eliminated from the lists. Reaching all the adult members in a household may be more troublesome. But, we must remember that we are not recommending these utility lists to the exclusion of the other sources, rather as a supplement to the present sources. Including another household previously missed, no matter how incomplete the information may be, it is still an accomplishment towards our mission of obtaining as many eligible jurors as possible. Also, considering the sophistication of OCA's computers, these new multiple lists could be merged into the already existing master list without the fear of duplication. All that is needed, other than a legislative or agency mandate, is the cooperation of the utility companies. Resistance by the utilities to assist is not an apparent concern. It appears that OCA is strongly considering employing telephone lists in the near future.<sup>110</sup> If the transmittal of lists between NYNEX and OCA is relatively trouble free, then OCA should avail itself of the lists of subscribers of other public utilities throughout the State.

High school graduation lists are another possible source of qualified and potential jurors. Upon reaching the age of eighteen, young people have been included in appreciable numbers in the other aspects of civic responsibility, but not to the same degree with jury venires. Invariably, this is another source of names that includes minorities who may be available to serve, if called. However, there is some validity to the argument that this young segment of the community may be too transitory, and possibly too apathetic, to justify the effort of adding graduation lists as a



source of names. Opponents have stressed the inconvenience of adding a list which may be obsolete within a year. The logic that escapes these opponents is that graduation lists are not only supplemental to the primary source, but may be the first opportunity to include the graduates' names to the master lists. If all the sources were updated annually to be current and to eliminate anomalies, this would diminish the concerns attributable to including this supposedly mobile segment of the community into the master list.

College lists are more bothersome. Indeed, college students maybe just as transitory as high school graduates, but there is another dimension, their inability to serve once summoned. Most college students can not afford to miss five or more days of classes, therefore it is not feasible to resort to college generated lists. Obviously, college students have more paramount immediate and urgent demands which provide justifiable excuses from jury service.

Library lists foster similar equivocation. Generally, those who register with a library are far more likely to be included in a primary source list. The individual library lists may be too small to include a cognizable segment of the community, and the effort to integrate them into the master list, may not be commensurate to their dubious benefit.

The use of a list which generates some enthusiasm and includes minorities not previously included in the primary source list is a list of naturalized citizens. Every six months, groups of eager people are sworn in as American citizens who want to participate in every facet of our great democratic tradition. They desire to embrace our democratic heritage which many of us have taken for granted. Names of naturalized citizens are provided to the County Clerks. It appears to be an unencumbered process to obtain these names and include them in the master list. Only Ulster Counter Commissioner of Jurors, Robert Jordan, has consistently sought out

naturalized citizen lists and had them merged into the master list. Even if OCA decided not to directly seek and merge this list, Mr. Jordan has established that other County Commissioners of Jurors can manage this task. They can acquire these names from their County Clerks and forward them to OCA, similar to the way volunteer jury registrants are submitted.

A more controversial suggested source of potential jurors may come from those who receive public assistance and unemployment benefits. By employing these lists, the segment of our community which we previously mentioned that had been purportedly systemically excluded on the basis of income, and by implication, race, can have a more meaningful opportunity to serve. Commissioners of Jurors and the New York State Judicial Commission on Minorities have pleaded for the use of this list.<sup>111</sup> However, without legislative intervention, the efforts to utilize this important source will be stymied.

Presently, the names of those who receive public assistance are statutorily deemed to be confidential.<sup>112</sup> Obviously, this is to prevent these recipients from the further sting of poverty, stigmatization, and to some degree overt ridicule. However, the Department of Social Services (DSS) is not the only municipal agency that has access to the Social Service list. The news media is entitled to review certain lists as long as they promise not to disclose names.<sup>113</sup> Municipal agencies such as probation, parole, law enforcement, government auditors, administrative boards, legislative bodies and "any other body or official required to have such information properly to discharge its or his duties" have access to this list.<sup>114</sup> If DSS has deemed the enumerated agencies appropriate recipients of the Social Services lists to perform their official responsibilities, surely, this agency can establish a rational basis for the Chief Administrator of the Courts or even the Commissioner of Jurors, to share in this vital list to

perform their vital democratic functions. Alternatively, the present law could be interpreted so that OCA and the Commissioners, may fall within the statute's exclusionary rubric, "any other body or official required to have such information properly to discharge its duties."

Moreover, transferring Social Service lists to OCA's master jury list would not breach any confidentiality concerns. OCA's master list is also confidential. Only OCA personnel and the Commissioners have authority to view the master list.<sup>115</sup> Taking one confidential list and merging it into another confidential list, removing any designation of its origin, will continue to meet the salutary intent of the Social Service Law. Confidentiality attaches, and another vital source of names is available.

There is another concern about using social service and unemployment recipients as jurors. Will the jury fee of fifteen (\$15) dollars a day and mileage allowance effect their entitlement?<sup>116</sup> Yes, it may. The legislature would have to craft legislation that is sensitive to the recipient's plight, but does not create an unnecessary or hidden entitlement. It is suggested that since this class of persons is receiving state benefits, the legislation would exclude them from receiving the per diem allowance set forth in §519 of the Judiciary Law. The savings are apparent.<sup>117</sup> However, these persons should be allowed to receive the travel allowance, without a reduction to their State assistance. Otherwise, they will shun this obligation because of the drain on their already meager resources. By employing this list, an obvious benefit will be had at no significant cost to the State Treasury.<sup>118</sup>

## Jury Fees

It appears, at least from some of our discussions with the Commissioners of Jurors, that the number one excuse used by potential jurors, across racial lines, is that they cannot afford to serve. Since most employers are not paying their employees when they serve on juries, and the per diem allowance of fifteen dollars a day does not equal a third of a minimum wage earner's daily pay, the majority of those who proffered an excuse from jury duty, do so because it just does not pay to serve. Especially during these recessionary times, this argument becomes more plausible.

