LIBRARY
SUPREME COURT, U. S.

In the

Supreme Court of the United States

S 2

CLAUDE ALEXANDER,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

No. 70-5026

Washington, D. C.
December 6 and 7, 1971

Pages 1 thru 47

HOOVER REPORTING COMPANY, INC.
Official Reporters
Washington, D. C.
546-6666

IN THE SUPREME COURT OF THE UNITED STATES

CLAUDE ALEXANDER, Petitioner,	:	
v.	:	No. 70-5026
STATE OF LOUISIANA, Respondent.	:	

Washington, D. C.,

Monday, December 6, 1971.

The above-entitled matter came on for argument at 2:39 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

CHARLES STEPHEN RALSTON, ESQ., 10 Columbus Circle, New York, New York 10019, for the Petitioner.

BERTRAND DE BLANC, ESQ., District Attorney, Fifteenth Judicial District Court, Lafayette, Louisiana, for the Respondent.

C O N T E N T S

(Second day's proceedings - pg. 16)

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in No. 5026, Alexander against Louisiana.

Mr. Ralston, you may proceed whenever you're ready.

ORAL ARGUMENT OF CHARLES STEPHEN RALSTON, ESQ.,

ON BEHALF OF THE PETITIONER

MR. RALSTON: Mr. Chief Justice, may it please the Court:

I represent the petitioner, Claude Alexander, in this case, which is here on a petition for writ of certiorari to the Supreme Court of Louisiana, to review the affirmance of petitioner's conviction of rape.

Petitioner is a black male, who was convicted in Lafayette Parish in Louisiana, and he raised in the State courts, and raises here, three constitutional challenges to his indictment and his conviction.

First, he urges that members of his race were unconstitutionally excluded from the jury list and venires from which the grand jury that indicted him was selected.

Secondly, he urges that the total exclusion of women from the service -- from jury lists and therefore from service on juries in the parish, also denied him due process of law, in violation of the Fourteenth Amendment.

And finally, he urges that the use at his trial of a statement which was taken without compliance with the require-

ments of Miranda vs. Arizona denied him due process of law.

With regard to the first contention, the exclusion of blacks from juries, we urge basically that petitioner clearly established a prima facie case of jury discrimination within the rule of the series of cases, beginning with Avery vs. Georgia and proceeding through Whitus vs. Georgia, and the cases that followed Whitus. And I will return briefly to discuss why we urge there is a clear prima facie case.

Therefore the issue, really, in this case is whether the State has offered a satisfactory rebuttal to that prima facie case. In other words, has the State given a constitutionally satisfactory explanation to a situation where a disproportion of black representation on juries has been shown, where, in the jury selection process, racial designations were before the jury commissioners when they selected the persons who were to be on the jury list.

I am getting to why a clear prima facie case has been made out. Briefly, the evidence introduced in the motion to quash the indictment in the court below showed that there was a significant drop in the proportion of blacks on the rolls or in the group of persons who were being considered for jury service during stages in the jury selection process, when the commissioners were working from documents on which there appeared racial designation.

The jury commission was operating under a Louisiana

statute which required that jury venires of at least 300 persons be made up. In this particular instance, in Lafayette Parish, they went above the minimum and established venires of 400 persons.

The Louisiana statutes do not set out the procedure by which these 400 persons are to be arrived at; they do set out qualifications for jurors and certain exemptions, which are mostly exemptions based on occupation and physical disability.

Now, the jury commissioners work from a number of sources of names to, as a starting point to achieve the final 400. The main sources are voter registration lists, city directory which covered the city of Lafayette itself, telephone directory and certain other lists which are not fully specified.

Initially there is an objection raised to cause these lists, or at least certain of them, the voter registration list and the telephone directory, were not, admittedly,fully representative of the black community. That is, there is a disproportion of black representation compared to the white disproportion. And we urge that this is one basis why the jury selection method violated the Constitution.

However, when these lists were used, the jury commissioners mailed out to prospective jurors a total of 11,000 questionnaires and received back approximately 7300. Now, of those 7300, 13.67 percent were from blacks. This is

in a population -- this is black males over 21, that is. This is in a population where black males over 21 represented 20.27 percent of the population.

On the questionnaires there was a request for the race of the person returning the questionnaire, and this was filled in in all but 189 of the questionnaires.

A card was made up, which also had a racial designation. These 7,000 questionnaires were then gone through, through a process of, the commissioners say, weeding out those that were not qualified or who might claim exemptions from service, until approximately 2,000 questionnaires were arrived at.

There is no evidence in this record as to the racial composition of that 2,000. However, the 2,000 were then put on the table, and from those 2,000 were selected 400. A white slip of paper having just the name and address of the person, each of the 400 persons, was put into a box from which 20-man grand jury venires would be drawn.

In the particular instance of the petitioner, of those 20 one was black and he was not pcoked when the final 12-man venire was picked, selected from the 20.

Now, of those 400 names at the end of the selection process, the proportion of blacks was down to approximately 6.75 percent, and it is this disproportion, together with the fact that at the time of the process, when an over-all popula-

tion of more than 13 percent was being examined, there were racial designations on the documents used. There was a clear opportunity to discriminate. It was condemned by Whitus and Avery. Coupled with a disproportionate weeding out of blacks as opposed to whites.

Q In weeding out now, at what stage are you addressing that?

MR. RALSTON: Your Honor, I'm addressing myself to the stage when they have the 7300 questionnaires. They went through and disposed of those that they say were not qualified.

