

Georgia Jury Commissioner's Handbook



*Judicial Council of Georgia
Administrative Office of the Courts
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**Changes to the Jury Commissioners Handbook
from 2006 Legislative Session**

Page 11, Section C. Judicial Excuse from Jury Service

Page 36, Affidavit by Child Caregiver:

The Georgia code was changed to allow the primary caregiver exemption or deferral if the person is a caregiver of a child 6 years of age or younger, and has no reasonably available alternative child care. It also allows parents who home school their children (as defined by subsection (c) of Code Section 20-2-690) to be excused or deferred from jury duty, regardless of the child's age. Both exemptions still require an affidavit to be submitted. (HB 376, Effective July 1, 2006)



FOREWORD

Since 1979 the Administrative Office of the Courts has regularly revised this handbook based on its proven utility as part of an orientation program for jury commissioners. The goal of this publication is to clearly explain the duties of the jury commissioner and to provide practical advice about how the commissioner can fairly and expeditiously execute the duties of the office.

Jury commissioners are vital to preserving the role of the citizen in the judicial process. Through the creation of a representative jury list, Commissioners assure citizen participation in the composition of juries and that every eligible Georgian is given an opportunity to participate in the judicial process through service on the jury. Citizen jurors help ensure that even-handed justice will be rendered to the parties to litigation. Only jury lists which are well-balanced reflections of the community can achieve this end.

It is our hope that this document will assist the jury commissioners and clerks to provide the most representative juries possible, and thereby contribute to the quality of justice in Georgia's courts.

This 2005 edition is an update of the most pertinent portions while waiting on the results of the Supreme Court Jury Composition Committee's current project.

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Introduction

If the law is to reflect the moral sense of the community, the whole community – and not just a special part – must help to shape it. If the jury's verdict is to reflect the community's judgment – jurors must be fairly selected from a cross-section of the whole community, not merely a segment of it.

Judge Irving P. Kaufman
U.S. Court of Appeals
2nd District

I. Creating the Commission

The Constitution of both the United States and Georgia guarantee each defendant the right to a fair trial. To ensure fair trials, the Constitutions further require that juries represent a fair cross-section of each defendant's community. In Georgia, juries are employed in both the indictment and trial phases of cases. In most felony cases (serious crimes), the grand jury determines whether there is "probable cause" (sufficient evidence) to refer a criminal defendant to trial, while the trial jury determines a defendant's guilt or innocence in a criminal trial and resolves disputes among individuals in a civil trial.

The first step in the jury trial process is obtaining persons to compose a representative jury. Statutory law provides that a group of citizens in each county, known as the Board of Jury Commissioners, is responsible for qualifying county residents for jury duty.

A. Composition of the Board

The Jury Commission in Georgia was formulated in 1873 to establish pools of local citizens in each county from which jurors would be selected. Early commissions consisted of three Commissioners, the county clerk, and the "ordinary" (now the probate court judge). Today, a Commission is usually composed of six persons appointed by the chief judge of the superior court for the circuit. The clerk of the superior court of the county serves as the Clerk of the Jury Commission.¹

The chief judge of the superior court of the county may issue a court rule decreasing the number of members to three, four, or five. Commission members are appointed for six-year terms. When a board consists of six members, terms are staggered so that the terms of two members expire every two years. For boards with fewer than six members, terms are staggered so that no more than one member's term expires in a given calendar year.²

A Jury Commissioner may not succeed himself or herself as a board member if the Commissioner has served more than three years of the term.³ A former Jury Commissioner who completes the term and is out of office for about three years, however, can be appointed to another term.⁴

Just as the selection of jurors must be impartial, so must the selection of Jury Commissioners.⁵ A Jury Commissioner may be removed at any time during service at the discretion of the chief judge of the circuit.⁶ The judge's decision to remove and replace a particular Jury Commissioner is limited only by a

standard of capriciousness or arbitrariness.⁷ There is no requirement for prior notice or a hearing before removal of a Jury Commissioner.⁸

Certain members of the community are prohibited from serving as Jury Commissioners. Practicing attorneys, county commissioners and other county officers are excluded.⁹ The term “county officer” has been interpreted for purposes of this prohibition to mean those officers listed in the Georgia Constitution Art IX, §1 ¶111(a).¹⁰ This includes the clerk of the superior court, judge of probate court, sheriff, tax receiver, tax collector, and tax commissioner. Although the Georgia Supreme Court has determined that a deputy sheriff is not a county officer, the court has disapproved of a deputy’s appointment as a Jury Commissioner because as the sheriff’s employee, the deputy’s impartiality could be questioned.¹¹

Though an individual may be disqualified from serving as a Jury Commissioner, the court has held that the official acts of such an individual completed before his ineligibility is discovered cannot be used as the basis for a jury challenge.¹² Although a Commissioner should consider the responsibilities of the office seriously and make time for his or her duties, emergency situations may arise. In one such case, the Supreme Court held that a Commission’s acts were not challengeable when a member was absent from the Commission’s meeting to have surgery.¹³

B. Compensation

Each Jury Commissioner and the Clerk of the Jury Commission is paid fifty dollars for each day’s service in revising jury lists. However, the chief judge of the judicial circuit in each county may, with approval of the county governing authority, increase the daily compensation to as much as one hundred dollars.¹⁴

C. Oath of the Jury Commissioner

Each Jury Commissioner must take the oath below. The oath is given before the probate court judge and recorded in the minutes of that court. This oath requires the Commissioner to discharge the duties of the office faithfully, without bias, and to maintain the secrecy of the proceedings of the Commission.¹⁵ A Jury Commissioner may divulge the Commission’s proceedings only when called upon to testify before a court of the state. The Clerk of the Jury Commission must take a similar oath which is also recorded in the minutes of the probate court.

Oath of a Jury Commissioner

You shall faithfully and impartially discharge the duty of jury commissioners for the County of _____ in accordance with the Constitution of this state, to the best of your skill and knowledge; and the deliberations and counsel of the jury commissioners, while in the discharge of their duties, you shall forever keep secret and inviolate, unless called upon to give evidence thereof in some court of justice or other legal tribunal of this state. So help you God.

II. Duty of the Commission

It is the duty of the Jury Commission to establish the grand jury and trial jury (also called “petit” or “traverse” jury) boxes, and to revise them periodically. Each county’s Commission should revise the lists

at least once every two years.¹⁶ It is in the discretion of the chief superior court judge of a circuit to require the list to be revised on a more frequent basis.¹⁷ In almost all the counties, computers are used to assist the Commission and clerk in this task. Jury Commissioners may revise the lists on the electronic data processing storage bank at intervals by adding, correcting, or deleting names because of death or other disqualifying causes.¹⁸

The foremost responsibility of the Jury Commission is to make the grand and trial lists representative of the community. “Community” for purposes of Georgia’s jury boxes refers to the county population. Until 1967, Jury Commissioners used the Real Estate Tax Digest as a source of juror names. At that time, the legislature adopted the voter registration list as the basic source list for jurors because they determined that this list was more inclusive and representative of a county’s population.

As of July 1, 2000, however, the legislature changed the statute so that the Commission must make use of not only the registered voters list but the list of residents of the county who hold drivers licenses or personal identification cards issued by the Department of Driver Services.¹⁹ Additionally, the Jury Commissioners are authorized to use any other list of county residents they deem appropriate as long as the resulting juror lists fairly represent the county population. Currently, the Department of Driver Services is making the drivers license and identification card list available to the Clerk of the Commission on request.

If at any time the Jury Commissioners find that the jury lists do not contain a “fairly representative cross-section of the county population,” then they must supplement the lists with other sources. This supplementation is essential because if an attorney believes that the jurors provided by the court to try the client’s case do not adequately reflect the community’s population, the attorney may “challenge the array.” This is a challenge to the composition of the entire jury box. It is a claim that the box was not fairly composed. The attorney challenging the jury will attempt to establish a *prima facie* case of disparity. *Prima facie* means “at first sight or on the face of it”. In other words, a *prima facie* case, in this instance, would mean that the juror list is presumed to be unrepresentative of the community unless other evidence is presented to prove the contrary.

An attorney challenging the jury array and seeking to establish a *prima facie* case will attempt to present evidence to show that a disparity exists between the percent of persons of specific groups (called identifiable or cognizable groups) in the jury box and in the county population, and that the source lists provided an opportunity for discriminatory selection. The U.S. Supreme Court has defined “a cognizable group” as a distinct group of individuals who share attitudes unique to the group or who have traditionally been the object of discrimination.²⁰

Challenges to the array most often allege racial or gender-based discrimination, though defendants have also based challenges on other factors that they claim distinguish particular groups, such as age.²¹ Despite suggestions that people in certain age groups, such as 18 to 25 year olds and 55 to 65 year olds, share similar ideas and attitudes, neither the U.S. Supreme Court nor the Georgia Supreme Court has yet recognized any age group as cognizable.²² The U.S. Supreme Court has recognized blacks and females as identifiable groups which may not be systematically excluded from any jury box. Additionally, the Georgia Supreme Court and the Court of Appeals have repeatedly held that where there is great disparity between representation of these groups in a jury box and their presence in the voting age population, this disparity is itself *prima facie* evidence of exclusion.²³

A. Representativeness of the Source List

In the past, some individuals have criticized the use of the voter registration list as the sole source of juror lists. The criticism stems from evidence that the voter list does not accurately reflect population demographics. Certain racial or ethnic minorities and low income citizens, as well as females and young adults, have been historically under-represented among registered voters in proportion to their number in the voting age population.²⁴ In addition, studies have shown that some people do not register to vote because they know the list is used as a source for jurors.²⁵ Thus detractors say, juror lists compiled solely from voter registration lists do not represent the constitutionally-required fair cross-section of the population.

Recent legislation on both the federal and state level is making changes in the way juror lists are compiled. In 1993, Congress passed the National Voter Registration Act, also known as the Motor Voter Act. The purpose of the act is to diminish procedural barriers to voter registration by providing eligible citizens the opportunity to register to vote at most any state or county office. For instance, individuals may register to vote at drivers license bureaus, public assistance offices, or public libraries. Georgia like most of the other states passed legislation in 1993 enacting a state-wide Motor Voter registration program and, as mentioned earlier, in 1999 also enacted a bill to require use of the list of state drivers licensees and personal identity card holders. (Hereafter, when the drivers license list is mentioned in this publication it is meant to include the list of personal identity card holders as well.)

In most states the number of adults having a driver's license or state identification card is substantially greater than the number of registered voters. This is true in Georgia. As of December 2005, there were about 4,900,000 persons on the voters list. The Georgia Department of Driver Services reports there were 5.4 million licensed drivers in 2001, but are unable to provide the number of personal identification cards. Of course, these figures do include a number of 16-17 years olds. Statutes in about thirty states require the use of the drivers list either alone or in conjunction with other lists to be the juror selection source list.²⁶

The benefits that prompted Georgia in 1967 to adopt the voter registration list as the main source for jury lists still apply. The qualifications for voting and jury service are almost identical. Additionally, the voter registration list is readily available for administrative use.

To Request a Voters Registration List for the County

Currently, the Secretary of State, upon request, will provide a voters list to the Jury Commission in either of two available formats, an electronic file or printed report. To avoid being charged by the Secretary of State's Elections Division, the Georgia Courts Automation Commission has arranged to download this information through the AOC. Submit a Technology Request through the AOC website at: <http://www.georgiacourts.org/aoc/technology.html> OR contact the AOC IT Help Desk: 1-800-298-8203. An example of the data format of the juror record on the voters list is shown in Appendix I.

To Access Census Data and Race by Sex data for Balancing the Box:

Every 10 years the AOC extracts pertinent data from the U. S. Census to assist clerks in balancing the jury box every two years. To extract the information for your county, it is available on the web at <http://research.georgiacourts.org/2000Census.htm> If you do not have web access, or if you require a

breakdown of race and sex, the Clerk of Commission may send a request to Dr. Greg Arnold or Justin Brady, AOC Research Division, 404-656-5171, or arnoldg@gaaoc.us .

To Request a Drivers License List for the County

In accordance with the change in O.C.G.A. §15-12-40, the Jury Commissioners must also request a copy of the county's licensed drivers. The list may be requested by the Superior Court Clerk from the Department of Driver Services by faxing a request on letterhead to Attn: Linda Smith, 678-413-8894 (fax). This can be a single sentence request for the drivers file for your county. For redundancy, call 678-413-8881 to notify them that a fax request has been submitted. Leave a voice message if no one answers. Specify whether you are requesting a CD-ROM or diskettes. The file structure and installation instructions are shown in Appendix I.