Under the present scheme, an employer can withhold the wages of an employee serving as a juror. However, an employer with ten or more employees cannot withhold the first fifteen dollars of a juror's daily wages during the first three days of jury service.<sup>119</sup> Essentially, an employee who does not have an employer who pays for jury duty or who does not have accumulated personal or annual leave to cover jury stint, receives only the fifteen dollars and a travel allowance. This has discouraged many from serving.

In order to address this problem, concerned parties have suggested legislation that requires employers to pay for employee's full jury service time. This will vary with the individual employee's service. It could either be five days or the actual length of service on a jury, whichever is longer, for a petit jury<sup>120</sup>, or the length of service on a grand jury. Grand jury terms vary throughout the state.<sup>121</sup> This may alleviate the employees' financial hardship, but, evidently, it could add to the employer's woes. It is understandable if employers do not embrace this proposed legislation. The private sector is not known to be receptive to legislation that provides a societal benefit at the expense of their profit margin, and invariably their existence.

Record number of employers have implemented drastic cost reductions, including employee lay-offs. The imposition of this cost could be construed as just another tax to be added to their already burgeoning tax difficulties, a notorious complaint against the State. The public is aware that New York State is concerned with its eroding tax base and its delicate relationship with the private sector. It is safe to assume that the State would not want to jeopardize this tenuous alliance between business and government, precipitating more businesses to leave the state because of spiraling costs.

Also, it has been suggested that the fifteen (\$15) dollars per diem be increased to the federal per diem rate. Federal jurors receive forty (\$40) dollars a day for actual attendance.<sup>122</sup> Many believe the federal allowance is more in line with today's needs. To increase the State per diem to an amount comparable to the federal per diem, would require a substantial increase in the court system's budget. New York State agencies have attempted to reduce costs annually at a rate of four to five percent, and there is speculation that in 1993, government agencies will be asked to slash their costs by as much as ten percent. We cannot forget the recent phenomenon of the branches of government were pitted in battle in the courts to restore the judiciary budget, which had been dramatically slashed in 1992.<sup>123</sup> After painstaking compromise between Governor Cuomo and then Chief Judge Sol Wachtler, the battle ended and some of the judiciary funds were restored. Nonetheless, the judiciary continues to clamor for more funds to increase judges pay, who have gone without a raise in four years, and to refurbish a decaying and visibly dilapidated infrastructure. It is difficult to imagine that the Judiciary will add another item to its already long but necessary wish list.<sup>124</sup>

Still, we can not allow to continue the financial cost of servicing to be borne only by the individual employees. The chasm between the daily cost to financially survive and the present per diem is evident to all. Should this gulf widen, the per diem will be castigated as an insult, and this financial excuse will be a more prevalent and prominent litany, from potential jurors. The court, in order to keep potential jurors, will have to turn an unsympathetic ear to what may become a chant, if not a chorus, which ostensibly, may replace civic acquiescence with begrudging resentment. This issue will have to be confronted eventually, and it is a good opportunity to analyze the costs and benefits of either increasing the per diem or having employers pick up some of the additional cost.

### Exemptions

Several of the Commissioners have implied that the laws allow for too many exemptions and probably too many abuses. Section 512 of the Judiciary Law lists those who may be exempted from service.<sup>125</sup> Anyone who is in the health care industry is exempt. The Commissioners argue that this exemption is too broad. They suggest that at the time they are summoned these persons should have to present additional reasons why they cannot serve, rather than being entitled to an automatic exemption. The Commissioners argue the same treatment should apply to firemen, therapists, and primary care takers of children under sixteen. The Commissioners suspect that there is no substantive interference with their profession or family responsibility. The Commissioners would like to have those who raise these exemptions provide additional reasons why they cannot serve at the time they are summoned. If their reasons are persuasive, then an excuse should be granted. The present carte blanche exemption for many is

no longer supported by contemporary needs. A revisit to the exemption list for further analysis may be necessary, and another statutory scheme be employed, before a particular person or profession receives an exemption.

### The Minority Community

Merely resolving the systemic problems alone will not increase the presence of minorities on juries. Our study has shown that minorities have, in varying degrees, shunned this democratic service. Whether due to the legacy of disenfranchisement or apathy, minorities have avoided serving, while continuing to claim the jury system deliberately excludes them. The claim was historically correct, but is it valid now? Attempts have been made to swell the ranks of minorities on juries, demographics notwithstanding. The lack of volunteered jury registration and unreturned jury questionnaires underscores a significant obstacle to our quest to have more minorities serve.

By targeting predominately minority neighborhoods with questionnaires, the Commissioners have highlighted, that there is a dismal response from these neighborhoods. They have recounted the various efforts to confront this challenge with less than admirable success.<sup>126</sup> One minority attorney recalls the number of his black friends and clients seeking any method possible to avoid jury service. The community must recognize that it is not always the dominant community or institution which keeps minorities off today's juries, but the culprit may be evasion by a visible segment of the minority community. The numbers of evaders paint an unflattering portrait of the minority community. Somehow, avoidance must be translated into appearance. Receipt, completion and the return of juror questionnaires is paramount for a

turnabout in the number of minorities on juries. This message must be conveyed to the minority community.