Q What was the percentage? What percentage did 7300 represent?

MR. RALSTON: That was 13.76 percent black.

Now, when they wound up with 400, they were down to 6.75 percent black.

Q And that's out of the 20 percent plus?

MR. RALSTON: That's out of the 20 percent plus.

The thing that is not clear is that when they had weeded out the 7,000 down to the 2,000 questionnaires from which the ultimate 400 were selected, what was the racial proportion of the 2,000.

We've pointed out that whichever way --whatever happened, whether the 13 percent were reduced down to 6 percent, when the weeding out process occurred, or whether it went from 13 percent to 6 percent when the final 400 were drawn; either

way a prima facie case has been made out. Because in both times there were racial designations available to the commissioners to use during the process.

Q Did you regard this shrinkage from 20 percent to 13.7 as significant for these purposes?

MR. RALSTON: We have urged that the entire process has to be looked at, that whether --

Q I'm talking about what inference there is, as to inferences; would you draw inferences from that change, from 20 percent down to 13.7?

MR. RALSTON: I think that under the circumstances of this case, that a serious constitutional question arises just from that shrinkage, because the jury commissioners admitted that the sources, at least two of the sources, the voter registration rule and the telephone book under-represented the black population. So that they knew they were getting a greater response from whites.

And the court has indicated that -- for some time, that where there is a duty on the jury commissioners not to use methods they know are going to result in the under-representation, so there's not a reasonable cross-section of the community.

We don't rely on that solely, but we do urge the entire process has to be looked at, because the ultimate end of this process was a drop from 20 percent down to 6.75 percent.

Now, we again feel that the use of these questionnaires with racial designation and the drop in proportion brings this case directly under Avery and Whitus, and the issue is, essentially, whether the State has sufficiently rebutted this prima facie case.

In the words of Whitus, has the State offered any testimony that the percentage of Negroes on the tax digest were not fully qualified. Here we're dealing with the percentage of blacks responding to the questionnaires. Has the State given any objective evidence that the proportion of blacks qualified, who responded to the questionnaires, was not as fully qualified as whites responding to the questionnaires.

And essentially, again, we say they have not. Now, they testified, of course, that they did not take race into consideration in making their selection; but this Court has held in numerous instances that such protestations are not sufficient to rebut a prima facie case.

They say that they apply these various objective criteria that are on the face of the questionnaire. This, however, conflicts with the presence of the racial designation on the questionnaire in this respect: that if all that was gone on was what was on the questionnaire in terms of occupation, et cetera, it's not at all clear why, what function the racial identification played, except to bring into play personal knowledge or subjective opinions of the commissioners

about the particular individual, which is information not reflected on the questionnaire.

The simple fact is that the jury commission had within its power in this case to come forward and explain or to justify this drop in proportion of blacks by showing by either, No. 1, keeping a record of the reasons why people were disqualified, or coming forward with the questionnaires which were available to it. It just simply did not do this in any way, simply rested on assertions about how it functioned.

And again, in the face of the racial designation and the opportunity to discriminate, we contend that simply was not sufficient.

I will just make one additional comment about one of the questions on the questionnaire, which possibly might have been used to justify the exclusion of blacks, and that is the question of whether a person could read or write, or what their educational attainments were.

In Turner vs. Fouche, this Court specifically reserved, in footnote 22, the issue of whether such a standard could be used by a State with a history of racial discrimination in the school to justify a higher rate of exclusion of blacks from jury service.

I point this out, not that this issue should be decided in this case, but that if the State were made to come forward with an explanation of the disproportion, and they

offered this as a possible explanation, this would raise another issue arising under the Fourteenth Amendment with regard to whether this kind of a standard was proper when it had this kind of result.

The second issue in this case involves the exclusion of women --

Q Just before you move on --

MR. RALSTON: Yes, Your Honor.

Q -- I just wanted to be sure: You say that if the State should respond, another and different Fourteenth Amendment issue might be raised by their response because -- what?

MR. RALSTON: I didn't -- I may have --

Q I must admit I was being inattentive, --

MR. RALSTON: -- misstated. I didn't mean different in --

Q -- I didn't quite get your point.

MR. RALSTON: I didn't mean different in the sense of it not being racial discrimination; what I meant was that if the State seeks to justify by saying that blacks have a lower level of educational attainment, and that's the reason they're disqualified disproportionately. And again, they haven't made that showing at all; but if they were to, this would raise the issue that would reserve in Turner vs. Fouche, as to whether or not this kind of standard, where it had this result in a State with a history of racial segregation, could be

justified under the Fourteenth Amendment.

Q Yes. Thank you.

MR. RALSTON: Now, the second issue raised by this case is the exclusion of women from not merely service on juries, but from consideration or from listing of jury lists at all.

Article 402 of the Louisiana Code, which is set out in our Appendix, provides that women shall not be selected for jury service -- a woman shall not be selected for jury service unless she has previously filed with the Clerk of the Court her written declaration of her desire to be subject to jury service.

This is essentially the same statute that was involved in this Court in the case of Hoyt vs. Florida; it is virtually word for word, identical to the Florida statute.

Q Mr. Ralston, this question is really -- I suppose I shouldn't ask it: If you were a counsel drawing a jury, would you want women on this case?

MR. RALSTON: Your Honor, I preface it by my answer -- I will respond to your question -- by saying that the Court has never held that this was a significant factor in jury discrimination cases, whether the difference in a particular -- where there would be a difference in a particular case. But it's difficult for me to say in response to your question directly, depending on the circumstances.