There are several differences in the data fields between the voters list and the drivers list. Although the drivers list does now include birth date and gender, it does not separate the name field into first, middle and last names, and the race field is incomplete since DDS only records the race from persons who register to vote. Lastly, although the county board of registrars is required by O.C.G.A. §21-2-231 to remove the names of persons convicted of felonies in the state or federal courts and of persons declared mentally incompetent from the voters list, there is no such requirement for the Department of Driver Services drivers list. Yet, it is still the duty of the Jury Commissioners to remove from the trial and grand jury lists names of persons convicted of felonies or declared mentally incompetent. Because of differences in the data elements available at this time, it will probably be necessary to mail questionnaires to persons on the driver license list in order to obtain the information necessary for qualification and administration.

If the Jury Commissioners decide to use lists supplemental to the voters and drivers list, the value of those lists should be analyzed since most have potential biases. Lists that have been used include: church, club, union or P.T.A. membership lists made available to Jury Commissioners, lists of persons receiving high school diplomas, motor vehicle registration lists, rosters of employees of public institutions such as schools and hospitals, tax and deed records, and city or telephone directories.

For examples of supplemental lists and their potential biases see Exhibit 1. Experiences of other states show that using city directories, tax lists, telephone directories, and utility company lists tends to duplicate a large portion of the names on the voters list. Motor vehicle registration lists are less duplicative than others.

In addition to supplemental source lists, many new county residents are located by means of the Jury Commissioners' personal knowledge, citizen requests to serve, jury questionnaires and public media campaigns such as radio announcements and newspaper advertisements.

When multiple source lists are merged to produce jury lists, the process must be carefully tailored to preserve randomness and equal likelihood of selection. Appendix III discusses the issues and ways of merging source lists. Using multiple source lists can improve the inclusiveness of the lists and help assure that cognizable groups in the community are properly represented, but merging lists may be very time consuming and expensive. Commissioners can remove duplications among multiple source lists and print revised lists generally much faster with data processing than by hand.

The current statute, although it requires the use of both the voters and drivers license list, it does not give any guidance as to the number of names that should be used from each list. Of course, the Jury

Commissioners may decide to do a total merge of both lists and use the combined list. This is difficult considering the size of both lists and the lack of certain information on the drivers license list that will have to be collected by questionnaires. Therefore, the Board may choose to select a smaller sample of the drivers list to which they will send questionnaires.

In order to provide some guidance to Jury Commissioners, it is suggested (for the purpose of increasing the inclusiveness of the process to more citizens of the state) that the Board consider using the same percentage of names from the drivers list as from the voters list for initial consideration for qualification. For example, if a county would need 100 jurors and this would equal 10% of the voters list of 1000 then at least 10% of the drivers list (not counting any names duplicated in both lists) should be sent qualification questionnaires. (If you are not going to merge and combine the complete drivers license list with the voters list, remember to send the questionnaires to drivers whose names are randomly chosen from the whole drivers list.) The number of qualified returned names would be added to make the combined source list. This is a suggestion only and Jury Commissioners are not restrained by law from choosing a different solution to the use of the drivers license list.

Once the Commissioners procure the source list, they should begin qualifying the persons on the list for jury service. Prior to April 8, 1984, this process began with deleting the names of those persons known to be exempt. Exemptions were afforded to categories of persons who had trouble serving or who were necessary to the public health, safety, or good order.²⁷ An amendment to the Official Code of Georgia in 1984 eliminated these exemptions. No individual should be deleted from a jury list because of occupation, although courts will excuse active military personnel from service with written verification by commanding officer.²⁸

B. Qualification of Jurors

Jury Commissioners should consider all qualified individuals as potential jurors for purposes of creating the jury box. Persons aged 70 or older are entitled to request that the Commissioners remove their name from the jury list. The Commissioners are required to make available affidavit forms for such requests.²⁹ See an example of such an affidavit in Appendix II.

Jury Commissioners should be aware that it is unlawful for an employer to discharge, discipline, or penalize an employee who is absent from work for purposes of jury duty.³⁰ Therefore, an employer may not reduce compensation for an employee who misses work to perform jury duty.³¹ Employers may, however, require employees to provide reasonable notification of their expected absence to attend jury proceedings.³² Moreover, Georgia employees who are penalized for missing work to attend judicial proceedings have a cause of action against their employers under O.C.G.A. § 34-1-3 for actual damages suffered and reasonable attorneys fees for asserting a claim.

The Commission must next establish which individuals are legally competent to serve as trial jurors and which are legally competent to serve as grand jurors, since the Georgia Code requires different criteria for these two categories of jurors. Commissioners, when using voter registration lists, may generally assume that the qualifications of jurors drawn from that list are the same as electors' qualifications. However, Commissioners should remember that is not true of persons drawn from other lists.

Exhibit I

Source Lists

<u>LIST</u>	<u>POTENTIAL BIASES</u>
1. Voter Registration	May Be Out of Date Excludes Non-voters Race, Age, or Ethnicity Bias
2. Driver's License	Excludes Elderly, Particularly Women Excludes People in Urban Centers Dependent On Mass Transportation Includes Persons under Age of 18
3. City Directory	Excludes People Not Found by City Directory Personnel Sex Bias City Biased
4. Property Tax Rolls	Economic Bias Sex Bias Excludes Renters Contains Trusts, Estates, Corporations
5. Telephone Directory	Sex Bias Economic Bias Duplication of Names May Contain Children Unlisted Numbers Omitted
6. Utility Customers	Sex or Age Bias Corporate Names Economic Bias Excludes Some Condominium or Apartment Dwellers
7. Vehicle Registration	Corporate Names Economic Bias Sex Bias Non-Georgia Citizen Can Register Car

To be **eligible** for jury duty a person must be:

1. A United States citizen;
2. A citizen of the State of Georgia who has resided in the county at least six months preceding the time of service;
3. Eighteen years of age or older; and
4. Intelligent and upright citizens of the county. (grand jurors must be among the “most experienced,” intelligent and upright).³³

A person is **ineligible**, and should be excluded from the grand jury list if that individual is:

1. An elected official in the state or local government or a person who has held such office within two years of the time requested to serve as a grand juror;
2. A person convicted of a felony who has not been pardoned or whose civil rights have not been restored; or
3. Incompetent because of mental illness or retardation.³⁴

Some factors Commissioners should consider during the process of determining eligibility are as follows: The Clerk of the Jury Commission should be familiar with state and local officers, and can single them out for exclusion. An individual who completes a felony sentence may register to vote, but cannot serve on a jury until that person has received a pardon or restoration of civil rights from the Board of Pardon and Paroles.³⁵ Such restoration is granted by the Board upon completion of all sentences and removal of any holds related to any criminal proceeding.

The Board restores civil rights by the issuance of an order which is sent to the superior court clerk in the counties of the individual’s convictions. It is also entered into the Georgia Crime Information Center’s records, and orders issued since 1943 are maintained by the Parole Board.

Felons’ names should already be removed by the registrar from voter registration lists. If using another source list, Jury Commissioners must use the voter registrar’s list of felons and mentally incompetent persons whose voting rights have been removed to determine if individuals are qualified to serve. The superior court clerk in each county is required to provide a monthly list of convicted felons to the Secretary of State and the probate court judge in each county is required to provide a similar list of persons declared mentally incompetent. The Secretary of State provides this information to the county voter registrars. The county registrar then removes the names of felons and persons mentally incompetent to vote from the voters registration list.

The Georgia Code requires the Board of Jury Commissioners to not only remove the names of persons convicted of felonies or mentally incompetent individuals whose voting rights have been removed, but to mail a notice of such action and the reason for the action to the last known address of such persons by first-class mail.³⁶

A felony conviction is the only type of criminal conviction that can disqualify individuals from serving as jurors. Accordingly, an individual who pleaded “nolo contendere” or “no contest” as a defendant in court proceeding may not be excluded because of that plea from serving as a juror in the future. Likewise, a person who has received first offender treatment is not considered to have been convicted unless that person entered a plea of guilty and failed to complete the first offender treatment.³⁷

Although Georgia’s 1983 Constitution and statutes do not make a person convicted of a misdemeanor ineligible to serve on a jury, it is arguable that a misdemeanor conviction involving an offense of moral turpitude can be considered when qualifying persons for the grand jury from the source list as the most upright.³⁸ At common law, a person so convicted was not considered upright. The definition of moral turpitude was established by the Georgia Supreme Court in Huff v. Anderson, 212 Ga. 32 at 34 (1955):

“Moral turpitude is an act of baseness, rudeness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man.”

For a list of crimes which involve moral turpitude, see Daniel, Georgia Handbook on Criminal Evidence, Section 6-14 (1993).

The qualifications for trial and grand jurors are essentially the same except the trial jurors need not meet the standard “most experienced,” intelligent and upright persons of the county. Instead, the jurors must meet the lesser standard of “intelligent and upright.”³⁹

C. Judicial Excuse from Jury Service

Although the Georgia code no longer allows any occupational exemptions from jury service, a juror summoned to court may request an excuse from service in accordance with a statute or court-ordered guidelines. There are currently two types of excuse or deferral of service for full-time students enrolled and taking classes or exams at any post secondary school, and for any person who is the primary care giver for a child under four years of age who has no reasonably available alternative child care. The student or primary care giver must make a request for excuse or deferral. Examples of affidavits for such purposes are shown in Appendix II. Service Members of the regular or reserve component of the United States Armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who are on ordered federal duty for a period of 90 days or longer, and the spouse of such members, may request to be excused or deferred. These may be granted upon presentation of either a copy of the official military orders or a written verification signed by the service member’s commanding officer.⁴⁰

The court may also grant an excuse if it is shown that a person will be engaged in work necessary to the public health, safety or good order.⁴¹ Only the judge or a person appointed by the order of the chief judge can excuse jurors.⁴² Establishing and adhering to excuse guidelines helps prevent challenges to the jury’s composition which allege that the excuses resulted in jury panels not fairly representative of the community. Except for excuses granted to permanently mentally or physically disabled persons, all excuses will defer service only until a day and time certain in the current or next succeeding term or as the court shall order.

The court alone may excuse jurors with physical disabilities. If the court does not excuse them, jurors with disabilities should be accommodated and given the opportunity to serve. In 1987, Georgia’s Attorney General issued an opinion that courts are not obligated to provide interpreters for hearing

impaired persons involved in court proceedings.⁴³ This opinion should be considered, however, in light of the American Disabilities Act of 1990 (ADA), which provides that no qualified individual with a disability shall be excluded because of that disability from participating in services or programs of public entities.⁴⁴ The ADA requires that entities serving the public take measures to “reasonably accommodate” individuals with disabilities. In accordance with the ADA, a court could, for instance, accommodate some hearing impaired jurors by supplying amplifying devices to enable them to adequately hear trial proceedings.

III. Mechanical or Electronic Selection

The Georgia Code was amended in 1976 to provide for computer automation in the jury selection process.⁴⁵ The statutes provide that the chief superior court judge of the circuit, with the concurrence of the other superior court judges in the circuit, may establish a plan by court rule to use mechanical or electronic selection. A county may contract with a private business or another local government to provide electronic jury selection. It is the responsibility of the Clerk of the Jury Commissioners to implement and maintain the system. As computers have become relatively inexpensive and commonplace in business activities, the majority of Georgia counties have automated at least a part of the jury selection process.

Mechanical selection involves storing the lists of qualified persons in a computer storage bank which then constitutes the jury box.⁴⁶ The number of trial juror names depends, as in the manual system, on the demand and anticipated needs of the courts in the county. The maximum number of persons to be qualified and placed in the grand juror storage bank of automated systems differs from manual selection systems.⁴⁷ The number of prospective grand jurors must equal at least four times the number of grand jurors required to be drawn in the county, but must not exceed 5,000 persons.⁴⁸ For instance, if a county ordinarily convenes four grand juries a year and for each of these grand juries draws 46 names, then at least 736 names must be qualified and placed in the computer storage bank for the grand jury box.⁴⁹ Some counties maintain two separate data files for grand and trial jurors. Other counties maintain one file in which persons qualified by the Commission as grand jurors are coded so that when selection of the grand jury is processed, the computer accesses only these names. Since grand jurors are also qualified to be trial jurors, this is also an acceptable method of selection.