If the jury lists are missing so many, then jury registrations must be the ultimate goal to correct such a dismal showing. Just as voter registration has become an important device to enroll new voters, and bring political empowerment to minorities, so too must a similar effort be made with jury registration. Combining jury registration with voter registration will get those who have not previously registered to realize that they have an opportunity to participate in two significant aspects of democracy, the election of public servants and becoming an integral part of the justice system. Not only should jury registration be carried out by traditional civil rights organizations, but unconventional methods should be employed. It is submitted that jury registrations can be left at barbershops, beauty shops, and local stores. The registrants can complete the forms at these locations, and the proprietors can forward the completed questionnaires to the appropriate authority.

To convert the cynical and the apathetic, there must be greater public discourse on the need for all citizens including minorities to serve on the jury. Jury duty should not be viewed as an onerous chore, rather it should be touted as a valuable contribution to the principles of justice. The success of voter registration drives in minority communities across this country should be a sterling example of what can be accomplished. There should be a propagation of what is expected of a juror, and the benefits that inure to this democratic society and to the individual, when they serve.

Promulgation of the responsibility and the benefit can be done in several forms. The Rensselaer County Commissioner of Jurors has used coupons with some success in its local



newspapers to produce volunteered jury registration, with some success.<sup>127</sup> Commissioner Robert Jordan of Ulster County has used radio announcements to generate an interest in registering for jury duty. But the most effective communication apparatus, the television, has been under-utilized in this regard. Twenty to thirty second public announcements on television may create the interest necessary to stem the tide of apathy, and convince those who are not on the master list to register, and persuade, those who have failed to complete the jury questionnaire, to do so the next time they receive it.

Public announcements cost money. Untapped sources of funding for these public announcements are lawyers and their bar associations, who have a special stake in this justice system. National, state and local bar associations can collectively pool their resources to sponsor public announcements that educate the populace and appeal to their civic pride to serve on one of the most wonderful and exciting democratic functions available to all Americans. We submit radio and television announcements, by political, social and entertainment personalities, could reach those presently missed by the current sources of names. These announcements would, in some measurable way, supplement all the other efforts to achieve a diverse jury pool, in every jurisdiction.

### Racial Balancing

The state jury questionnaire denotes gender, but it does not identify race or ethnic background. Perhaps, when the questionnaire and its corresponding statutory authority were drafted, there was a concern that identifying race would create the perception that the system would always have the ability to identify persons of color, then deliberately exclude them from

service. Conversely, the federal questionnaire inquires into ethnicity.<sup>128</sup> The New York State Judicial Commission is urging that the questionnaires include an inquiry on race and ethnicity. Their argument is two-fold. First, there is no means to statistically analyze those who serve on juries based upon race, to determine whether there is proportional representation on jury panels. Presently, Commissioners of Jurors have to rely upon unscientific empiricism in determining who is not serving on juries, and why. Secondly, this Commission wants racial identification to be monitored by the jury commissioners, and to be used to correct jury pools for racial imbalance, should it exist.<sup>129</sup>

Using race identity for analysis just makes sense. By employing scientific techniques to analyze a problem, there is a greater chance that it will lead to a more accurate and truthful discussion of the problem and lead to cogent solutions. Today, we cannot provide accurate data on the extent of the underrepresentation of minorities on jury venires. In the Third and Fourth Judicial districts, where minorities constitute between three and eight percent of the total population, depending on the county, a representative number of minorities on a particular panel may occur, but still appear to be minuscule compared to the number of minority litigants whose fates are determined by juries. Proportional racial representation on juries may already exist in these judicial districts, without engendering a corresponding perception. Accurate statistical information will dispel any erroneous perception. There will be hard facts rather than supposition.

However, the Commission's later suggestion, correcting racial imbalance, is a little more perplexing. Although the notion may be lofty in terms of an affirmative action effort to assure minorities' presence on juries, and appears to be the easiest and most direct method of achieving

the desired outcome, racial balancing appears to fly in the face of present statutory and constitutional schemes. The United State Supreme Court has stated repeatedly that a defendant is not entitled to a specific racial composition of a jury, nor have the jury mirror the community and reflect the various distinctive groups, but a defendant has a right to an impartial jury, made up of a "fair cross-section of the community."<sup>130</sup> "Given a century, in an almost unbroken chain of decisions, this court gradually has abolished race as a consideration for jury service,"<sup>131</sup> and it makes little difference who invokes the racial accounting, the harm is the same in all cases. It is submitted that racial balancing may not pass constitutional muster, unless an analysis similar to affirmative action for employment can be successfully argued.

Furthermore, racial balancing is contrary to New York State's policy and statute. A jury is to be randomly selected from a "fair cross-section of the community."<sup>132</sup> It is axiomatic that one cannot have racial balancing and random selection; they are inimical. Ostensibly, to properly exercise racial balancing, the Commissioners would have to hand pick individuals to create the optimum composition, a scenario, some of the Commissioners want to avoid. They believe that the random selection by OCA's computer generates the best bias-free jury panels. Tampering with these computer generated lists by selecting individuals to replace others is doing the very thing they have sworn to avoid, deliberate exclusion or inclusion based upon race. Moreover, if racial balancing is used, will we then have to balance on religious grounds, ethnicity, political affiliation, economic status or ideology?<sup>133</sup> This task would be virtually impossible, and nothing would be resolved. Although not perfect, particularly in correcting past abuses, the random selection of a "fair cross-section of the community" maybe the most prudent policy.

Still, corrective measures are in order. An approach which does not imperil the present constitutional interpretation nor contradict state policy, but is still a permissible affirmative action, is to devise a formula to weigh the mailing of the questionnaires to specific zip codes of minority communities. By employing such a formula, there may be an extrapolated return of questionnaires which further provides more names of minorities to receive a summons to serve. Directly effecting the distribution of the questionnaires, and not the composition of persons summoned to appear may best serve our efforts to create a jury pool that mirrors the community, without inappropriate or unconstitutional interference with the selection process.