Q That's why my question may be unfair.

MR. RALSTON: Maybe, if I had an opportunity, getting again to the merits of this particular cases, to have a black woman on the jury, perhaps so, to bring insight into this kind of situation.

Q Or maybe if you would pose the issue whether there was in fact consent you might prefer this?

MR. RALSTON: Yes.

The whole notion of a cross-section of the community being represented on a jury is to bring variety of insights into decisions of cases, and in a rape case, even though women may have a negative reaction to it, they could very well bring insights that a man could never have. It might be the kind of case where a defendant might very well want a woman on the jury.

Q But your argument isn't just confined to rape cases, is it?

MR. RALSTON: No, Your Honor. My argument says that in any kind of cases, that this kind of exclusion of women at least violates the due process right to juries that fairly represents --

Q If we agree with you, do we have to overrule Hoyt?

MR. RALSTON: Pardon?

Q If we agree with you, do we have to overrule

Hoyt?

MR. RALSTON: No, Your Honor. We have argued in our brief that Hoyt is sufficiently distinguishable on its facts. In Hoyt, there were women on the jury to some extent; here there were none at all. The three concurring opinions in Hoyt indicated that they saw nothing in the Hoyt record to show actions of the jury commissioners that resulted in no service of women.

Q Now, if we find clearly that there's a Whitus violation, do we have to get to the woman's point?

MR. RALSTON: No, Your Honor, except in this sense, I suppose this case will go back down for a new indictment, and the issue will be raised all over again. Because the system they're using is no woman on the jury list at all, and apparently there never has been, and when there will be is very unclear.

And now the Supreme Court of Florida said this is all right, and the issue would just have to be relitigated. I think that it would be proper for this Court to decide the issue, because I think it will clearly be raised again, when the case goes back down.

Q Are you talking only about the grand jury?

MR. RALSTON: Yes, Your Honor, this is the grand jury. Only the grand jury was challenged in this case.

And under past decisions of this Court, also involving

challenges only to the grand jury, the indictment falls, the conviction based on that indictment falls as well.

As I said, in response to Mr. Justice Brennan's question, we first contend that this case is distinguishable from Hoyt, in that there has been no service of women on the juries at all.

Moreover, petitioner contends that unlike Hoyt, the total exclusion of women is a direct result of the jury selection procedures adopted by the jury commission.

MR. CHIEF JUSTICE BURGER: We'll begin at that point at ten o'clock in the morning.

MR. RALSTON: Thank you, Your Honor.

(Whereupon, at 3:00 p.m., the Court was recessed, to reconvene at 10:00 a.m., Tuesday, December 7, 1971.)

EM

IN THE SUPREME COURT OF THE UNITED STATES

CLAUDE ALEXANDER,

Petitioner,

v. No. 70-5026

STATE OF LOUISIANA,

Respondent.

Washington, D. C.,

Tuesday, December 7, 1971.

The above-entitled matter was resumed for argument at 10:02 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

(Same as heretofore noted.)

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: You may resume argument in No. 5026.

ORAL ARGUMENT OF CHARLES STEPHEN RALSTON, ESQ.,
ON BEHALF OF THE PETITIONER -- Resumed

MR. RALSTON: Mr. Chief Justice, and may it please the Court:

To briefly recapitulate, we have urged with regard to issue 2 in this case that the total exclusion of women, where it is the direct result of procedures used by jury commissioners, as shown by this record, resulting in the total exclusion of more than one-half of the population of a community, results in a jury system that, in the words of this Court in Carter, contravenes the very idea of a jury; that is, a body truly representative of the community.

Now, the reasons why a jury system which excludes women, why such a system is not representative, have been set out by this Court in its decision in Ballard vs. United States, which we quote in our brief.

And basically, by excluding this group, an identifiable group, it excludes from the jury system all range of attitudes and perceptions which can be brought to bear in any criminal case, so skews the system drastically away from its proper function; that is, its function to have a democratic institution.

Again, as this Court said in Ballard, by such an exclusion there is injury to the jury system, to the laws and institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.

Well, the problem with what Lafayette Parish has done pursuant to Louisiana law, and the problem with the Louisiana statute itself, is that it rests on assumptions about the function of women in our society, which this Court has recently characterized in Reed vs. Reed as arbitrary. That is assumptions about the proper role of women, the notion that women will automatically have such responsibilities in the home that they cannot serve on juries.

We contend that the State must avoid this kind of an assumption, this kind of a procedure that results in a non-representative jury system, and essentially treat women on the same basis as men are treated. That is, to focus in on specific and well-defined concerns that may allow an exemption, such as occupational exemption or a more narrow exemption for women who have special family duties that would make it a hardship for them to serve.

Q You mean in individual cases?

MR. RALSTON: In individual cases, Your Honor.

I might just point out an illustration, in Florida, after the Hoyt decision, they amended its statute allowing women who were pregnant or who had children, I believe under

the age of 16, to exercise a personal exemption if they so wished.

The problem of what --

Q With respect to men, some categories are exempted, aren't they? Just as categories, not as to individualized cases.

MR. RALSTON: They are. And under the Louisiana statute, there are personal exemptions to be exercised by the individual. The statute specifically says that they are not basis for challenge for cause.

As a matter of fact, what Lafayette Parish did was to not send questionnaires to even these exempted categories, although under the statute it would seem that they should have and allow those individuals to exercise their own exemption.