Counties using mechanical or electronic means of selection should produce a computer printout of the names contained in the grand jury and trial jury boxes to be kept by the clerk. This printout should be alphabetically arranged and certified by the Commissioners and clerk to contain all the names in the computer storage bank for jury lists. The lists should be recorded on microfilm and also as tape, diskette, or other photographic or electronic media and stored in the clerk’s vault and in off-site storage. This precaution is taken so that, in the event that the data in the computer storage bank is lost or destroyed, the information can be restored.⁵⁰

Once the source list or lists of qualified jurors have been entered into the computer, selection can be accomplished. One method is the “random start and fixed interval” method.⁵¹ With this method, jurors names are numbered, preferably in a manner that will not create any geographical, alphabetical or numerical patterns that could reduce the randomness of selection. For this purpose, a random number can be assigned to each juror’s name (by computer or by a table of random numbers). Then the number of names on the list is divided by the number of jurors needed for the jury box. This insures that the entire data file of names will be scanned.⁵² The resulting quotient gives the “fixed interval.” A random number, a value within the numbers assigned to the juror names, is selected. The random number should be generated either by the computer or by a blind selection from a table of random numbers. This random number is often called the “seed” number and is the number of the first juror name selected. Thereafter,

the computer scans the total list of names, selecting each name that is located at the “fixed interval” following the initial random number or the preceding “fixed interval.” The same procedure is used to generate the actual jury panels for each term of court.

Another, somewhat more sophisticated method is to use a computer that generates not only an initial random seed number of selection, but thereafter generates a new random number for each selection until the appropriate number of names for that term have been chosen. This is a preferable method, since it makes it more difficult to predict the next name to be chosen when the selection system is running, and therefore is less subject to manipulation.

As names are drawn for service, each juror’s name should be coded so that it will not be selected again until the remaining names in the box have been selected or the box has been revised. No juror’s name should be given any preference for selection.

After a list or box of qualified jurors has been established, the Jury Commission may meet periodically to revise the list, deleting names of persons who have died or who are no longer legally qualified to serve. They may also update the names, addresses, and other data for jurors on the computerized list.⁵³ Updating these lists can increase efficiency by improving the rate of appearance of legally qualified persons summoned for duty. If names are deleted or added, a new printout should be made, a new balancing test (as described in the next section of this manual) should be run, and certification forms should be completed.

No matter which method of selection is employed, the responsibility for the constitution of representative jury boxes remains with the Commission. The importance of having a well-constituted jury box cannot be over-emphasized. A county with a poorly-constituted box will later spend needless time and money defending its juror qualifying process from challenges to the array and attempting to summon persons unavailable for service because of ineligibility or outdated data such as changes of addresses.

IV. Manual Selection

Once a sufficient number of jurors have been qualified, the names of the prospective jurors are to be put in a box for actual selection. The Clerk of the Jury Commission assists the board in determining the number of qualified persons to include in the grand and trial juror boxes. The clerk is familiar with the demand for jurors and frequency of use in the county’s courts. Georgia law provides that the number of grand jurors shall not exceed two-fifths of the number of citizens on the trial jury list.⁵⁴ For example, if the trial jury list contains 1600 persons, then the grand jury box should contain no more than two-fifths of 1600, or 640 persons.

A qualified person may be included in both the grand and trial jury boxes. But once drawn as a grand juror, a person cannot serve as a trial juror in the same term of court. Instead, the grand juror’s name is returned to the trial jury box, and may be selected at a later term of court for trial jury service.

The clerk of the superior court will prepare a list of names contained in the grand and trial jury boxes to be placed in the clerk’s office after certification by the clerk and Jury Commissioners.⁵⁵ They should certify that the list contains all names placed in the jury boxes.⁵⁶

Once the names are placed in the grand or trial jury box, they are available for selection. The purpose of placing the jurors’ names physically into a box is to assure randomness of selection. Each box

usually has two compartments so that the names of qualified prospective jurors are placed in one side and when drawn by the judge in open court are placed in the second compartment.⁵⁷ The same process of selection continues for each term of court for which juries are needed until names in the first compartment are depleted. If this occurs before the next jury revision, the names will be drawn from the second compartment and returned to the first side. Unless the chief judge of the superior court of the county specifically so orders, no new names can be added to the jury boxes until all the original names have been selected or a revised list has been properly created.⁵⁸ Thus, each qualified person is given a fairly equal likelihood of being drawn for jury service.

V. Balancing the Box

A representative box is of prime importance to the qualifying process. The jury box must comprise a cross-section of the community, adequately representing each identifiable group in the county population.⁵⁹ Since blacks and females have been recognized as identifiable groups in Georgia, they must be fairly represented in the jury box.⁶⁰ Fair representation means that the percentage of each distinct group in the jury box must parallel the percentage of that group in the county's population of eligible age.

The Georgia Supreme Court has established Unified Appeals Procedure Rules which apply to cases in which the state seeks to impose the death penalty. In these cases, the trial judge must certify in writing that the percentages of blacks and whites, females and males, and any other cognizable groups in the grand and trial jury boxes do not vary more than 5% from the percentages of each of these categories in the most recent U.S. Census population of county citizens 18 years and older. Jury Commissioners are responsible for preparing the jury box so that the judge can certify its representativeness at any time, and should assist the judge, when necessary, in completing the certification forms. The forms the judge must execute are shown in Appendix IV.

Computer systems have an advantage over manual systems since the computer can perform mathematical processes rapidly to produce the sex and race breakdowns required by the certification forms. Additionally, if the initial list is out of balance, the computer can quickly calculate the numbers of persons necessary to correct any imbalance.

In a manual system, as the Jury Commission qualify individuals, each person's name can be placed in the proper group, such as black female, black male, white female, or white male. At the end of the process, the names can be tallied for each group and compared to the county census figures.

When the Commission first convenes, the task of obtaining a copy of the latest census should be assigned to the Clerk of the Commission or one of the Commission members. A population breakdown by sex and race may be obtained. The following shows the steps the Commission should take to ensure that the jury boxes are balanced. (Refer to Exhibits II and III.)

Step I: The Commission should first determine the number of persons eligible for jury duty, i.e., the county population 18 years and older, and the percentage of each identifiable group in the eligible population. An example of the necessary data is shown below:

U.S. Census

Total County Population		<u>11,793</u>
Total County Population Aged 18 and Over		<u>8,183</u>
Total Females		<u>4,456</u>
Total Males		<u>3,727</u>
Total Blacks		<u>3,658</u>
Total Black Females	2,076	
Total Black Males	1,582	
Total Whites		<u>4,487</u>
Total White Females	2,368	
Total White Males	2,119	
Total Other Races		<u>38</u>
Total Other Females	12	
Total Other Males	26	

Step II: Then the percentage of each identifiable group in the eligible county population should be calculated:

Number of females divided by total county population 18 and older = 54.5%

Number of males divided by total county population 18 and older = 45.5%

Number of blacks divided by total county population 18 and older = 44.7%

 black females = 25.4%

 black males = 19.3%

Number of whites divided by total county population 18 and older = 54.8%

 white females = 28.9%

 white males = 25.9%

Number of members of other races divided by total county population

 8 and older = .5%

 other females = .2%

 other males = .3%

Step III: Suppose in our example county that about 69% of the eligible population (8,183) of the 11,793 persons are registered to vote and that there are 10,400 names on the drivers license list. Of the 10,400 names 7,425 matched the voter list names. 1975 were non-duplicate names on the drivers list. Since about 24 % of the voter list would have to be used to obtain 2000 names, the Commission should send out questionnaires to at least 24% of the 1975 drivers or 474 names randomly chosen from the list. From these questionnaires, 278 are returned and appear qualified.

These 278 names will be added to the voter list to make the combined juror source list from which the jury box will be selected.

After qualifying the appropriate number of persons for each jury list (grand and trial), the number of persons in each of the identifiable groups should be totaled, and the percentage each group composes should be computed. The percentage of each group should match as closely as is administratively feasible to the percentage of whites, blacks, females and males in the county population eighteen and older.

In recent years, the number of persons of races and ethnicities other than white or black has grown. In 1990, there were 16 counties in which Asian-Americans composed 1% of the population and 19 in which Hispanic-Americans composed 2%. At this time none of these groups have been recognized by state or federal law to be a cognizable group in Georgia, which would require inclusion of these groups in the certificate, but the Jury Commissioner should be aware of the overall composition of the county population.

In our example, the grand jury box of 1000 persons should contain as nearly as possible:

Blacks	447 which is	1,000 x .447
Whites	548 which is	1,000 x .548
Females	545 which is	1,000 x .545
Males	455 which is	1,000 x .455

TOTAL: 1,000 Names in the Box

The trial jury box should be constructed in the same manner as the grand jury box:

Blacks	894 which is	2,000 x .447
Whites	1,096 which is	2,000 x .548
Females	1,090 which is	2,000 x .545
Males	910 which is	2,000 x .455

TOTAL: 2,000 Names in the Box

Step IV: “Disparity” or “under-representation” are terms that describe an imbalance in the jury box. Disparity or under-representation is the difference between the percentage of the identifiable group in the eligible county population and the percentage of that group in the jury boxes. For example, if after qualification in our example, the county’s trial jury box contained 50% (or 1000) female names, then the under-representation of females would be 54.5% minus 50%, or 4.5%. Disparity is not measured by comparing the composition of the county population with the composition of either the registered voters list or the jury panel which actually tries the case.⁶¹

Although case law has not required the percentage of each identifiable group in the jury boxes to match exactly the percentage of that group in the community, Jury Commissioners are required to have less than a five percent disparity. If there is a disparity for any identifiable group of five percent or more, the Commission should supplement the box until the representation of that group parallels as closely as possible its number of members in the community.

Step V. Although the certification forms for the Unified Appeals Procedure Rules do not require judges to certify representation of race by sex and other subgroups, it is good practice to ensure that none of these subgroups is under-represented in the jury boxes.

Therefore, in our example:

Black females should compose 25.4% of the trial and grand jury boxes or 508 trial names and 254 grand jury names.

Black males should compose 19.3% or 386 trial names and 193 grand jury names.

White females should compose 28.9% or 578 trial names and 289 grand jury names.

White males should compose 25.9% or 518 trial names and 259 grand jury names.

Other females should compose .2% or 4 trial names and 2 grand jury names.

Other males should compose .3% or 6 trial names and 3 grand jury names.