#### Affirmative Action and Proportional Representation

For a moment, let us stray from the notion of "fair cross-section of the community". We have cited Taylor v. Louisiana, and Smith v. Texas, and their progeny for the constitutionally confirmed proposition that a litigant is not entitled to a particular jury composition, just a "fair cross-section of the community".<sup>134</sup> The fair cross-section rule, initially, concerned trial juries, but eventually was expanded to jury panels.<sup>135</sup> Justice Lewis Douglas surmises that the court-fashioned principle, "fair cross section of the community," is just "tokenism to address a remnant of past discrimination."<sup>136</sup> To eradicate a discriminatory effect which originated in deliberate exclusion, we may need to harken back to the original concept which is invoked whenever justice is declared, the "jury of one's peers." This originally meant that an accused person had the right to be tried by members of his/her class, and some people have argued that this idea should be reinstated now.<sup>137</sup> Perhaps, another "necessary step" is in order to insure fidelity to this maxim, which when appropriately applied may create proportional representation in this public

institution, and ameliorate the perceived "charade" that "random selection" and "fair cross-section" have not been able to dispel.<sup>138</sup>

Although presently the Courts and theorists are following a "color blind" approach to diversity in our juries, a color conscious approach should not be summarily dismissed. We cannot ignore that a color conscious approach denied blacks access to serving on a jury. Present standards and principles such as a "fair cross-section of the community" have not done much to undo this history of deliberate exclusion, and the present discriminatory effect, that minorities are not present on jury venires. Is it possible that a color conscious approach could be a viable solution? In remedying other past discriminations, the law has clearly relied upon race consideration in other areas where the horrors of discrimination prevailed. So, one could now propose a discussion on proportional representation on jury panels based upon race factors to correct past discrimination. We have, and we continue, to give due deference to the Courts' constitutional interpretation on this issue, as we should, but deference should not foreclose any other exploration of new theories which may promote greater representation of minorities on juries. We propose more study on whether an attempt at proportional representation of minorities on juries may pass constitutional muster.

Presently, New York jury venires are selected county wide,<sup>139</sup> as the "fair cross-section of the community", even though most minorities dwell in urban settings.<sup>140</sup> This selection scheme diminishes the venerated concept, a "jury of one's peers", for minorities. "The very idea of a jury is a body of men composed of peers of equals of the person who rights it is selected or summoned to determine..." (emphasis added).<sup>141</sup> Jury venires selected county wide which cross several communities within it, obviously dilute minority representation on the jury panel,

and lessen their influence in determining the fate of persons from their distinct communities; who are definitely their peers, and whose numbers are conspicuously visible in the matters before the court.<sup>142</sup> Moreover, this scheme dilutes these potential jurors strength in deciding the fate of what transpires in their community. How, then, can we devise another scheme whereby minorities may have an increased opportunity to hear and ultimately decide the fate of a peer? One suggestion is the establishment of jury districts that cuts across a county, similar to political districts and judicial districts.<sup>143</sup>

The Sixth Amendment of the United States Constitution reads, in part, that a person is entitled to an impartial jury of the state and district wherein the crime shall have been committed (emphasis added). When the founding fathers enacted this amendment, they only had a "jury of one's peers" as their fundamental definition for an impartial jury, not a "fair cross-section of the community". And, this "jury of one's peers" would come from districts where the crime was committed. Furthermore, to cling to the notion of "jury of one's peers", especially in our contemporary mosaic communities, the jury venires will have to be selected from more finite parameters than counties. The county should be divided into smaller districts, being mindful of the diverse community makeup. Jury districts could be drawn so that the black community would constitute a representative jury district or districts.

Jury districts exist in New York. In People v. Shedrick,<sup>144</sup> a husband and wife were tried for murder in Steuben County. Steuben County is divided into three distinct jury districts. The jury districts were established in 1904 and never abrogated even after the enactment of §500 of the Judiciary Law, which requires that juries be selected from a "fair cross-section of the community" in the county or other governmental subdivision wherein the court convenes

(emphasis added). The defendants challenged Steuben County jury districts as invalid because of §500. An unanimous Court of Appeals said that Steuben County's jury system did not violate this law, nor did the law unequivocally require juries be drawn from throughout the entire county or that jury lists be county wide.<sup>145</sup> Since present law does not abolish existing jury districts and juries can be selected from smaller subdivisions, it is submitted that the creation of jury districts, which take into consideration racial and ethnic demographics, may likewise rely upon Shedrick's analysis.

In other arenas where the abridgement of a fundamental right has lead to a race conscious remedy to rectify dilution of proportional representation, subdistricts have been proposed. Where it has been ascertained that at-large elections have effectively denied minorities proportional representation, and indirectly, empowerment, the community has turned to the Voting Rights Act for solutions.<sup>146</sup> This Act, using a formula, has created minority political districts, which did not previously exist, to correct existing political districts that had diluted the minority communities voting strength.

Presently, Albany County is going through the process of creating minority voting districts to overcome this abridgment. This Act, also was used to create judicial districts in Texas so that the minority communities could have proportional representation in the judiciary. In Texas, judges were elected to districts where they resided, but the elections were at-large, district-wide electoral schemes, so that the candidate with the most votes wins.

For example, Harris County has fifty nine (59) judicial districts and African-Americans comprised twenty-six (26) percent of the county, mostly located in concentrated neighborhoods. Still, under this at-large district voting scheme, only three of the fifty nine judges were black, less

than five percent. A Federal District Court Judge found that this at-large, county wide method of electing district judges contravened the Voting Rights Act, and based upon the totality of the circumstances, after inaction by the legislature, divided the Districts into subdistricts so that there will be more proportional representation on the bench. The United States Supreme Court agreed with the lower Federal District Court, noting at-large selection "may well lessen minority influence instead of increase it."<sup>147</sup>

Thus, an argument can be made that legislation can be drafted establishing smaller jury districts, considering racial demographics, in order to increase, not minimize minority influence on those matters that transpire in the heart of their community.