Q Would it think it would violate the Constitution if physicians, for example, were excluded in the same category as women? That is, they were all excluded unless they asked to serve.

MR. RALSTON: Your Honor, I think it would be preferable to have again an exemption that they could exercise if they wished.

Q We are only talking about what's constitutional here, aren't we?

MR. RALSTON: Yes. I would say that that kind of an exclusion would focus in on a narrow class of persons. It would

not result in a wholesale exclusion of a large group, and does focus in on what I think could be said to be legitimate interests. That is, they can -- given the importance of physicians, and having sufficient numbers of physicians available --

Q In other words, you'd find a rational basis for that?

MR. RALSTON: There would be a rational basis for that kind of a limited exclusion of a group. And, again, the effect on the jury system would not be particularly extreme in terms of the proportion, the numbers of people to be excluded. And there are other possible groups, the same kind of exclusion could be exercised.

It may be a problem at some point, if there are so many groups excluded that you do result in a system that's unrepresentative.

But narrow exemptions as exclusions would, I think, be proper.

Now, finally, on this point, I just wanted to bring out that we feel that any person faced with criminal procedure has the right to object to the exclusion, this kind of a wholesale exclusion of a whole group, even though, in this case, the defendant was a male. That the right to a jury system, that fairly represents the community, in light of the proper function of the jury to interpose between the

accused and the State, the voice of the community, this right extends to all persons and not simply to persons of the excluded class.

And I would just cite two State cases that have taken this position, the case of Maryland vs. Madison, at 213 Atl. 2d 880, and Allen vs. State of Georgia, 137 SE 2d 711.

I would just like to touch for a moment on the third issue involved in this case, that is the use of the statement taken from the defendant by interrogation.

We have pointed out in our brief that the issue in regard to this question is the effect of the Harris case. Briefly, we'd like to urge that the Harris case is distinguishable on, really on two bases. The first, as we pointed out in our brief, is the question of the reliability of the statement, whether or not the defendant actually said what he's claimed to be said, and there are two points on this: No. 1, he denies that's what he said, and there's a conflict in the testimony of two of the police officers.

One said that he insisted a number of times that he did not commit the rape; the other police officer said he didn't say that.

So with these kinds of questions of reliability, we feel the statement in Harris should not be excluded to that kind of case.

The other basis of distinction is the fact that in

Harris it was admitted that the confession did not comply with Miranda, and the jury was specifically instructed that it could be considered only for purpose of impeachment.

In this case, the trial judge held that the confession was taken in compliance with Miranda, and that, therefore, presumably it could be used for all purposes.

An examination of the record does not reveal that the judge instructed the jury that the confession could only be used for the limited purpose of impeaching the testimony of the defendant.

He does not so state in his over-all charge to the jury, and there's no such statement at the time he entered the confession -- the confession was brought up. The District Attorney did say at one point that he was going to impeach the defendant's testimony, but the judge never instructed the jury as to its limited use, and without such an instruction it simply cannot be assumed the jury may not have considered the confession as in terms of the proving of the actual fact of the commission of the crime.

Q Was there a request for a limiting instruction?

MR. RALSTON: No, Your Honor, that does not appear in the record.

Again the judge had held that it did not violate Miranda. So it may be that everybody was going on the presumption that it could be used for all purposes. But since

it did not comply with Miranda, I would feel is the kind of error that so permeates the whole system that the Court can hold the use of it unconstitutional even without a request for a limiting instruction under those circumstances.

I will reserve the rest of my time for rebuttal.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Ralston.

Mr. De Blanc.

ORAL ARGUMENT OF BERTRAND DE BLANC, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. DE BLANC: Mr. Chief Justice, may it please the Court:

I would like to take just a minute to get my breath. I'm always a little nervous when I get up here; although I've been here three times.

MR. CHIEF JUSTICE BURGER: Well, just take your time, counsel.

MR. DE BLANC: Yes, sir. I've been here three times, the first time was -- maybe Justice Douglas remembers; I was here representing an accused who had been electrocuted by the State -- or attempted to be electrocuted by the State once, and they were trying to electrocute him the second time, and I was here to plead for --

Q Resweber.

MR. DE BLANC: That's right, Your Honor.

We were not successful, but we had you on our side.

(Laughter.)

Q You got a good percentage.

MR. DE BLANC: Yes, very good.

If Your Honor please, I would like to start off with the first point, and there are three points involved here. The first one being that they are complaining that there was a systematic exclusion of Negroes on the grand jury; the second being systematic exclusion of women; and the third being the failure to comply with Miranda.

So I would like to begin with the first point and say this: That I came here today not to defend the commission or the clerk of the court, who is a member, but to praise him, and the manner in which he selected names to be considered for the grand jury, as well as the petit jury. But I would like to point out to the Court that the complaint here is strictly to the grand jury. He's not complaining that there was a -- that the trial was not fair, or that there was anything wrong with the petit jury, but simply to the grand jury.

The clerk of court began, as he said, to attempt to get as wide a range of persons as he could to consider for grand jury and petit jury service. And I would like to point out that he sent out 11,000 questionnaires in a parish -- a county, we call it parish there in Louisiana -- where there was 40,000 population. He sent out 11,000 questionnaires,

according to his testimony which is in the record here.

And, incidentally, the record was compiled by the complainants, and we are going according to the record that they've got, that they've compiled and submitted.