Additionally, although neither the U.S. nor the Georgia Supreme Court has recognized any particular age group as an identifiable group, it is wise to ensure as broad a spectrum of the community in the jury boxes as possible. Therefore, the Jury Commission may wish to compare the age breakdown of the jury boxes to the county population and correct any significant disparities. This procedure may help to reduce the number of challenges to the array. Although fewer categories may be acceptable, a suggested age breakdown for comparison (compatible with available U.S. Census data) is:

1. Eighteen through twenty-four years;
2. Twenty-five through thirty-four years;
3. Thirty-five through forty-four years;
4. Forty-five through fifty-four years;
5. Fifty-five through sixty-four years;
6. Sixty-five years and older

On the following pages are examples of how the U.S. Census information might be formatted to provide an age, sex and race breakdown. Note that in the 1990 U.S. Census race by age tables, race is classified into three categories: black, white and other. If a county has a significant percentage (5% or more) of persons of another race than black or white or particular ethnicity, it may become necessary in the future to seek additional information from the U.S. Census and consider the representation of this group in the jury box. For example, in Texas, Mexican-Americans have been recognized as a cognizable group.⁶²

EXHIBIT II

**U.S. CENSUS
COUNTY POPULATION FOR 2000 BY SEX, RACE AND AGE
EIGHTEEN YEARS AND OLDER**

Theoretical County
Total County Population All Ages 11,793

GENDER	TOTALS		18 – 24		25 – 34		35 – 44		45 – 54		55 – 64		65 - 65+	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
ALL	8,183	100.0	1,087	13.3	1,614	19.7	1,583	19.3	1,189	14.5	1,031	12.6	1,679	20.5
FEMALES	4,456	54.5	542	6.6	852	10.4	846	10.3	618	7.5	569	7.0	1,029	12.6
MALES	3,727	45.5	545	6.7	762	9.3	737	9.0	571	7.0	462	5.6	650	7.9
BLACKS	3,658	44.7	629	7.7	846	10.3	744	9.1	478	5.8	380	4.6	581	7.1
BLACK FEMALES	2,076	25.4	330	4.0	473	5.8	422	5.2	268	3.3	216	2.6	364	4.4
BLACK MALES	1,582	19.3	299	3.7	373	4.6	322	3.9	210	2.6	161	2.0	217	2.7
WHITES	4,487	54.8	447	5.5	753	9.2	832	10.2	709	8.7	650	7.9	1,096	13.4
WHITE FEMALES	2,368	28.9	209	2.6	375	4.6	421	5.1	349	4.3	350	4.3	664	8.1
WHITE MALES	2,119	25.9	238	2.9	378	4.6	411	5.1	360	4.4	300	3.6	432	5.3
OTHERS	38	.5	11	.1	15	.2	7	.09	2	.02	1	.01	2	.02
OTHER FEMALES	12	.1	3	.04	4	.05	3	.04	1	.01	0	.0	1	.01
OTHER MALES	26	.3	8	.1	11	.13	4	.05	1	.01	1	.0	1	.01

EXHIBIT III

**DESIRED COMPOSITION OF TRIAL JURY BOX SEX, RACE, AND AGE
EIGHTEEN YEARS AND OLDER**

Theoretical County
Total County Population All Ages 11,793

GENDER	TOTALS		18 - 24		25 - 34		35 - 44		45 - 54		55 - 64		65 - 65+	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
ALL	2,000	100.0	266	13.3	394	19.7	386	19.3	290	14.5	252	12.6	410	20.5
FEMALES	1,090	54.5	132	6.6	208	10.4	206	10.3	150	7.5	140	7.0	252	12.6
MALES	910	45.5	134	6.7	186	9.3	180	9.0	140	7.0	112	5.6	158	7.9
BLACKS	894	44.7	154	7.7	206	10.3	182	9.1	46	5.8	92	4.6	142	7.1
BLACK FEMALES	508	25.4	80	4.0	116	5.8	104	5.2	66	3.3	52	2.6	88	4.4
BLACK MALES	386	19.3	74	3.7	92	4.6	78	3.9	52	2.6	40	2.0	54	2.7
WHITES	1,096	54.8	110	5.5	184	9.2	204	10.2	174	8.7	158	7.9	268	13.4
WHITE FEMALES	578	28.9	52	2.6	92	4.6	102	5.1	86	4.3	86	4.3	162	8.1
WHITE MALES	518	25.9	58	2.9	92	4.6	102	5.1	88	4.4	72	3.6	106	5.3
OTHERS	10	.5	2	.1	4	.2	2	.09	0	.02	0	.01	0	.02
OTHER FEMALES	4	.2	1	.04	1	.05	1	.04	0	.01	0	.0	0	.01
OTHER MALES	6	.3	2	.1	3	.13	1	.05	0	.01	0	.0	0	.01

Lastly, a few counties have found it useful to assure that all voter precincts are fairly represented in the jury boxes. This assures equal geographical representation in the box. For example, if 5% of the eligible populations are black females in the Whitehall Election District, then 5% of the number placed in the jury box should be black females of the Whitehall District. This sort of geographical representation is not required by the U.S. or Georgia Supreme Courts.

The more categories a Jury Commission includes in its breakdown of the eligible population, the greater the necessary workload, time, and calculations. Therefore, it is wise to attempt a voting precinct breakdown only if computer services are available to calculate each category's representativeness and necessary corrections.

Despite a Commission's best efforts to balance the jury box, the array will sometimes be challenged. Once a challenge is made, the Jury Commissioner's duty is to truthfully explain the Commission's work. Thus, the testimony of each Jury Commissioner and the documents used in the selection process may become vital. These will be necessary to show that the jury lists were created fairly, and that the Commission made every attempt to represent all major population segments in the county.

As mentioned before, the challenger need not show that the Jury Commission has purposely discriminated against any group. Instead, since it is difficult to show intentional discrimination, the challenger will attempt to present a *prima facie* case based on the following points: 1) The source list presented an opportunity for discrimination, and, 2) the use of the infected source produced a significant disparity between the percent of the group in the community and on the jury lists.⁶³

In response, the following types of evidence may help to overcome the challenge: 1) persons of various racial and ethnic groups and sex have participated as Jury Commissioners; 2) no qualified individual was purposely excluded from the jury list; 3) there are no gross disparities in the percentage of any identifiable group on the jury list and in the county population over eighteen; 4) juror names were drawn in a random fashion; 5) the Commission used a random mechanical process; and 6) the Commission used additional source lists, advertising or other efforts to cure any disparities that did arise. Testimony alone that the Commission acted in good faith to avoid systematic exclusion of any class is insufficient to overcome evidence of a significant disparity.⁶⁴ Commissioners must provide evidence that they worked honestly and diligently to correct any disparities.

VI. Juror Questionnaire

A. Purpose

Different problems arise in the qualification process according to the size of the county. The original concept of the Jury Commission, a small body of the persons well-acquainted with most members of their community, who would fairly apply jury qualification standards to all members of the community, is still most effective in smaller counties. In smaller counties, however, Commissioners must cautiously avoid possible prejudices that can taint the decision-making process. In larger counties, problems of bias may be less significant since the Commission may know only a small percentage of the citizenry. On the other hand, a lack of familiarity with the citizens may be as undesirable as the problem of bias, since Commissioners may have difficulty subjectively qualifying persons they do not know.

Some Commissioners have sought to remedy these problems by using the juror questionnaire, a tool that has improved the juror qualification process. Written questionnaires are authorized by O.C.G.A. §

15-12-11(b) and §15-12-23(b). The juror questionnaire seeks to identify persons who are legally competent to serve as jurors by obtaining personal data that will accurately identify each citizen and establish their eligibility for jury service. The questionnaire is particularly helpful when using multiple source lists that may not include all relevant information to determine if a person is qualified for service.

The personal data solicited on a juror questionnaire generally include:

- Name
- Address
- Phone Number
- Type and Place of Employment
- Work Phone Number
- Length of Residency in County
- Date of Birth
- Sex
- Race
- U.S. Citizenship

Date of birth helps identify persons with the same name. Data on residency and birth assists the Commission in determining whether a person is qualified to serve. Information concerning sex and race aids in determining whether the box is well-composed.

The questionnaire can also be used to maintain information on jurors for later use by the clerk of court in compiling juror lists for attorneys used during voir dire. “Voir dire” is the process whereby parties’ attorneys are permitted to question each potential juror in the panel selected for a case to determine if any juror is biased and thus disqualified from service. Voir dire also allows the attorneys to learn more about each juror and thus guides them in best presenting their case. Basic data gathered on the questionnaire, which the clerk can provide to attorneys, can help shorten the voir dire process. If questionnaires will be used for this additional purpose, it is helpful to construct them to elicit supplemental information often sought during voir dire, such as juror’s marital status and spouse’s occupation.

If drawing is computerized and a voters list is maintained in the computer files, the questionnaire can also be used to update the addresses of the individuals in the voter registration file.

B. Questionnaire Design and Mailing

There are two basic forms the questionnaire may take: 1) a separate form which may be mailed to potential jurors or filled out at the courthouse when the juror has been called for service, or 2) a portion of the juror summons. Either type of form may be prepared for mailing manually or by computer.

The questionnaire can range in size from that of a full page of paper to a postcard, depending on the amount of information to be gathered, a county’s budgetary limitations, and whether the questionnaire is to be used for other purposes. An advantage of a card format is that the clerk can more efficiently use the questionnaire to provide attorneys with voir dire information and to keep track of who has served. Bar code scanning or similar scoring techniques may be used for counties with large numbers of questionnaires to collate the information from the returns.

If a questionnaire is prepared manually, it may be photocopied or printed. Since a large quantity of questionnaires will usually be needed, printing is relatively inexpensive and produces a more professional-looking document. The alternative is to print and address questionnaires by computer. Most often this process uses a packet which includes the questionnaire and a return envelope. The questionnaire can also be prepared with a return address and a mailing permit attached on the opposite side, with one edge of the questionnaire gummed. Prospective jurors can simply fill out the questionnaire, fold them, and drop them in the mail.

Computer-prepared questionnaires have several advantages. They have a professional appearance, require less preparation time, and are easy to return. Additionally, computer-generated names and addresses are generally more accurate than those prepared manually.

Developing computer technology has given even greater flexibility. For instance, many Superior Courts have computerized systems by which summoned jurors can use the Internet to obtain information about service and deferrals.

Small counties should not necessarily be deterred from using a computer to prepare questionnaires. Currently, O.C.G.A. §15-12-42 allows any county under proper court rule to contract with any public or private agency or entity within the state to use a computer for drawing jurors. If a county or service can provide computerized drawing, and prepares qualification questionnaires by computer, another interested county may contract with the county or service to use the same questionnaire at an affordable price.

To encourage high rates of return, questionnaires must be convenient to fill out and to return. Questionnaires may be returned either by mail or in person on the juror's first day of service. For jurors returning questionnaires by mail, pre-stamped self-addressed envelopes or post cards provide optimum convenience. These increase the likelihood that the questionnaires will be returned to the Commission.

Questionnaires can be sent out using various methods. If the manually-prepared questionnaire is part of the jury summons, the summons must be sent by certified U.S. mail, return receipt requested.⁶⁴ If the questionnaire and summons are computer-generated, the sheriff may authorize the summons to be delivered by first-class mail.⁶⁵ Various classes of postage may be affixed to return envelopes as well, depending on their size and design. Because rates for different postage classes vary, Commissioners should investigate costs and procedures through their local post office before mailing to ensure the most economical means of sending questionnaires.

Some counties attempt to increase their rate of returns by printing an incentive on the questionnaire, such as, "Failure to return this questionnaire within ten days may be considered contempt of court." For a questionnaire sample, see Appendix II.

Every method that can simplify the revision process and increase the accuracy of the jury box is worth investigating. Tools and practice such as questionnaires, voter registration list campaigns, and regular purging of the list as provided by law will help to assure the accuracy of the information on the jury lists. At the point of revision, it may be helpful to run an article in the local paper or a public service radio announcement to inform the populace of the revision, to ask new residents to register, and to request that individuals notify the Jury Commission of changed addresses. This may help the Commission avoid unnecessary postage costs in sending and receiving questionnaires.

VII. Conclusion

The duties of Jury Commissioner are a serious responsibility. The Jury Commissioners work diligently to provide each eligible citizen an equal likelihood of serving on a jury and to create a jury box that accurately reflects each distinctive group in the community. Their work assures each of us, should we be a claimant or defendant before the court, that our cause will be judged by a truly representative jury.

ENDNOTES

1. O.C.G.A. §§ 15-12-20 and 15-12-23.
2. O.C.G.A. § 15-12-20.
3. O.C.G.A. § 15-12-20(d).
4. Opinion Att’y Gen. No. U84-17
5. Woods v. State, 222 Ga. 321, 322 (1966)
6. O.C.G.A. § 15-12-20(d).
7. Parker v. Davis, 218 Ga. 810 (1963). See also Op. Att’y Gen.. No. 57-178
8. Parker v. Davis, 318 Ga. 810 (1963).
9. O.C.G.A. §§ 15-12-20(a) and 15-12-21.
10. Clark v. State, 255 Ga. 370 (1986).
11. *Ibid.*
12. *Ibid.*
13. Frazier v. State, 257 Ga. 690 (1987).
14. O.C.G.A. § 15-12-24.
15. O.C.G.A. § 15-12-22.
16. O.C.G.A. § 15-12-40.
17. O.C.G.A. § 15-12-40(a)(1).
18. O.C.G.A. § 15-12-40(b)(2).
19. O.C.G.A. § 15-12-40 (a)(1)(A). (*Note: The drivers license portion of the Department of Public Safety became the Department of Driver Services in 2005*)
20. Hernandez v. Texas, 347 U.S. 475 (1954).
21. Sanders v. State, 237 Ga. 858 (1976); Hernandez v. Texas, U.S. 475 (1954).
22. Cobb v. State, 244 Ga. 344 (1979); Mooney v. State, 243 Ga. 373 (1979) U.S. cert. den. in 444 U.S. 886, U.S. reh. den. in 444 U.S. 975; Hudson v. State, 240 Ga. 70 (1977).
23. Potts v. State, 259 Ga. 812, 388 S.E.2d 678 (1990); Lee v. State, 258 Ga. 481; 371 S.E.2d 389 (1988); Jefferson v. State, 256 Ga. 821, 353 S.E.2d 468, cert. denied, 484 U.S. 872 (1987).
24. Jon M. Van Dyke, *Jury Selection Procedures: Our Uncertain Commitment to Representative Juries*. (Cambridge: Ballinger Publishing Co., 1977) p. 89.
25. Senator Edward M. Kennedy, “Use of Voter Registration Lists for Jury Selection,” U.S. Senate, 94th Congress, 1st Sess., April 15, 1975 (Congressional Record, p. S5985).