## RECOMMENDATIONS

We have discussed the enormity of this issue. We wish to succinctly recommend the following:

1. That OCA increase the source of names, by using social services, unemployment, utility, telephone, high school, and naturalized citizen lists;
2. That judges be circumspect over jury selection, and scrutinize and deter attorney's from using racially motivated peremptory challenges;
3. That the community pursue jury registration with the same fervor as voter registration; creative methods of distributing jury registration forms should be pursued;
4. That the Bar Association, at every level, lend a hand to this issue by sponsoring public announcements via newspapers, radio, and TV;
5. That an optional question be added to the jury questionnaire asking racial identity. This information should be used solely for statistical purposes;
6. That the Legislature analyze the fiscal implications of increasing the jury fee or directing employers to pay for employees jury service. If the benefit to the system outweighs the cost then we suggest that the judiciary law be modified, and the financial burden be lifted from the individual and shared by government and private-sector employers;
7. That the Legislature evaluate the present list of exemptions and determine if modifications to the list would better reflect contemporary circumstances;
8. That the justice system consider day care options for primary care takers so that they can serve on juries;

9. That the Commissioners consider when mailing questionnaires in their community, weighing more heavily, the number of questionnaires to be sent to the minority community;
10. Individuals who belong to a minority or ethnic group should strongly consider participating in the most democratic form of government, the jury, registering and serving. Justice needs you.

## CONCLUSION

Our most venerated and most democratic institution, the jury, is under siege by the hue and cry that it does not serve all. It may be the most significant democratic principle known to us to resolve controversy, and give it repose. Still, it is plagued by a public perception that it has not done all that it can to be totally democratic, totally inclusionary. It is our hope that our discussion and message will not be viewed as an academic exercise for the authors, but a clarion call to the Legislature, administrators, and the community that what is good can be made better. Democracy works well when there is faith that it works well for all. Let us heed the Supreme Court's dictum in Taylor v. Louisiana that we have a jury of the community so that there is a perception of "public confidence in the fairness of the justice system."

## ENDNOTES

1. Charles Walker, *Is There a Conspiracy to Keep Blacks Off Juries*, *Ebony*, September 1992, at 54.
2. Lewis Douglas, *Race, Jury Composition and Change of Venue Application*, N.Y.L.J., Oct. 10, 1992; *A Diverse Jury is a Just Jury*, *Daily Gazette*, June 10, 1992 at B-12.
3. Report of the New York State Judicial Commission on Minorities, *Minority Representation on Juries*, vol. 1, chp.6, April 1991 at p 53-59.
4. Jon M. VanDyke, *Jury Selection Procedures*, chp one p.2 (Ballinger Publishing Co. ed, 1977); *Also see, Constitution of the United States Analysis and Interpretation*, 1331-1337 (Congressional Research Service of Congress, 1987).
5. VanDyke, *Id.* at 2.
6. *Id.* at 3.
7. *Id.* at 3.
8. Y.B. 17 John, *Magna Carta*, c.39 (1215).
9. VanDyke, *supra* note 1, at 3.
10. *Id.* at 4.
11. *Id.* at 4.
12. *Id.*
13. *Id.* at 5.
14. *Id.*
15. *Id.* at 6.
16. *Id.*
17. *Id.* at 7.
18. U.S. Const. Art. III, §2. *See* Appendix 2.
19. VanDyke, *supra* note 1, at 7.
20. U.S. Const. Amend. V.

39. Id. at 527; *Also see Lewis Douglas, Race, Jury Composition and Change of Venue*, N.Y.L.J. October 10, 1992 at 1.
40. Id.
41. Id. at 530.
42. 407 US 493 (1972).
43. Id. at 503.
44. *See Taylor v. Louisiana*, 419 US 522, 538.
45. Id.
46. Id.
47. 380 US 202, (1964).
48. *People v. Addison*, \_\_\_ Misc2d \_\_\_, NYS2d \_\_\_, (1992), N.Y.L.J. August 8, 1992 at 26 col 2 (Mallon J. Suffolk County); *People v. Waters*, 125 A.D.2d 615 (2nd Dept, 1985).
49. 439 US 357 (1979).
50. Id. at 367.
51. 60 NY2d 403 (1983).
52. *Guzman* at 412 citing *Rose v. Mitchell*, 443 U.S. 545 (1979).
53. *See N.Y. Jud. Law §§500 et. seq.* (McKinney 1993).
54. *See N.Y. Jud. Law §§210 and 211* (McKinney 1993); N.Y. Const. Art. VI, §28.
55. *See, also*, N.Y. Code R. & Regs. tit. 22 §128.0 (1993).
56. *See, also*, N.Y. Civ. Rights Law, §13 (McKinney 1992).
57. *See, also*, N.Y. Jud. Law §504(b) (McKinney 1993) which provides for removal of commissioners of jurors for cause.
58. *See*, N.Y. Jud Law §503; *see, also*, 28 USC, §1863 (1992).
59. *See, also*, N.Y. Codes R. & Regs. tit 22 §128.2 (1993) (hereinafter NYCRR).
60. *See*, N.Y. Jud. Law §504(a).