But there were 11,000 questionnaires mailed out, out of a total of 40,000 persons in the parish, of which there were 21,000 males. He sent this out only to the male population. Although we did have a place to show whether they were male or female, because the clerk did attempt, and it's shown in the record that the clerk did attempt to get women interested in jury service.

This record will show that he talked to my assistant, who happens to be a lady, assistant district attorney there, trying to get her to talk to the women's clubs and get them interested in that. And the reason he said, in the record, that they had not done it before was because we had an old courthouse, which had no facilities for women jurors; but there was being built at the time a new courthouse. And at the time that the case was tried, we tried it in the new courthouse.

But at the time that the selection was made, we were in a temporary courthouse at that particular time. But he did try to get the assistant district attorney to get the ladies interested.

Now, to go ahead with this: there are 21,000 males in the parish, and there are 17,000 white and about 4,000

Negroes, which amounted to 20 percent Negro, in so far as the male population was concerned.

Then he has the registered voters here, which showed that there were a total of 6,541 Negroes who were registered, out of a total population of 9,000. So the entire -- the population of this parish is very highly registered, both white and Negro, because out of 9,400 Negroes in the parish there were 6,500 registered voters. And there were 3,573 Negro males in the parish; and 17,000 white males in the parish.

Now, he sent out 11,000 of these questionnaires, and he went around looking everywhere to try to get lists from different people. He used every person who was registered, a registered voter, and there were 40,000 voters, of which there were 34,000 white and 6,500 Negro.

Now, you have to consider that there were -- that that parish had very few Negroes, comparatively speaking; only 20 percent, or 21 percent Negro there. So they used every eighth person registered; he took every eighth name. And also they went through the city directory, which had every name of every person in the city of Lafayette, which comprises most of the population of the parish, and the phone directory, which included all of the phones in the entire parish, as well as lists submitted by the school board, and also a bunch of lists submitted by other people, and also by the commission.

There was no record, they didn't ask -- they asked

the question, but they didn't insist on it, as to how many questionnaires were returned. Well, we don't know how many questionnaires were returned, out of the 11,000, but the clerk found, by looking at it, and making the determination as to whether they were qualified or not to serve, and he used the requirements of the law of the State, 21 years old, read, speak, and write the English language; many people out there do not speak the English language, they speak French, both white and Negro. Many people, many whites and many Negroes speak only French there in this section of the State.

And they are not qualified unless they can read and write and speak the English language. Now, many times we conduct a trial completely in French out there.

Now, they must not also be under interdiction, or mental or physical infirmity. And not be interdicted.

Q If you conduct a trial completely in French, it's kind of inappropriate to have jurors who speak only the English language, isn't it?

MR. DE BLANC: We conduct the trial in French only where it's a misdemeanor and the judge speaks French, the district attorney speaks French, the lawyers on both sides speak French, and the witnesses also speak French.

Only those cases.

Q Oh, so no jury trials in French?

MR. DE BLANC: No jury trials in French.

We feel that sometimes those misdemeanors are easier to try that way, because it takes a whole lot longer to have an interpreter.

And they have to be a resident of the parish for a year.

So he sifted these out, after receiving all these questionnaires, and he found, as far as qualification was concerned, and placed them on a card index, he had 6,354 white and 1,015 Negroes, which he says in his brief comprise a little over 13 percent of the population, or 14 percent -- it's 13.76. And I say the same thing, but I didn't put it in my brief that it was over 21 percent of the entire male Negro population.

So there are 1,015 Negroes who were in the box, who were qualified, according to the clerk, and they will use that box, and it's in the record, on page 15 of the record, Appendix; so that means that there are over 21 percent of the Negro male population considered for jury service as eligible by the clerk and by the commission. So there were actually more Negroes who were considered for jury service than there were, in actual percentage, for the community.

Now, he put them in there. After he did that, then he had these names. You have to see them to believe it, all the cards he has, it would fill up this whole table; thousands and thousands of cards, and he's added onto it since that time.

But he took out 400, 100 more than what was necessary, and he put them in the grand jury venire, for which he had 373 whites and 27 Negroes; which amounted to 6.75 of the population is what he figured, but -- of the population. And there was one name drawn out of it.

Now, when they draw it out for the grand jury venire, you have to understand that it's drawn by lots, so they dipped in there and got 20 names for the grand jury venire, of which 19 were white and one Negro.

But it could very well have been just the opposite; it could have been the other way, because since that time, like this year, this grand jury, this grand jury we had no Negroes on it, but the one in the spring had three on the grand jury. So it varies.

Q Mr. De Blanc, when the clerk was making his choice, did he know the race of the people?

MR. DE BLANC: Yes, Your Honor, he did --

Q So how do you get from the command of the Whitus case?

MR. DE BLANC: Your Honor, if Your Honor please, the clerk said that he wanted it on there because, for identification purposes; he says that on page 51. That he needed that for identification purposes.

Q Well, did he ask about the marks that they might have had on their face or hands for identification

purposes? Did he ask the color of their hair?

MR. DE BLANC: No, Your Honor.

Q He only asked race for identification purposes.

MR. DE BLANC: Well, Your Honor, he asked race -- and I thought, also, that he should have done it, because I thought that in case the case would be appealed and brought to this Court, that we would have no problem in determining how many Negroes were there. Because if we did not have it on there, we would be in a quandry here as to how many Negroes and whites we had on there. And I wanted to be sure that this Court understood that there was more than the percentage of Negroes in the box, --

Q Well, I'm interested --

MR. DE BLANC: -- who were considered.