26. G. Thomas Munsterman, National Center for State Courts, March, 2000.
27. Georgia Laws 1984, Act 1337, amended O.C.G.A § 15-12-1 to abolish jury service exemptions for the following individuals: (1) police and other law enforcement officers; (2) court officers and personnel including attorneys at law; (3) fire department officers, firemen, and other personnel; (4) physicians, surgeons, medical interns, medical technicians, and other hospital personnel; (5) dentists and pharmacists; (6) teachers and school principals; and (7) persons 65 years of age and older.
28. O.C.G.A. § 15-12-1(c); Op. Att’y Gen. No. 80-125.
29. O.C.G.A § 15-12-1(b).
30. O.C.G.A §§ 34-7-3 and 15-1-4.
31. Opinion Att’y Gen. No. 89-55.
32. O.C.G.A § 34-1-3
33. O.C.G.A §§ 15-12-40.1, 15-12-40(a)(1), and 15-12-60(a).
34. O.C.G.A § 15-12-60(b)
35. Opinion Att’y Gen. No. 83-33.
36. O.C.G.A § 15-12-40.2
37. Opinion Att’y Gen. No. 90-6.
38. Williams v. State, 12 Ga. App. 337 (1913).
39. O.C.G.A § 15-12-40(a)(1).
40. O.C.G.A § 15-12-1 (a) (2) & (3); 15-12-1 (c)
41. O.C.G.A § 15-12-1.
42. *Ibid.*
43. Opinion Att’y Gen. U87-11.
44. 42 U.S.C. 1201 et. seq.
45. O.C.G.A § 15-12-40(b).
46. O.C.G.A § 15-12-42(b).
47. O.C.G.A § 15-12-62(b).
48. O.C.G.A § 15-12-40(b)(4).
49. *Ibid.* See also O.C.G.A § 15-12-62, which provides that all judges shall draw not less than 18 nor more than 75 names to serve as grand jurors for each term of court.
50. O.C.G.A §§ 15-12-43(b) and 15-12-44(b).

51. G. Thomas Munsterman, *A Supplement to the Methodology Manual for Jury Systems: Relationships to the Standards Relating to Juror Use and Management*. National Center for State Courts Center for Jury Studies. May 1987, p. 11.
52. O.C.G.A § 15-12-40(b)(5).
53. O.C.G.A § 15-12-40(b)(2).
54. O.C.G.A § 15-12-40(a)(2).
55. O.C.G.A § 15-12-43(a).
56. O.C.G.A § 15-12-42(a).
57. O.C.G.A § 15-12-42(a)(1).
58. O.C.G.A § 15-12-40(a)(3).
59. O.C.G.A § 15-12-40(a)(1).
60. *Cunningham v. Zant*, 928 F.2d 1006 (11th Cir. 1991).
61. *Wright v. State*, 255 Ga. 109 (1985)
62. *Hernandez v. Texas*, 347 U.S. 475 (1954).
63. *Hudson v. State*, 185 Ga. App. 508 (1988). See also *Barrow v. State*, 239 Ga. 162 (1977); *Fulton v. State*, 127 Ga. App. 711, 713(5)(1972).
64. *Barrow v. State*, 239 Ga. 162 (1977).
65. O.C.G.A § 15-12-65(a); O.C.G.A § 15-12-65(b).

APPENDIX I

FORMATS

REGISTERED VOTERS AND DRIVERS LICENSE

LIST FILES

APPENDIX I VOTER DATA

Installation of Voter Data:

The data is transmitted to the clerk of superior court as an email attachment in a compressed or zipped format. The designated jury program vendor may also request this information directly. Requirements: Microsoft Win2000 or Windows XP, Microsoft Outlook or Outlook Express, and WinZip.

1. Open the message that contains the file attachment you want to save. The attachment will usually be named *YourCountyName.Zip*. Right-click the attachment, and then click **Save As**. In the **Save Attachment** dialog box, choose a folder location. In the **File** name box, you can type a new name for the file, then click **Save**.
2. Using Windows Explorer or the WinZip application, navigate to the saved zip file. Right click your mouse on the file name and select **Extract to...**
3. The WinZip Extractor application pops up, select a folder on your C drive to extract the file, and select **Extract**. This will start copying the data file to the selected directory of your C drive.
4. When you get the message “1 file unzipped successfully” left click your mouse on “OK”.
5. Left click your mouse on “Close”.
6. You now have a text file in a folder on your C drive. You can use Notepad or any other word processor to view the file.

See File Format on next page.

**Georgia Secretary of State
Voter Registration System
Jury List Record Description**

Record Name	Data Form	No. of Positions	Comments
Registration Nbr.	AN	08	Registration number
Last Name	AN	20	Last name
First Name	AN	20	First name
Middle-Maiden	AN	20	Middle or maiden name
Suffix	AN	03	Suffix
Title	AN	03	Title
House Nbr.	AN	06	House number
Street Name	AN	30	Street name
Street Suffix	AN	02	Street suffix
Apt. Unit Nbr.	AN	08	Apartment unit number
City	AN	17	City
State	AN	02	State
ZIP	AN	05	ZIP
Zip Plus 4	AN	04	ZIP plus 4
Mail Address 2	AN	30	Second mail address line
Mail Address 3	AN	30	Third mail address line
Date of Birth	N	08	Date of birth
Race	AN	01	Race
Gender	AN	01	Gender
Date Added	N	08	Date voter added
Date Changed	N	08	Date voter data changed
RR-PO-Box	AN	08	Rural route or PO box number
Combined Street	AN	60	Formatted second line of address; includes house number, street name, street suffix, PO box, rural route, and/or apartment number
County Precinct	AN	05	County precinct
Municipal Precinct	AN	05	Municipal precinct
Old Reg. Nbr	AN	14	Old registration number
		Total Bytes = 326	

AN = alphanumeric
N = numeric

DRIVER DATA

OCGA § 40-5-2(f)(7). By law, DDS can only provide the following data fields:

“The lists required to be made available to boards of jury commissioners pursuant to Code Section 15-12-40 regarding county residents who are the holders of drivers licenses or personal identification cards issued pursuant to this chapter. Such lists shall identify each such person by name, address, date of birth, gender, driver's license or personal identification card number issued pursuant to the provisions of this chapter, and, whenever racial and ethnic information is collected by the department for purposes of voter registration pursuant to Code Section 21-2-221, by racial or ethnic group.”

Jury List Record Layout:

This is a Text File which can be opened with PC software ex: Notepad, MS Word.

File Name	Number of Positions	Notes
License Number or Identifier	9	
License Status (valid, expired)	20	“Not License” = ID cards and permits
Driver Name	26	Last, First, Middle
DOB	10	CCYY-MM-DD (C=century, 19 or 20)
Gender	01	F, M, U (unknown)
Race	01	<u>If registered voter</u> (A-Asian, B-Black, I-Indian, M-Multi, O-Other, R-Refused, U-Unknown, W-White)
Address	26	
City	15	
State	2	
Zip Code	9	
County Code	3	

If you have any problems with the procedure, contact your technical support person. If you still have problems please call Linda Smith at 678-413-8881 and include your phone number with a brief description of the problem and someone will get back to you as soon as possible. Or you can send a fax to 678-413-8894.

APPENDIX II

SAMPLE AFFIDAVITS FOR:

- 1) Persons 70 Years of Age and Older - Exemption**
- 2) Student - Deferral**
- 3) Primary Caregiver - Excuse or Deferral**

SAMPLE SUMMONS AND QUALIFICATION QUESTIONNAIRE

SUMMONS FOR JURY SERVICE

You are hereby summoned to appear before the Honorable _____, Presiding Judge, on the date and time indicated, to serve as a juror. Your attendance is required by law. Failure to respond will result in further court action.

Group Number:

Juror Number:

Instructions

- Answer all questions, sign, and return the prepaid juror questionnaire within seven (7) days from receipt of summons.
- Please telephone _____ after _____ p.m. on the day before your service date, for a recorded message concerning which groups are to report for jury service.
- If claiming medical or age exemption, complete appropriate affidavit, and return with questionnaire.
- You may enter the courthouse through the main security entrance on _____ street.
- Georgia Law prohibits employer harassment of prospective jurors. O.C.G.A. §34-1-3.
- See reverse side for important letter and map.

JURY SUMMONS

SUPERIOR COURT OF _____ COUNTY, GEORGIA

You are hereby summoned to appear before the Superior Court of _____ County, (city), Georgia, on the date, time and courtroom indicated below to serve as a (grand, traverse) JUROR.

_____, Presiding Judge
_____, Judicial Circuit
_____ County Superior Court

Date	
Time	Room
Service Term:	

Standby Status	Group
Juror No.	Sel. No.

QUESTIONNAIRE

- 1. Answer all Questions
- 2. Sign and date Confirmation Form
- 3. Remove Tape, Fold
- 4. Seal and Mail

PLEASE PRINT

Name: _____ Occupation: _____
 Address: _____ Employer: _____
 _____ Spouse Occupation: _____
 Sex _____ Age _____ # of Children _____ Spouse Employer: _____

CIRCLE CORRECT RESPONSE

- > Marital Status: Single Married Divorced Separated Widowed
- > Can you read, speak, and understand the English language? YES NO
- > Are you now a resident of _____ County? YES NO (If no, please circle)
 If NO, **fill out the top portion, sign, and return.** Do Not Report for Jury Duty
- > Have you been a party to a lawsuit? YES NO
- > Has any member of your family been a party to a lawsuit? YES NO
- > Have you ever been a VICTIM of a crime? YES NO
 If yes, what type of crime? _____
- > Has any member of your family ever been a VICTIM of a crime? YES NO
 If yes, what type of crime?

- > Have you ever been convicted of a Felony? YES NO
 If yes, have your civil rights been restored? YES NO
- > Have you ever been selected to serve on a jury trial? YES NO
- > Are you related by blood or marriage to any person in law enforcement? YES NO
- > How many years have you lived in _____ County? _____

JURY DIVISION
COURT ADMINISTRATORS OFFICE
 Address _____

Postage

RETURN ADDRESS REQUESTED

OFFICIAL COURT BUSINESS
JURY SUMMONS
RETURN QUESTIONNAIRE INSIDE
PLEASE OPEN - READ ALL PAGES

Affidavit for Exemption

PERSONS 70 YEARS OF AGE AND OLDER

_____ County, Georgia

Juror Name: (Print name) _____

Juror Address: _____

Juror Telephone Number: _____

I hereby affirm that I am 70 Years of Age or older, my date of birth is _____ and my age at my last birthday was _____. I currently reside in _____ County. I hereby request the Board of Jury Commissioners of this County to remove my name from the list of eligible grand and trial jurors.

This the _____ day of _____, 20_____.

Signature: _____

Subscribed and Sworn before me this
the ____ day of _____, 20__.

Notary Public

Affidavit for Deferral from Jury Duty

STUDENT

_____ County, Georgia

Juror Name: (Print name) _____

Juror Address: _____

Juror Telephone Number: _____

I hereby affirm that I am the **a full-time student at a college, university, vocational school, or other post-secondary school** and that I request to be deferred from jury duty during the period of time that I am enrolled and attending classes in such school in accordance with O.C.G.A. §15-12-1 (a) (2). I further affirm that my post-secondary education will be completed on or about

_____.

This the _____ day of _____, 20_____.

Signature: _____

Subscribed and Sworn before me this
the _____ day of _____, 20__.