61. We were apprised by one of the Capital District commissioners of jurors and also one of designers of Office of Court Administration's automated juror management system that a fourth major list is being considered for future inclusion in the juror selection system, i.e., a NYNEX list or list of telephone service subscribers.
62. *See, Interim Report of the Jury System Management Advisory Committee*, NYS Unified Court System, (December 1984).
63. *See, also* 22 NYCRR, §128.5 and, for Federal qualification criteria, 28 USC §1865 (1992).
64. *See*, N.Y. Jud. Law §515 (1993).
65. *Id.*
66. *See, also*, 22 NYCRR §128.7, which requires the commissioner of jurors to either qualify and summon jurors for town and village courts or, if not practicable, to furnish to such courts lists of qualified jurors who reside within the geographical jurisdiction of such courts.
67. *See, also* 22 NYCRR §128.6(a) and (b) and see 28 USC §1866 (1992).
68. *Id.* and see, also, 22 NYCRR §128.6(c).
69. *See*, N.Y. Jud. Law §519 and *see*, 28 USC §1875 (1992).
70. *See*, N.Y. Jud. Law §520 (1992).
71. *See*, N.Y. Jud. Law §521-a, and *see*, 28 USC §1871 (1992), which provides a minimum \$40/day for service of a Federal juror.
72. All jurors who have served are entitled to an allowance therefore they must present a claim for such allowance on or before the thirty-first of December of the year following the year in which they rendered their juror services or such allowance is deemed forfeited. *See*, N.Y. Jud. Law §526. Jurors who appear for the sole purpose of requesting an excuse, deferment or postponement from jury service are not entitled to any per diem fee or mileage allowance. *See* 22 NYCRR §128.6(d).
73. *See*, N.Y. Jud. Law, §524 (McKinney 1993); 22 NYCRR §128.9; *see* 28 USC §1866 (1992), which imposes a two year non-eligibility period at the Federal level.
74. *See, also*, 22 NYCRR §128.8.
75. *See*, N.Y. Jud. Law §525 (McKinney 1993).
76. *See*, 22 NYCRR §128.12 and also, Penal Law §215.50 (McKinney 1992), which provides, *inter alia*, that intentional failure to obey a summons for jury service may be punishable as criminal contempt in the second degree, a class A misdemeanor. We have been

informed by some of the commissioners of jurors that participated in our Capital District survey that rarely if ever are sanctions sought against residents for failure to comply with the qualification questionnaire or summons.

77. See the concurring opinion of Judge Bellacosa in *People v. Bolling*, 79 NY2d 317,329-331(1992). Moreover, the Justice argues for the total elimination of peremptory challenge. *Id.* at p.326. See, also, Joel Swift, *Defendants, Racism and Peremptory Challenge*, 22 Colum. Human Rts. L. Rev. 177 (1992).
78. Charles Walker, *Is There a Conspiracy to Keep Blacks Off Juries*, *Ebony* (September 1992) at 54.
79. N.Y. Crim. Proc. Law §270.25 (McKinney 1993).
80. S. Fulero and S.D. Penrod, *The Myths and Realities of Attorney Jury Selection Folklore and Scientific Selection: What Works*, 17 Ohio N.U.L. Rev 229 (1990); Barbara Underwood, *Ending Racial Discrimination in Jury Selection: Whose Right is it Anyways*, 92 Colum. L. Rev. 725 (1992).
81. S. Fulero, *Id.* at 234.
82. *Ross v. Oklahoma*, 487 US 81, 89 (1988); *People v. King*, 47 A.D.2d 595, 594 (4th Dept 1975) citing, *People v. Doran*, 246 N.Y. 409, 426-427 (1927); Joel Swift, *supra*; *Georgia v. McCollum*, 505 US \_\_\_, 120 L.Ed.2d 33, (1992).
83. *People v. Thompson*, 79 A.D.2d 87, 96-99 (2nd Dept 1981).
84. N.Y. Crim. Pro. Law §§ 270.15, 270.25; N.Y. Civ. Pro. L. & R. §§ 4109; 4110 (McKinney 1993).
85. *People v. Thompson*, *Id.* at 96. (citations omitted).
86. 100 US 303 (1880).
87. *Taylor v. Louisiana*, 419 US 522 (1975).
88. *Batson v. Kentucky*, 476 US 79 (1986); *Georgia v. McCollum*, 505 US \_\_\_, 120 L Ed 2d 33 (1992); *Powers v. Ohio*, 499 US \_\_\_, 113 L.Ed.2d 411 (1991).
89. *Edmonson v. Leesville Concrete Co.*, 500 US \_\_\_, 114 L.Ed.2d 660 (1991).
90. N.Y. Const. art. 1 §1; N.Y. Civ. Rights Law §§ 12, 13.
91. *People v. Kern*, 75 NY2d 638 (1990).