Q I'm interested in how many were on the grand jury.

MR. DE BLANC: Sir?

Q I am interested in how many were on the grand jury, not how many questionnaires went out or how many they considered. I want to know why only one showed up on the grand jury.

MR. DE BLANC: That's just the way it falls, Your Honor.

Q I see.

MR. DE BLANC: It doesn't mean that every year it's

the same thing, or every term it's the same thing; it just happened in that case, and I don't believe that this Court would want to hold that just because one case, that there were no Negroes on the jury. The only way we can come back at that, Your Honor, is --

Q Well, what did --

MR. DE BLANC: -- to arbitrarily --

Q -- the Whitus case say? When the man knows the race, and he did know the race here; is that Whitus or not?

MR. DE BLANC: Yes, but the Whitus case was a little different from that. They had been consistent --

Q Yes, it was in Georgia.

MR. DE BLANC: They were considered over the period of time, that they had certain color courts for Negroes and certain color courts for whites; and this is not the situation here.

Q No, it's just that you have the race on it. They don't have a certain color; they have the race. The word.

MR. DE BLANC: And how would we ever find out how many Negroes were on the jury if we hadn't put it on there?

Q Yes.

MR. DE BLANC: Put down the race. We would never be able to tell this Court how many were on and how many were not on.

I'll say, Your Honor, that the only way we can would

be to comply with having a specific number of Negroes on the grand jury, would be to arbitrarily put 21 percent Negroes on the grand jury. That would be the only way I could see we can arbitrarily do that. I don't think this Court would want us to arbitrarily take exactly the same number of Negroes on the grand jury as there are in the community, because that's not what was said in the case of Swain vs. Alabama, where they said: We learn, due to the jury rules and all the venire need be a perfect mirror of the community or accurately reflect the proportioned strength of every identifiable group.

We learn from this that jurors should be selected as men, not as a race; and that's what we're doing, Your Honor. We're not selecting the jurors according to race; we're selecting jurors according to men. And that's what we've been doing all the time. And that's what we'll continue to do unless this Court will tell us different.

If this Court tellsus we have to select by proportion, we'll do it. But so far we have followed Avery vs. Georgia --

Q Well, what would happen if this Court said you have to take race off those qualifications and look at it --

MR. DE BLANC: Then certainly we will take it off. We have tried to follow whatever this Court says to do.

But Avery vs. Georgia says that we've got to utilize this -- in fact, as a matter of fact it was when Scott vs. Walker was decided, and Davis vs. Davis, which is a Fifth Circuit

case, and also Scott vs. Walker. That was the time that he started this system, under my direction. As a matter of fact, as soon as Scott vs. Walker was decided, I wrote a letter to all these clerks of the court and told them they've got to comply with this Scott vs. Walker, and there is a constitutional duty on the local officials to develop a system, a jury system that will result in a fair cross-section of the community.

And that they should be put on a master list to be used as the source for -- from which to select the grand and petit juries. And there should be no discrimination of any kind between any classes.

And he did so, at my request. And he says in the record that he -- well, I worked with him, to try to get this system in effect there. And of course after Akins, Your Honor, Akins vs. Texas, the same thing.

They said that defendants under our system of criminal statutes are not entitled to demand representatives of their racial inheritance upon juries before whom they are tried. They're simply entitled to a fair cross-section of the community. And there has been no evidence to show that the clerk of the court was in bad faith, they had a chance to cross-examine him. They cross-examined -- they questioned him for a long time, and they didn't bring out anything to show that he was prejudiced in any way, that he tried to get more Negroes

than whites, or whites more than Negroes, as he tried to set it up in accordance with whether they were qualified or not qualified.

I would like to pass, if Yor Honor please, to the next question, which is women on the jury.

I would like to point out that they are claiming that women were systematically excluded from grand jury service, which is not true. We give them an exemption, but we don't exclude women from the grand jury or from any jury. There are 18 States, as a matter of fact, now that grant women an absolute exemption, the same as Louisiana. And they form a great proportion of the population, and, as a matter of fact, there are presently, I think, 21 million women in the United States who have children, and the only difference between, for instance, me as a lawyer and Your Honors as a judge in Louisiana, is that we're both exempted; I'm exempted as a lawyer. You're exempted as a judge. And women are exempted because they're woman; and there are schoolteachers that are exempted, schoolbus drivers, officers, ministers, lawyers, dentists, and firemen.

But the only difference, and they're not excluded -- they're just exempted. The only difference between us, for instance, you as a judge and me as a lawyer, is that we must claim our exemption; and in order for them to be -- they have to waive their exemption. But we must claim ours.

There's no difference at all between the treatment of a lawyer or a woman in so far as exemption. It's just a matter of procedure.

If we want to be exempted as a lawyer, we must claim it. Also a judge, a schoolteacher, a bus driver.

But the purpose is to save the women the trip to the courthouse to claim their exemption, and that's the only difference.

But we have certainly tried to get the women interested in serving on the grand jury. In Louisiana there are over one million women who are married -- I mean population of women, there are over one million women in the State and there are 69 percent who are married. And your grand jury pays $12 a day; petit jury pays $8 a day. A woman has to get a babysitter, and it's going to cost her a whole lot more than that to try to get a babysitter, even to serve on a grand jury; if we could take testimony from my associate here, he'll tell you how much it cost him to get babysitters so his wife could come over here to hear the case today.

Fortunately I have my own babysitters. We have some older children who babysit for our young ones.