Notary Public

Affidavit for Excuse or Deferral from Jury Duty

CHILD CARE GIVER

_____ County, Georgia

Juror Name: (Print name) _____

Juror Address: _____

Juror Telephone Number: _____

I hereby affirm that I am the **primary care giver** having active care and custody of a **child under four years of age** and that I have no reasonably available alternative child care and that I request to be excused or deferred from jury duty in accordance with O.C.G.A. §15-12-1 (a) (3).

This the _____ day of _____, 20_____.

Signature: _____

Subscribed and Sworn before me this
the ____ day of _____, 20____.

Notary Public

APPENDIX III

COMBINATION OF SOURCE LISTS

Chapter 2 – Source Lists, PAGES 3 - 20 FROM

Jury System Management

by

G. Thomas Munsterman

PUBLISHED 1996

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SOURCE LISTS

The purpose of this element is to increase the coverage of the source list from which prospective jurors' names are selected. The courts should determine the percentage of those citizens eligible to serve on juries, which is covered by the existing source list, extend the coverage if it does not meet the standard, and make that improvement part of the Jury Plan.

APPLICABLE ABA STANDARD

STANDARD 2: JURY SOURCE LIST

- (a) **THE NAMES OF POTENTIAL JURORS SHOULD BE DRAWN FROM A JURY SOURCE LIST COMPILED FROM ONE OR MORE REGULARLY MAINTAINED LISTS OF PERSONS RESIDING IN THE COURT JURISDICTION.**
- (b) **THE JURY SOURCE LIST SHOULD BE REPRESENTATIVE AND SHOULD BE AS INCLUSIVE OF THE ADULT POPULATION IN THE JURISDICTION AS IS FEASIBLE.**
- (c) **THE COURT SHOULD PERIODICALLY REVIEW THE JURY SOURCE LIST FOR ITS REPRESENTATIVENESS AND INCLUSIVENESS OF THE JURY SOURCE LIST, APPROPRIATE CORRECTIVE ACTION SHOULD BE TAKEN.**
- (d) **SHOULD THE COURT DETERMINE THAT IMPROVEMENT IS NEEDED IN THE REPRESENTATIVENESS OR INCLUSIVENESS OF THE JURY SOURCE LIST, APPROPRIATE CORRECTIVE ACTION SHOULD BE TAKEN.**

In some states, the voters list is the source of names for the selection of prospective jurors.¹ This list consists of those registered to vote or those who voted in the most recent election and covers a much wider cross-section of the population than source lists previously prepared by *keymen*.² Many courts accept the voters list as the best single list to use because, in their opinion, it provides an adequate cross-section of a jurisdiction and has many desirable features, the most notable being that it includes all those who displayed civil responsibility by participating in elections.

The question has been raised whether exclusive use of the voters list meets the goals of jury selection. Since voter registration tends to peak every four years before a presidential election, the voters list in the intervening years may not fully represent significant portions of the population, particularly among the young and transient. Further, a substantial proportion of those eligible for jury service may not register to vote. The drivers list usually has greater coverage than the voters list and, as will be discussed, is the list used with the voters list in about half of the states. Since 1979, a number of jurisdictions have gone to exclusive use of the drivers list with excellent results.³ These changes to the use of the drivers lists or the single use of the drivers list has resulted in improved representativeness at the expense of a reduced yield, as will be addressed in Element 3.⁴

Two measures against which the voters list, or any source list, should be tested are balance and inclusiveness. *Balance* is the degree to which the list reflects the eligible population based on its

demographic characteristics (e.g., age, race, gender, occupation, etc.). *Inclusiveness* is the completeness of the list or combined lists.

If the inclusiveness is high, that is, if nearly everyone eligible appears on the master selection list, it follows that balance will be good. But the opposite is not necessarily true. Because of the difficulty of determining the balance of the population and source lists, the Incentive Program chose as the standard an inclusiveness of at least 85 percent of the eligible population as the standard of source list adequacy. In most states, this "eligible" population will be the population aged 18 and over.

Courts who wish to meet this standard will necessarily use one or more other lists in addition to their present source list. The method of list selection and combination is presented in the following sections.

Before committing to the use of multiple lists, courts whose source list coverage is below 85 percent may wish to explore the demographic necessity for using multiple lists and, hence, to consider the balance of their lists; that is, the agreement between the source list and population. Some balance problems will be obvious, such as when a source list contains 75 percent male in contrast to a population of 49 percent male. However, when the population contains 5 percent of some minority and the source list contains only 2 percent, the significance of the difference and hence the question of the need for multiple lists is difficult to resolve. The literature contains measures of these disparities.⁵

List Selection

The process of determining which list or lists to use must include the practical aspects of acquisition and combination. For instance, the list of licensed drivers, usually the best list in terms of coverage, may not be separable by county or jurisdiction. Zip codes may also cross jurisdictional lines in some states, yet the voter/driver combination is the one most frequently used. Some lists are not available; e.g., the Social Security and federal census lists (see Table 2-1).

Table 2-1

Possible Source Lists for Juror Selection Process

Lists	Inherent Limitations
Social Security	Not available, the Social Security Number is available
Voter registration	Not up to date; not complete
City directory	Not complete; low income missing
Census	Federal list not available
Motor vehicle registration	Institutional and corporate listings, no age identification
Driver's license	Not up to date; jurisdiction difficult to ascertain
Real estate tax	Commercial properties; mortgage companies; male bias
State income tax	Not available; male bias
Welfare	Not available in most jurisdictions
Telephone directory	Jurisdictions not always apparent; male bias
Utility customers	Jurisdictions not always apparent; not resident owner; male bias

Courts considering the use of multiple lists should consider the following.

1. *Availability.* The best lists (Social Security, federal census, and income tax) cannot be used. However, a state or local census and state income tax lists are available in some jurisdictions. Courts should be prepared to both pay the costs of lists and ensure the privacy of the lists used.
2. *Efficiency.* Combining lists can be costly. This is particularly true if the individual lists are updated at different times, in which case the combined list should be recompiled each time one of the lists is revised. It is also very inefficient to generate a large, nonduplicative master list when only a very small number of names is required (e.g., 10,000 selected out of 1,000,000). Kadane and Lehoczky present methods for directly combined samples of lists without having to handle combination of the entire lists. (See "Random Selection Without Full List Combination," page 11.)⁶
3. *Bias.* Some lists are heavily biased. For example, property tax and utility lists are biased toward property holders.
4. *Duplications.* Because of difficulties in eliminating duplicated names in multiple lists, an individual named on several lists has a greater probability of being selected than those named on only one list. Courts confronted with this problem accept some level of duplication rather than the risk of excluding a qualified citizen. The elimination of duplicates, either by computer or by hand, creates two types of errors: exclusion of a name that is not a duplicate and retention of a name that is a duplicate. The best method for removing duplicates is to use a unique individual identification in each list, such as a Social Security number.⁷
5. *Geo-coding.* Some lists are not easily resolved into court jurisdictions; i.e., county or district. This may require a manual verification of those few summoned who reside in the undefined areas, such as in one zip code or census tract, which are not limited to one court's jurisdiction.

Study of List Overlaps and Efficiencies

Even after source lists for juror selection are combined, few jurisdictions know the contribution of each list. Courts considering the use of multiple lists should have some estimate to determine if the combination is worthwhile; i.e., how many names not found on the first list does each successive list add. The method used to determine the number of unique names provided by the voters and drivers lists for San Diego County will be described.

To determine the overlap between the voters and drivers lists, a sample of 200 names was drawn from the voters list and manually checked against the entire drivers list. Eighty percent of the voters in San Diego County were also found on the drivers list (see Table 2-2.)

The reliability of these results was tested by reversing the process and checking a sample of 200 names from the drivers list against the voters list (see Table 2-3). The two samples were used to estimate the size of the total combined list less duplicates (see table 2-4). The two samples show less than 1 percent difference in the percentage of overlap measured (49.6 percent vs. 48.7 percent), a difference that is insignificant.

Table 2-2**Voter/Driver Overlap Estimate from Voters List Sample**

Category	Sample Size	% of Sample	Voters List	Drivers List
Total	200	100	628,217	925,497
-----	-----	-----	-----	-----
Voter/Driver overlap	164	82	515,138	515,138
Voters only	36	18	113,079	
Drivers only				310,359

Table 2-3**Driver/Voter Overlap Estimate from Driver List Sample**

Category	Sample Size	% of Sample	Voters List	Drivers List
Total	200	100	925,497	628,217
-----	-----	-----	-----	-----
Voter/Driver overlap	100	55	509,023	509,023
Voters only				119,194
Drivers only	90	45	416,474	

Table 2-4**Summary of Sampling Results**

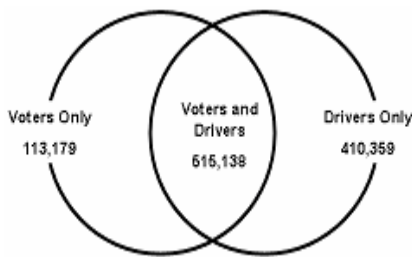
Category	Voters List Sample from Table 2-2	Drivers List Sample from Table 2-3
Total combined list minus duplicates	1,038,576	1,044,691

Based on the estimate of the overlap from the first sample, the result of combining the drivers and voters lists in San Diego would provide coverage of 93 percent of the target population. In contrast, the voters list alone would cover 56 percent of the 18 and over population, and the drivers list alone would cover 83 percent (see Figure 2-1).

Figure 2-1

Effect of Combining Lists in San Diego County California, 1976

	<u>Number</u>	<u>Coverage</u>
Registered voters list	628,217	56%
Driver's licenses (18+)	925,497	83%
Total	1,553,714	
Less duplicates	515,138	
Combined master list	1,038,576	93%
Population 18 and over (est.)	1,110,783	



Voters Only	Voters and Drivers	Drivers Only
11%	50%	39%
Combined Master List -- 1,038,576 = 100%		

Methodology for the Combining of Lists

Once the need for using two or more lists is apparent, the actual method of combining the lists comes into focus. The most direct way of doing this (and the most expensive and tiresome), whether done by computer or by hand, is the direct combination of all lists into a single alphabetical or otherwise ordered list from which duplicates have been removed. The intent of such a list is to include only one listing (or one card or token) for each eligible person such that each person has the same and equal chance of being selected.⁸

Misconceptions of Combining Source Lists

Before discussing the method for combining lists, several misconceptions concerning the use of multiple lists should be discussed.

1. *Improper Supplementation.* Some courts take a sample of a list or lists and add these names to the voters list. This method violates equal probability of selection unless no duplicates exist between the lists.
2. *Improper Duplicate Recognition.* If a random sample is made from each list and duplicates are checked only between these samples, then equal probability of selection is not maintained.

3. *Improper Combination.* Some courts attempt to duplicate the cross-section of the community by combining certain lists in determined proportions. Although this achieves a better cross-section, the equal probability of selection is violated.
4. *Improper Timing.* Some courts draw from one list in the spring and another list in the fall, in a sense taking random samples from each list without considering the duplication between the lists.

Direct Combination of Lists

The combining or merging of two lists can be a manual task but is usually done by a computer. The task is complicated by the matching of names to remove duplicates. The computer technique is basically as follows:

1. The entry on each list is formed into a common format upon which the comparison for duplicates can be based. This information is called the *key*.
2. Each list is ordered based on the information in the key. If the key begins with the name of the person, the ordering is alphabetical.
3. The lists are simultaneously scanned, starting at the lowest key value or the top of each list, and a comparison of the entries from each list is made. If the comparison indicates a duplicate, the name is written to the combined list file, and the next name is considered. When duplicates are found, the most recent address or the address from the list found to be most up-to-date should be carried forward. If the names are different, the one of lowest value is written to the combined list file and the higher value name is kept and compared to the next name on the list from which the lower value name was taken.

The result of this process is a single merged list with the level of duplicates determined by the name match criteria used and the degree of duplication in each individual list. This combined list can then be sampled, using some random method, to generate a list for the qualifying or summoning process.

This technique can be used to merge any number of lists, because the process is a successive merging of two lists until all the lists are combined.

The computer time necessary to perform this method can take several hours; however, it is usually done only once a year. If jurisdictions desire a more up-to-date source list, the process could be performed more often, providing the constituent lists are updated. Regardless of the method of combining the lists, certain data should be obtained, such as the number of duplicates found and the constituent sizes of the lists. Samples of the duplicates rejected can also be used to monitor the accuracy of the duplicate-matching routine.