92. *Baston v. Kentucky*, supra; *Georgia v. McCollum*, supra; *Edmonson v. Leesville Concrete*, supra.
93. *People v. Bolling*, 79 NY2d 317,324 (1992).
94. *Id.* at 321.
95. *People v. Simmons*, 79 NY2d 1013, 1015 (1992); *People v. Bolling*, 79 NY2d 317; *People v. Hawthorne*, 80 NY2d 873 (1992).
96. *People v. Scott*, 70 NY2d 420, 423 (1987).
97. *People v. Bolling*, at 322.
98. M. Hoenig, *Peremptory Challenges Revisited*, N.Y.L.J. October 14, 1992; *People v. Hernandez*, 80 N.Y.2d 872 (1992); *Baston v. Kentucky*, 476 US 79 (1986).
99. *People v. Bolling*, at 325; *People v. Kern*, 75 NY2d 638 (1990). Furthermore, the courts may commence levying sanctions against obdurate litigators, who persist in exercising racially tainted peremptory challenges and fail to adequately proffer a race-neutral reason for the challenge, similar to Federal District Court Judge Louis J. Freeh in *Pueblo v. Super Markets General*, 92 Cir. 1267 reported in the New York Law Journal on December 24, 1992.
100. *Georgia v. McCollum*, 120 L Ed 2d 33, 52, Justice Thomas concurring; Also *See People v. Bolling*, at 326.
101. This report does not take the position that peremptory challenges should be eliminated, however, the analysis of its conjectural demise is at hand. Scholars are debating this issue now. *See, James S. Bowen, Peremptory Challenges Discrimination Revisited: Do Batson and McClesky Relieve or Intensify the Swain Paradox*, National Black Law Journal, vol 11, (1989) at 291.
102. N.Y. Jud. Law §506 (McKinney 1993).
103. *People v. Addison*, \_\_ Misc2d \_\_, \_\_ NYS2d \_\_, N.Y.L.J., August 8, 1992 at 26, col.2, Mallon, J Suffolk County. *See, OCA Chief Administrator, Matthew Crosson Affidavit Appendix 10.*
104. *See Appendix 7B.*
105. Judge George B. Ceresia's Comments at the Funds for Modern Courts Meeting, held November 12, 1992, at Desmond Americana, Albany, NY.



106. Cynthia A. Williams in her law review article, *Jury Source Representativeness and the Use of Voter Registration Lists*, 65 N.Y.U. L. Rev. 590 (1970), cogently highlights the frailties of voter registration lists as a primary source of including distinct and under represented groups. Moreover, she employs statistical analysis to support her arguments. (at 608-616).
107. *Id.* at 632; *The Report of the New York State Judicial Commission on Minorities*, vol 1 (April 1991) at 58-59.
108. N.Y. Jud. Law §506 (McKinney 1993); 22 NYCRR-Part 128.
109. *See* Methodology, *infra* at p 24 ,Albany County Case History for July and August, 1992. Similar results were experienced by Schenectady County Commissioner of Jurors, Elizabeth Carroll.
110. *See Interim Report of the Jury System Management Advisory Committee*, NYS Unified Court System, December, 1984.
111. Ulster County Commissioner, Robert Jordan, Appendix 7G; *The Report of the New York State Judicial Commission on Minorities*, *supra* at p.53-59.
112. N.Y. Soc. Serv. Law §§ 2(18), 136 (McKinney 1993); 42 USC §602(a)(9); *People v. Hobson*, N.Y.L.J. October 8, 1992 p.22, 2nd Col (Weissman, J, Suffolk County).
113. N.Y. Soc. Serv. Law §136 (McKinney 1993).
114. N.Y. Soc. Serv. Law §2(18), 136(1) (McKinney 1993); 18 NYCRR §357.3 (1993).
115. N.Y. Jud. Law §509(a) (McKinney 1993); 22 NYCRR §128.4 (1993).
116. N.Y. Jud. Law §521 (McKinney 1993).
117. Assembly persons Eve, Koppell and Norman and Senator Holland, attempted to introduce a bill (Assembly A.10987, Senate S.844) dated May 12, 1992 to amend section 506 of the Judiciary Law, in relation to expanding the source of names from which a commissioner of jurors may select names from social service and unemployment lists, and to amend section 521 of the Judiciary Law in relation to the juror's per diem and travel allowance. We surmise the bill will be reintroduced for 1993.
118. *Id.*
119. N.Y. Jud. Law §519 (McKinney 1993). However, *see* §521 which provides that the State does not have to pay fifteen dollars for the first three days if the juror's employer is not allowed to withhold that amount.
120. N.Y. Jud. Law §§ 524 and 525 (McKinney 1993).

121. See N.Y. Jud. Law §525(b) (McKinney 1993).
122. 28 USC §1871 (1992).
123. *Wachtler v. Cuomo et al*, 6034-91 Supreme Ct-Albany (1992).
124. Per several Commissioners, it took approximately twenty-five years to increase the juror's per diem from five dollars a day to fifteen dollars.
125. See Article 16 Discussion, *infra* beginning at 16.
126. See Commissioner of Jurors Interview, *infra* at 25; Appendix 7.
127. See Appendixes 7D and 11.
128. Appendix 9; 28 USC §1863 (1992).
129. *Report of the New York State Judicial Commissions on Minorities, supra*, at 55.
130. *Taylor v. Louisiana*, 419 US 522 (1975); *Holland v. Illinois*, 493 US 474, 483 (1990).
131. *Georgia v. McCollum*, 505 US \_\_, 120 L Ed 33.
132. N.Y. Jud. Law §500 (McKinney 1993).
133. *Thiel v. So Pacific Railroad*, 328 US 217, 220 (1946).
134. *Taylor v. Louisiana, supra*; *Smith v. Texas*, 311 US 128 (1940).
135. *Swain v. Alabama*, 380 US 202 (1964).
136. *Race, Jury Composition and Change of Venue*, N.Y.L.J. October 1, 1992 at 4.
137. Jon M. VanDyke, *Jury Selection Procedures* chp one p.7 (Ballinger Co. ed 1977).
138. Derrick Bell, *Race, Racism and American Laws*, ch 16, 949-1005 (Boston, Little Brown 1973).
139. 22 NYCRR 128.4.
140. See Appendix 6, (County Breakdowns).
141. *Strauder v. West Virginia*, 100 US at 308 (1880).
142. In *People v. Henderson*, 128 Misc2d 360, (City of Buffalo 1985), statistics were presented which clearly showed how the likelihood of blacks who comprised 23% of the City of Buffalo's population, but only 9% of the Erie County population, was diluted by 61% due

to the use of county wide rather than city lists when picking City Court juries. Discriminatory effect notwithstanding, the court observed that the consequence was inadvertent, unintended, and avoidable, but not unconstitutional.