But I think that their complaint, of course, is not that Hoyt was unconstitutional; they're not complaining about the unconstitutionality of Hoyt. They're complaining, as I understand it, is that the way we apply it in Louisiana, that

we have not encouraged any women to serve. And that in Florida they did have some, and in Louisiana there were none.

I don't believe that they would want to have a woman on the jury if they could, because the last time they put one on out there, they made her the foreman of the jury, and they convicted the accused.

As a matter of fact, it was a rape case. But I don't think they'll try it again.

Q Well, this accused could not have come out any worse if a woman had been on the jury, could he?

MR. DE BLANC: Yes, he could have been -- if he had had a woman, he could have gone to the electric chair; and probably would.

Because he was caught in the act --

Q That's contributing a lot of power to one woman.

MR. DE BLANC: That's right. Really remarkable the power of women, Your Honor.

(Laughter.)

I can testify to that.

But I would like to ask now pass to our last point, Your Honor, --

Q Before you do --

MR. DE BLANC: Yes?

Q -- when last was there a woman on the grand jury, in your parish?

MR. DE BLANC: Is there one now?

Q Has there ever been one?

MR. DE BLANC: Not in my parish. There has been one in -- well, I have three parishes. In Arcadia Parish, the parish that I'm telling you about where they had a woman on the grand jury, made her foreman, and they convicted the accused of the rape.

But -- it was a rape case.

Q Was she on the grand jury or the petit jury?

MR. DE BLANC: She was on the petit jury.

Q Yes.

MR. DE BLANC: She was the petit jury, that's right.

Q Well, the question was, when have you had a woman on a grand jury?

MR. DE BLANC: Well, we have --

Q In any of the three parishes.

MR. DE BLANC: Yes, we have had in Arcadia Parish.

Q You did have?

MR. DE BLANC: Yes.

Now, we have not considered it in all three parishes for women, which we didn't have before we had -- we have a new courthouse --

Q Is that right? Are women now serving in all three parishes on grand juries?

MR. DE BLANC: Only one.

Q Only in one of the three.

MR. DE BLANC: Yes.

Q Arcadia. And here what county is involved here -- parish?

MR. DE BLANC: This is Lafayette County.

Q This is Lafayette.

MR. DE BLANC: But they haven't made a request to do it.

Q Well, when -- can you recall when Lafayette Parish last had a woman on the grand jury?

MR. DE BLANC: No, Your Honor.

They have not made any -- they have never made -- there has been no application made by them for us to waive their exemption.

Q Yes.

MR. DE BLANC: I notice that there are, in the Hoyt case, that the court said that there were 18 States including the District of Columbia,that was in '61, where a woman had an absolute exemption based on sex, exercisable in one form or another, and that in eight States they were exempted if they had family responsibilities which would cause undue hardship. And I like to think of myself as the representative of this -- oh, by the way, there's this brief that was filed by Senator Bayh on this whole question, but he spent -- he's got a 40-page brief, and he spent all but the

last four pages in giving the history of women's rights, which I agree with; it's a very well-written brief about women's rights. And I really agree with all he said, except the last four pages, where he talks about this particular case.

And he represents 180 million -- 180,000 women who belong to this organization, of which my assistant happens to be a member.

I like to think of myself as representing 21 million women who are for the Lib Movement, that is the liberty to make their own choice as to whether they should serve or not.

Q Well, does your questionnaire give them the right -- doesn't your questionnaire say whether you can claim your exemption or not?

MR. DE BLANC: Yes, Your Honor.

Q Well, why wasn't that sent to the women?

MR. DE BLANC: Well, because, you see, in this -- in the Hoyt case it was stated that -- they talk about the inclusion on the jury list of persons so exempted usually serves as a waste of time to the clerk. And in the Hoyt case, that's what this Court said. So they didn't fill them out if they were exempt, you see.

Q But I understand this questionnaire says to the men: Are you going to claim your exemption or not?

MR. DE BLANC: That's right.

Q And you say the only reason you don't bother with

the women is because they claim their exemption.

MR. DE BLANC: That's right.

Q Well, why not let them claim it on the questionnaire?

MR. DE BLANC: Well, you see, Your Honor, if we did that, then who would we mail --

Q If you did that, you might have found out there would be quite a few who wouldn't claim it.

MR. DE BLANC: Well, that could be -- and if Your Honor please --

Q Well, why wouldn't you find out?

MR. DE BLANC: Well, I would agree with Your Honor's suggestion, and I will --

Q Well, that don't help this man.

MR. DE BLANC: No, it won't, but --

Q Well, that's the case we're talking about. Or listening to.

MR. DE BLANC: Well, I don't feel as though that was, in itself, the fact that -- the court had no responsibility -- I don't feel that the clerk of the court had any responsibility to determine, himself, whether or not the women of the parish wanted to serve. He did take means, he asked my assistant to go out and talk to these women's clubs and ask them to get themselves interested in this. And they didn't.

But he didn't feel as though he should send

questionnaires out to them, and that's one of the reasons, if Your Honor please, one of the ladies did send one in. He has one woman who offered to serve.

Now, I'd like to go to my last point, Your Honor, which is the question of whether or not the accused was prejudiced in so far as what was constitutional under Miranda vs. Arizona. I understand in this particular case, Your Honor, in so far as the Miranda was concerned, we did not use the statement in convicting the accused, and presenting our side of the case; we did not use it at all. And we had no intention, because we were able to prove -- as a matter of fact, this is an unusual case, where they caught the accused in the act of committing the rape, which is a very unusual case.