Random Selection without Full List Combination

Kadane and Lehoczky describe techniques for sequentially sampling and checking from several lists to arrive at a random sample.⁹ These techniques do not require that the lists be combined; instead, only one list need be scanned for duplicates. If the list that is the most easily scanned is chosen, the task of achieving a merged list is simplified.

The following illustrates the methods of direct combination and random sampling (without direct combination) by using a hypothetical list. The combined list consists of twenty-one "names" with nine

duplicated "names." The direct combination method described in the previous section would generate such a combined list.

The results of random selection without full combination are illustrated in Table 2-5. This method, which is described below, is the fourth of the five methods described by Kadane and Lehoczky.

1. A random sample is taken from each list given in Figure 2-2 in proportion to its size. Since the lists are of equal length, fifteen names, the samples are also equal, and a random sample of five names is selected from each list (see Table 2-5).
2. List 1 (Table 2-5) is considered the "primary list," and all five names are defined as "good." The five names selected from List 2 are compared to the entire List 1, and the duplicate names (A, L, and Q) are rejected. The remaining names (H and J) are combined with the first five to obtain the random sample of seven names.

This method achieves the same result as a direct combination followed by a random sample by sampling first and then comparing one sample to the entire other list and rejecting duplicates. This rejection of duplicates ensures that the duplicated names are given only a single chance of being selected; i.e., on the primary list. Either list may be the primary list, with the choice usually based on which list is easiest to check.

Figure 2-2

Example of Combination of Lists

List 1	List 2	Combined List	Duplicates
A	A	A	A
B	C	B	F
D	E	C	I
F	F	D	L
G	H	E	M
I	I	F	P
K	J	G	Q
L	L	H	R
M	M	I	T
N	O	J	
P	P	K	
Q	Q	L	
R	R	M	
T	S	N	
U	T	O	
		P	
		Q	
		R	
		S	
		T	
		U	
15	15	21	9

Table 2-5

Random Sampling from Lists 1 and 2 to get Random Sample of Combined List

Sample of Five Names		Random Samples from Combined Lists
List 1	List 2	
D	A	List 1 Primary D
G	H	G
P	J	H
Q	L	J
T	Q	P
		Q
		T
5	2	7

Table 2-6

List Merging Samples

Item	List 1 (Drivers)	List 2 (Voters)
Number of names	900,000	600,000
Random sample	45,000	30,000

A second example combines voters and drivers lists (see Table 2-6). The technique is as follows:

1. Indicate the drivers list as List I because it is usually larger than the voters list, is available on computer tape, and is accessible at an on-line terminal.
2. Designate the voters list as List 2 because it is generally smaller and usually composed of many different alphabetical section listings.
3. Determine the selection rate as follows:

Number of names needed		<u>50,000</u>	(A)
Number of names on List #1		<u>900,000</u>	(B)
Number of names on List #2		<u>600,000</u>	(C)
Estimated % of "good" names from List #2 (decimal)		0.18	(D)
Estimated number of names to come from List #2	=	C x D	
"	=	600,000 x .18	
"	=	108,000	(E)
Selection Rate	=	A/(B + E)	
"	=	50,000/(900,000 + 108,000)	
"	=	.0496 = 5%	

4. Select 5 percent (45,000) names at random from the drivers list and accept all of these as valid names (unless there are internal duplicates, which should be removed). Do not check these against the other list.
5. Select 5 percent (30,000) names at random from the voters list and check each one of these against the entire drivers list. Approximately 82 percent of the 30,000 will be duplicates: these 24,600 duplicated names are dropped, while the remaining 5,400 unduplicated names are added to the 45,000 drivers names to form a combined list of 50,400 names, near the desired number of 50,000 (A).
6. The 50,400 names retained as a result of this selection and checking procedure should be randomized because they may retain the order of the original lists. If more or less than 50,400 names are desired, then the percent sampled from each list may be increased or decreased as necessary. The important factor is that the percentages remain constant for both lists; i.e., each sample is proportional to the size of the list. Because the approximate overlap of the lists is known (about 82 percent), the results are predictable within limits. However, this method does not yield an exact number or the same number of names each time.

If the overlap of the lists is not known, cross-checking a small sample of each list will provide an estimate of the overlap needed.¹⁰ Any error in this estimate can be corrected in future samples.

North Dakota has used this random selection technique without full list combination for several years. It is particularly useful in North Dakota, for the voters list is maintained only in the poll books and the drivers list is computerized. Therefore, it is very easy to look up a name from the voters list on the drivers list, but the reverse is virtually impossible. Before the introduction of this method, North Dakota employed several persons in many counties for several months to combine the two lists. This is no longer necessary.

Many courts with automated systems use this random selection technique because of the reduced computer run time needed to achieve the desired result.

Combination of Three or More Lists

In combining three or more lists as a source for jury selection, the principles and procedures are basically the same as when combining two lists. The first step is to study the available lists with respect to their overlap. This can be done by sampling as described under the combination of two lists. The lists should then be ordered by size, ease of checking for duplicates, or both. The importance of studying the lists in these terms arises from the checking procedures in which all names selected from List 2 will be checked for duplicates only against the entire List 1; those names selected from List 3 will be checked for duplicates against the entire List 2 and then again against the entire List 1 and so on for as many lists as may be used. Such checking is necessary to retain equal probability of selection for each name on the combined list; i.e., to preserve the randomness of the selection.

Checking for duplication of those names selected from a sample of one list against only the sample from the other list, a shortcut that many jurisdictions have been tempted to adopt, does not produce a random sample from the combined list and, hence, should not be done.

Duplicate Recognition and Decision Errors

Any matching routine, whether manual or computerized, requires some criteria upon which to base the decision as to whether two records are duplicates or represent two individuals. Associated with each criterion are two possible errors:

1. The probability of rejecting a good name (a mismatch)
2. The probability of keeping a duplicated name (a missed match)

The kinds of decisions possible when two records are matched fall into one of four categories, which include the two error types and the two correct decisions, as illustrated in the following truth diagram.

		Criterion Indicates:	
		Individual Same	Individuals Different
True Situation	Individual Same	True Match A	Missed Match C
	Individuals Different	Mismatch B	True Nonmatch D

An error is made when either:

- The matching criterion does not recognize two records that, in fact, do match (missed match-cell C). The chance of this type of error becomes greater as the matching criterion becomes more strict and uses more information.
- The matching criterion recognizes two different records as representing the same person (mismatch-cell B). The chance of this error occurring increases as the criterion becomes less strict, thereby enabling two records to be more easily identified as being similar.

The possibility that a good name will be rejected or that a list will contain duplicates is the product of two probabilities. The first probability is that the matching criterion will fail; i.e., reject a good name or keep a duplicated name (as in 1 or 2 above), and the second is the probability that a pair of names is or is not a true duplicate. The first probability is a property of the matching criterion. The second probability is a property of the lists considered and is related to the percentage of duplicates on the list.

Types of Record Errors

The matching criteria used to determine duplicate records for estimating the overlap of San Diego County's voters and drivers list was based upon the information available in each list.¹¹ The percentage of records missing information is given below.

	<u>Voter</u>	<u>Driver</u>
<u>Name:</u>		
Last	0%	0%
First	0%	0%
Middle	9%	0%
<u>Address</u>		
Home No.	0%	0%
Street Name	0%	0%
<u>Birth:</u>		
Day	25%	0%
Month	25%	0%
Year	10%	0%

The basic matching criteria to determine a true match manually were as follows.

1. When birth month and day information existed on the voters list, the following must agree:
 - a. Last name
 - b. First name
 - c. Middle initial
 - d. Birthday
 - e. Birth month

2. When birth month and date information do not exist, the following must agree:
 - a. Last name
 - b. First name
 - c. Middle initial
 - d. Home number
 - e. Street name

All format and minor spelling discrepancies, such as Av., Ave., or Camto Basswood, Cam Basswood, were recorded but ignored for matching purposes. No attempt was made to check for duplicates that may exist within each list itself.

There were three areas of discrepancies between the 164 matched pairs found in San Diego County (see Table 2-7):

- *Availability of records* -- day and month of birth are missing in approximately 25 percent (42/164) of the voting list records; middle initial is missing in 9 percent (15/164) of the records.
- *Different street addresses* -- approximately 16 percent (26/164) of the matched records have different street addresses but are listed due to same name and birth date information.
- *Format and spacing errors* -- street name format errors (Ave., Av.; Cam, Camto, etc.) occur in 18 percent (29/164) of the records matched.

In the San Diego sample, only the last name seems to be immune to any discrepancies, possibly because this sample contains only last names that start with the letter A through "Armstrong." A recent study of combined voters/drivers lists with most of the duplicates removed by computer revealed a relatively higher duplication rate among last names starting with the letters D and M due to simple spacing (format) errors; e.g., Mc Hugh versus McHugh, which caused otherwise identical records to be denoted by the computer as two individuals. Other studies have shown last name discrepancies to be a real factor in record matching.¹² These are often minimized by extraction codes or "Soundex" matching systems.¹³

Table 2-7**Analysis of 164 Pairs of Voter/Driver Records with Matching Last Names**

Matching Criteria	Street Name Exactly Same		Street Name Similar But Not Exactly Same		Street Name Different		Total
	Same Birthday & Month	Birth Date Not Recorded	Same Birthday & Month	Birth Date Not Recorded	Same Birthday & Month	Birth Date Not Recorded	
First Name Exactly Same:							
Same middle initial:							
Same street number	64	34	21	6	0	0	125
Different street number	1	0	0	0	20	0	21
Middle initial not recorded:							
Same street number	6	2	2	0	0	0	10
Different street number	0	0	0	0	5	0	5
First Name Similar But Not Exactly Same:							
Same name initial:							
Same street number	2	0	0	0	0	0	2
Different street number	0	0	0	0	1	0	1
Middle initial not recorded:							
Same street number	0	0	0	0	0	0	0
Different street number	0	0	0	0	0	0	0
Totals	73	36	23	6	26	0	164

Recommended Matching Criteria

Agreement of the following criteria is recommended for identifying duplicate records from the voters and drivers lists for the court studied.

- Last name
- First name
- Middle initial (where record exists)
- Birth month and day (where record exists)
- Street number or post office box number (street name is not included due to format difficulties)

In these criteria the greatest amount of reliable information is used to minimize the chance of a mismatch. The following format considerations are also necessary:

- No name or number should contain internal blank spaces
- Obvious errors in the records (such as incorrect zip or out of county, town, or city; non-alpha names or inconsistent numeric sequences; should be checked or rejected)

In using these criteria, the assumption was made during the sample checking that records matching the last name, first name, middle initial, day, and month of birth are the same, notwithstanding street address differences. The court should investigate the validity of this assumption by using the information provided

in the qualification questionnaire, which is sent to and returned by prospective jurors, and by sampling the names rejected as being duplicates.

Error Estimates

Based on the results of the 164 matched pairs, the expected percentage of true matches that will be missed is about 18 percent (29 of 164)--2 percent whose first names will differ slightly and 16 percent due to the record's different street numbers.

To determine the percentage of duplicates that will remain in the merged list, it is necessary to introduce the second probability; i.e., the probability of a name being duplicated when the criteria are applied. The criteria are applied every time two names are compared. The number of comparisons is based on the routine used and is approximately $n_1 + n_2$, where n_1 and n_2 are the number of names on each list. Using the San Diego data (see Figure 2-1), if the probability of compared names being duplicated is

$$\frac{n_d}{n_1 + n_2}$$

where n_d is the number of duplicated names, the probability is

$$\frac{515,138}{1,553,714} = 0.332$$

The probability of a duplicate remaining in the merged San Diego list is, therefore, $0.177 \times 0.332 = 0.059$. The merged list will contain about 6 percent duplicates.

The probability of a good name being rejected is almost impossible to measure without actually merging and counting the errors based on manual screening of computer-determined duplicates. However, it can be estimated. The following probabilities of accepting a duplicate and rejecting a good name based on experiments by the Social Security Administration indicate the expected inverse relationship, which their product verifies.