143. Derrick Bell, *supra* at 976.

144. 66 NY2d 1015 (1985).

145. *Id.* at 1017.

146. 42 USC §1973 (1992).

147. *Houston Lawyers' Assn v. Attorney General of Texas*, 501 US \_\_\_, 115 L.Ed.2d 379, 385, 111 SCT 2376 (1991). The Voting Rights Act challenges to judicial elections have been brought in a number of states with some states entering into settlement agreements or judicial decrees which created subdistricts. *Brooks v. State Board of Elections*, No. CV288-146 1992 U.S. Dist. LEXIS 6030 (S.D. Ga. Order of April 22, 1992); *Chisom v. Roemer*, \_\_\_ US \_\_\_, 111 S. Ct. 2354 (1991); *Clark v Roemer* 777 F. Supp. 471 (M.D. La. 1991); *S. Christian Leadership Conference v. Evans*, 785 F. Supp. 1469 (M.D. Ala. 1992); *Martin v. Mabus*, 700 F. Supp. 327 (S.D. Miss. 1988); *Williams v. State Board of Election*, 718 F. Supp. 1324 (N.D. Ill. 1989); *Mallory v. Eyrich*, 922 F. 2d 1273 (6th Cir. 1991); *Nipper v. Chiles*, No. 90-447-CIV-J-16 (M.D. Fla. June 2, 1992); *Davis v. Martinez*, No. 90-40098MP (N.D. Fla. Complaint Filed June 5, 1990); *African-American Voting Rights Legal Defense Fund, Inc. v. Missouri*, No. 4:92CV00973ELF (E.D. Mo. complaint Filed May 20, 1992); *Cousin v. McWherter*, No. Civ-1-90-339 (E.D. Tenn. complaint Filed August 31, 1990); *Hunt v. Arkansas*, No. PB-C-89-406 (E.D. Ark. Consent Decree Filed November 7, 1991); *Tsosie v. King*, No. Civ 91-0905m (D.N.M. Complaint Filed September 9, 1991); *Also See*, Robert McDuff, *The Voting Rights Act and Judicial Election Litigation: The Plaintiffs Perspective*, 73 *Judicature* 82 (1989).

## APPENDIX AND EXHIBIT LIST

1. Commissioners' questionnaire
2. Text of Article III, Section 2 of The United States Constitution
3. Text of Sixth and Seventh Amendment of The United States Constitution
4. Text of New York Constitution Article I § 1
5. New York Civil Rights Law § 12 & 13
6. A. Racial, Ethnic background by zip code  
B. Overlap zip code map  
C. Map of the region
7. Commissioners interview:
  - A. Albany County
  - B. Columbia County
  - C. Greene County
  - D. Rensselaer County
  - E. Saratoga County
  - F. Schenectady County
  - G. Ulster County
8. Jury Questionnaire
9. Federal Questionnaire
10. Matthew Crosson's affidavit
11. Rensselaer County Commissioner of Juror's Jury Coupon

**Appendix I**

**Commissioner of Jurors Questionnaire**

**COMMISSIONER OF JURORS**  
**Areas of Inquiry**

1. What are the present sources of names for jurors?
2. How much of the jury pool is generated from jury registration? How successful is jury registration?
3. What is the process in getting potential jurors to appear for jury duty?
4. Do you possess census or demographic racial breakdowns for your county?
5. What has been your success rate in obtaining minorities for your jury panel?
6. Have you conducted any studies on this particular issue? Are you willing to share the with us?
7. What persons generally seek exemption or excuse from jury duty?
8. How frequently do minorities seek exemption or excuse from jury duty?
9. How do you promulgate juror's obligation to serve and requirements to the various communities?
10. When choosing a jury panel, do you attempt to balance the pool based upon gender? based upon race?
11. If yes to question 10, how do you do this?
12. Do you have a mechanism to identify a juror's gender or race to create a balanced jury pool?
13. How are changes implemented to the selection process i.e., use of different lists to generate a jury pool? Is it by the commissioner of jurors, you or OCA?
14. Are there different experiences in selected grand jury panels? What are they?
15. How many different jury panels are selected each trial term?
16. How do other political subdivisions such as towns or cities select jurors? What role do you play in this selection process?
17. How frequently do you update your lists of potential jurors?

18. After a juror has served, how long are they disqualified to serve, i.e., 4 years or 2 years?
19. How do you feel about names taken from high school graduation lists, telephone lists, utility lists, etc?
20. What problems do you see in using these types of lists?
21. What requests or involvements does OCA have in your jury selection?
22. What recommendations do you suggest to increase minority representation on your jury panels?
23. Are your lists computerized? If so, what feature or information can you generate with your computer?

## Appendix 2

### Text of Article III, Section 2 of the United States Constitution

Section. 1. The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting Ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more States;--between a State and citizens of another State;--between citizens of different States;--between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting Ambassadors, other public ministers and consuls, and those in which a State shall be party, the supreme Court shall have original jurisdiction. In all the other cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to law and fact,



with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

## Appendix 3

### Text of the Sixth and Seventh Amendments of the United States Constitution

#### SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

#### SEVENTH AMENDMENT

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## Appendix 4

### New York State Constitution

#### Article 1 § 1

No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or to elect any unit of representation of the state from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law.

## Appendix 5

### Civil Rights Law §13

No citizen of the state possessing all other qualifications which are or may be required or prescribed by law, shall be disqualified to serve as a grand or petit juror in any court of this state on account of race, creed, color, national origin or sex, and any person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for any of the causes aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor and be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not less than thirty days, nor more than ninety days, or both such fine and imprisonment.