So it wasn't necessary to use the confession. So we didn't use it. Didn't mention it at all.

But we did serve on the accused and his lawyer, before the trial started, without the jury knowing about it, we served the notice that we would introduce the confession, you see, because that's the law of the State. If you intend to use the confession, you have to give them notice ahead of time. Which we did.

Well, when we presented our side of the case, we did not use the confession. And at the end of our presentation of the case, when the defense went ahead through their side,

they came along and they put him on the stand. So, as soon as they got through with their examination in chief, then they asked the court to withdraw the jury; so the jury was withdrawn and I advised the court that we had a confession which we intended to use to impeach the testimony of the accused.

So while they were out, we then proceeded to show the voluntary nature -- under the laws of the State we have to show the voluntary nature of the confession, which we did. We showed the voluntary nature of the confession, as well as the compliance with Miranda.

Now, their complaint is that Miranda was complied with all except one thing: that the accused was not told that he was entitled to an attorney at the time that the statement was given.

So that was what -- we did inform him; he was informed. He was informed by the officer, of which one was a colored officer. He read him all the rights of Miranda; but he did not inform him, Your Honor, that he was entitled to an attorney at that time when he gave his statement.

So that's what their complaint is.

But the judge thought that he did comply with Miranda, because they said he was told: You are entitled to an attorney.

So he said that that indicated, he thought, when he said, You are entitled to an attorney, the guy should have

understood at that time.

But he didn't say "at this time". He didn't use those words, "at this time."

So then that's their complaint.

But I'm saying this, that the statement was voluntary, was shown to be voluntary. The Court held that it was voluntary. It was proved to be voluntary outside the presence of the jury, and again in the presence of the jury, to show it was voluntary. We did prove it, that it was voluntary, and it was reliable.

And there was no coercion of any kind there. As a matter of fact, they were drinking coffee. They asked the fellow if he would like to have some coffee, and he said, no, he didn't want any coffee. They offered him, I think, some cigarettes, and a phone call and everything; but it was a very friendly place, and attitude at that point.

Q It's not clear to me, Mr. De Blanc, how the confession was used. You say it was not used in the State's case in chief?

MR. DE BLANC: No, Your Honor.

Q And then the defendant took the stand in his own behalf, and was there any talk about whether or not he had confessed?

MR. DE BLANC: Well, you see, that's the point, that was why he -- when he took the stand he had a completely

different story.

Q Yes.

MR. DE BLANC: And so he told the story to the jury, about how this thing happened, and he was going out to burglarize a place with a friend of his, and that while they were there they happened to stumble on this girl, who was in the culvert down there. So he went to lend aid to her, and when he got down there, that was when the officer shone the lights on him and arrested him. So that's what his story was, you see.

Q All right. Then how was his confession used?

MR. DE BLANC: Well, when I --

Q He testified along those lines, I understand that.

MR. DE BLANC: I asked him -- okay. Then I went back and cross-examined him, and I said: Now, you said this was the way it happened. Now, isn't it a fact that you had a conversation with the officers on blank day of blank? And didn't you tell them this?

No, I didn't.

And this and this.

No, I didn't.

So then I said: Now, Your Honor please, I intend to impeach this man's testimony by the testimony Officer so-and-so and so-and-so and so-and-so. And that's the way I did it.

And then we put the officer on the stand, but did not introduce the confession. We just put the officer on the stand and --

Q Who said what? Who testified what?

MR. DE BLANC: Who testified that he did make the statement that he denied having made.

Q Well, that's introducing an oral confession, though.

MR. DE BLANC: Well, in a way, yes.

Q But the --

MR. DE BLANC: But it was used to impeach his testimony alone.

Q I understand. I think I understand. The written piece of paper never went into evidence, is that correct?

MR. DE BLANC: No.

Q But you read from it?

MR. DE BLANC: I quoted from it.

Q Yes.

MR. DE BLANC: Thank Your Honor.

MR. CHIEF JUSTICE BURGER: Very well, thank you, Mr. De Blanc.

You have just one minute, Mr. Ralston.

REBUTTAL ARGUMENT OF CHARLES STEPHEN RALSTON, ESQ.,
ON BEHALF OF THE PETITIONER

MR. RALSTON: Yes, Your Honor.

The main point I want to make was that Mr. De Blanc indicated the one reason the racial designation was on these papers was so that they would know how many blacks had served. And the point I wanted to make is that you can compile racial statistics without having the racial statistics and the racial information on the documents that are actually used by the jury commission.

You have no problem compiling racial statistics, as such. The point is, where they can be used as an opportunity to discriminate as results here, then Whitus is directly involved.

Q Well, do I understand you're not objecting to having the racial designation for some purposes, as long as they are not available to the person drawing the grand jury; is that it?

MR. RALSTON: Well, for example, if you send out a questionnaire that has a perforated section on it, on top, on which the person is asked if he will respond to his race, this can be removed by a clerical person and filed out of the way; and then used, after the whole process is finished, to cross-check. That might be perfectly all right.

But this kind of a system is not.

Q You think that would meet the standards of Whitus?

MR. RALSTON: As long as they are not used so there's an opportunity to discriminate. Compiling statistics as such, for a cross-check, I think would be permissible.

MR. CHIEF JUSTICE BURGER: Very well.

Thank you, gentlemen. The case is submitted.

(Whereupon, at 10:44 a.m., the case was submitted.)