$\frac{P_{dup}}{}$	$\frac{P_{rej}}{}$	$\frac{P_{dup} \times P_{rej}}{}$
0.32	0.004	0.0013
0.12	0.01	0.0012
0.05	0.02	0.0010

The probability of retaining a duplicate was calculated to be 0.177. Over the range of 0.32 to 0.05, the product is fairly constant and can be used to estimate a P_{rej} of 0.007. The probability that a comparison will be nonduplicated is $1 - 0.332 = 0.668$. The probability of a good name being rejected is 0.007×0.668 , or 0.005.

Using the data from Figure 2-1, these errors would have the following effect upon the list combination in San Diego County.

Voters only	113,079	
Drivers only	410,359	
Voters and drivers	515,138	
Unrecognized duplicates	<u>+ 65,118</u>	
	1,103,694	
Good names rejected	<u>- 5,193</u>	
Total list size	1,098,501	
The apparent coverage could be	<u>1,098,501</u>	
	1,110,783	= 99%

This shows how the unrecognized duplicates can inflate the coverage above the expected 93 percent.

A method for reducing the duplicates below the 6 percent level is developed in the referenced San Diego County report. This method uses a question on the qualification questionnaire to verify whether the person has a driver's license and is a registered voter in the state. The answers are used to verify the duplicate-matching technique and to give an estimate of the error rate for the list-merging process.¹⁴

ENDNOTES FOR APPENDIX III

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- ¹ Material in this section is extracted from C. H. Mount, G. T. Munsterman, and W. R. Pabst, *Multiple Lists for Juror Selection: A Case Study for San Diego Superior Court* (1978), a study supported by the American University, Criminal Courts Technical Assistance Project. Supt. Of Documents, Washington, D.C. 20402, Stock No. 027-000-00665-5
- ² *Keymen* were appointed community members who had the responsibility of compiling a list of qualified citizens for consideration as jurors. Keymen based their selections on any source of information about or simply their own personal knowledge of potential jurors. This is the origin of the office of *jury commissioner*. Keymen are no longer used in any state.
- ³ A list of the various jury system functional parameters, such as the source list used, qualifications, exemptions, jury sizes used, fees, etc., can be found in David B. Rottman, Carol R. Flango, and R. Sheldine Lockley, *State Court Organization, 1993* (Williamsburg, VA: National Center for State Courts, 1995).
- ⁴ G. Thomas Munsterman and Janice T. Munsterman, "The Search for Jury Representativeness," *Justice System Journal*, 11 (1986), 59-78.
- ⁵ David Kairys, Joseph B. Kadane, and John P. Lechoczky, "Jury Representativeness: A Mandate for Multiple Source Lists," *California Law Review* 65 (1976), 776; and Peter W. Sperlich and Martin L. Jaspovice, "Methods for the Analysis of Jury Panel Selections: Testing for Discrimination in Series of Panels," *Hastings Constitutional Law Quarterly* 6 (1979), 787.
- ⁶ J. B. Kadane and J. P. Lechoczky, "Random Juror Selection from Multiple Lists," *Operations Research*, 24 (1976), 207.
- ⁷ Under a 1993 revision to the Social Security Act, the Social Security number may be used for juror selection purposes.
- ⁸ See Standard 3, *Standards Relating to Juror Use and Management*, Appendix A.
- ⁹ Kadane and Lechoczky, *Operations Research*, 2-3.
- ¹⁰ The method described in "Study of List Overlap and Efficiencies," page 7, may be used.
- ¹¹ If the Social Security number is available on the lists, this unique identification vastly simplifies the matching process. Unfortunately, this was not the case in the San Diego study cited in the text. While duplicate Social Security numbers can exist, the occurrence is much less than found in the other matching methods.
- ¹² David M. Nitzberg, "Results of Research Into the Methodology of Record Linkage," and J. E. Fisher and M. R. Hubbard, "A Computer System for Medical Record Linkage," in E. D. Acheson, ed., *Record Linkage in Medicine* (London: E. & S. Livingstone, Ltd., 1968).
- ¹³ A "Soundex" matching system compensates for most spelling errors by removing all vowels. See Acheson, ed., *Record Linkage in Medicine*.
- ¹⁴ Mount, Munsterman, and Pabst, *Multiple Lists for Juror Selection*, 6-1 to 6-2.

APPENDIX IV

EXCERPT FROM
GEORGIA UNIFORM COURT RULES

UNIFIED APPEALS

OUTLINE OF PROCEEDINGS

GRAND AND TRAVERSE CERTIFICATE

GEORGIA UNIFORM COURT RULES

II. Pre-Trial Proceedings

E. Forms for Required Jury Certificates

The grand and traverse jury certificates required by Rule II (B)(6) shall comply with the following forms, and shall be included in the trial judge's report specified by OCGA § 7-10-35 (a). (Note: To convert a decimal number to a percentage notation, move the decimal point two places to the right. Example: .055 = 5.5%)

Grand Jury Certificate

This court has reviewed the Grand Jury List for _____ County from which the grand jury was selected that rendered the indictment in this case. This Grand Jury List was last revised in the year _____.

The following categories are "cognizable groups" in this county within the meaning of the Unified Appeal and current state and federal law:

- A. Males B. Females C. African Americans D. Whites
E. _____ F. _____

The total county population according to the most recent decennial census is _____.
The total county population over 18 years old, according to the most recent census is _____.
The total number of persons on the grand jury list is _____.

For each "cognizable group" listed above, calculate the percentage of the over-18 population of the county represented by the cognizable group, as follows:

A. Males

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group A (males) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of males on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

B. Females

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group B (females) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of females on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

C. African Americans

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group C (African Americans) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of African Americans on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

D. Whites

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group D (whites) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of whites on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

E. _____

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group E is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of cognizable group E on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

F. _____

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group F is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of cognizable group F on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

This court is satisfied that the identified cognizable groups are adequately represented on the grand jury list.

Traverse Jury Certificate

This court has reviewed the Traverse Jury List for _____ County from which the defendant's traverse jury panel will be selected. This Traverse Jury List was last revised in the year _____.

The following categories are "cognizable groups" in this county within the meaning of the Unified Appeal and current state and federal law:

- A. Males B. Females C. African Americans D. Whites
E. _____ F. _____

The total county population according to the most recent decennial census is _____.
The total county population over 18 years old, according to the most recent census is _____.
The total number of persons on the traverse jury list is _____.

For each "cognizable group" listed above, calculate the percentage of the over-18 population of the county represented by the cognizable group, as follows:

A. Males

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group A (males) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of males on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

B. Females

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group B (females) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of females on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

C. African Americans

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group C (African Americans) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of African Americans on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

D. Whites

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group D (whites) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of whites on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

E. _____

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group E is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of cognizable group E on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

F. _____

1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group F is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of cognizable group F on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

This court is satisfied that the identified cognizable groups are adequately represented on the traverse jury list.

APPENDIX V

APPLICABLE GEORGIA CODE CITATIONS

ATTORNEY GENERAL OPINIONS

CASE LAW REFERENCES FOR JURY COMMISSIONERS

I. CONSTITUTIONS AND GEORGIA STATUES

U.S. Constitution Sixth Amendment “In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed....”

U.S. Constitution Fourteenth Amendment “...Nor shall any State deprive any person of life, liberty, or property, without due process of law;....”

Ga. Constitution Art 1, § 1, ¶ 11 “Right to trial by jury; number of jurors; selection and compensation of jurors.

(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be the judges of the law and the facts.

(b) A trial jury shall consist of 12 persons; but the General Assembly may prescribe any number, not less than six, to constitute a trial jury in courts of limited jurisdiction and in superior courts in misdemeanor cases;

(c) The General Assembly shall provide by law for the selection and compensation of persons to serve as grand jurors and trial jurors.

O.C.G.A. §15-12-1 Excuse from jury duty; exemption of persons aged 70 years of age or older. (student, care giver, military excuses or deferrals)

O.C.G.A. §15-12-2 Member of General Assembly excused.

O.C.G.A. §15-12-3 &
§15-12-128 Length of jury service.

O.C.G.A. §15-12-4 Ineligibility of juror at next succeeding term; name of ineligible person returned to the box.

O.C.G.A. §15-12-20 Board of jury commissioners; appointment; qualifications; number; terms; removal; succession.

O.C.G.A. §15-12-21 Jury commissioners; ineligibility of members of board of county commissioners.

O.C.G.A. §15-12-22 Jury commissioner’s oath; entry on minutes of probate court.

O.C.G.A. §15-12-23 Clerk of the board of jury commissioners; questionnaires to prospective jurors.

O.C.G.A. §15-12-24 Compensation of jury commissioners and clerk for revising jury lists.

O.C.G.A. §15-12-40	Compilation, maintenance, and revision of jury lists; selection of grand and trial jurors.
O.C.G.A. §15-12-40.1	Juror; requirement of United States citizenship.
O.C.G.A. §15-12-41	When judge may order revision of jury list.
O.C.G.A. §15-12-42	Selection of jurors, jury boxes; use of electronic selection.
O.C.G.A. §15-12-43	Maintaining book or computer printout of jury box.
O.C.G.A. §15-12-44	Jury box or list, how supplied, when destroyed.
O.C.G.A. §15-12-45	Precepts, when lost or destroyed, how supplied.
O.C.G.A. §15-12-60	Qualifications of grand jurors.
O.C.G.A. §15-12-64	When judge fails to draw grand jury, probate judge, jury commissioners and clerk shall draw.
O.C.G.A. §15-12-162	Challenge to array.
O.C.G.A. §20-2-870	Leave of absence for service as juror for person employed as public school teacher; retention of juror's compensation.
O.C.G.A. §34-1-3	Unlawful for an employer to discharge or penalize employee who is absent for purpose of jury duty.
O.C.G.A. §14-5-2(f)(7)	Dept. of Driver Services to provide specific drivers license data to Jury Commissioners

II. ATTORNEY GENERAL OPINIONS

Unofficial Opinion U68-272	Definition of “exhausting the box.”
Unofficial Opinion U72-88	Jury Commissioners succeeding themselves, including filling unexpired terms to the commission.
Unofficial Opinion U72-93	Age of majority and eligibility on juries
Official Opinion 80-125	Although there is no Georgia statute that expressly exempts active U.S. Military personnel from serving on juries, the Supremacy Clause of the U.S. Constitution prohibits such service because the service would present “an undue interference by the State with the performance of the military duties of active military personnel.”
Official Opinion 81-54	A county has the authority to contract with the Department of Public Safety (now DDS) for a list of residents licensed to drive for purposes of supplementing the voter registration list as a source for potential jurors.
Unofficial Opinion U82-5	In counties using mechanical or electronic means to select jurors, the person who operates the computer pursuant to the clerk’s direction, need not be a court official if the clerk performs the critical steps of drawing the starting number and computing the quotient.
Official Opinion 83-33	Restoration of civil rights is necessary for one convicted of a felony to be eligible to serve on a grand or trial jury. Conviction for a misdemeanor does not affect one’s eligibility to serve. A nolo plea does not disqualify one from jury service.
Unofficial Opinion U84-17	Reappointment of jury commissioner.
Unofficial Opinion U86-4	The method used for granting excusals and deferrals must not adversely affect deliberately or inadvertently the representative nature of the jury list.
Unofficial Opinion U86-9	The court is not obligated to excuse as a matter of law a correctional officer as a juror in a criminal case when challenged for cause.
Unofficial Opinion U87-11	The Georgia Code does not require the court to provide and pay for an interpreter for the hearing impaired prospective juror.

Unofficial Opinion	U87-24	Full-time deputy sheriff may serve as courtroom bailiff but not juror. Common law excluded full-time enforcement officers as jurors. A challenge for cause is an extension of the prior common law rule. A deputy sheriff serving as juror raises a suspicion of bias.
Official Opinion	89-55	An employee's salary should not be reduced or withheld because the employee missed work to perform jury duty.
Unofficial Opinion	U90-6	A person placed on probation under the First Offender Act, O.C.G.A. §§42-8-60 to 42-8-65 does not become ineligible to serve on either a grand or petit jury under O.C.G.A. §15-12-60(b)(2) either before or after being discharged without court adjudication of guilt.
Official Opinion	95-13	Georgia employees who are penalized or discharged for missing work to participate in judicial proceedings in other states have a civil cause of action against employers under O.C.G.A. §34-1-3.

III. SELECTED CASE LAW

(Not intended to be all-inclusive)

A. Jury Commissioners

Georgia Case Law:

Parker v. Davis, 218 Ga. 810, 130 S.E.2d 723 (1963). The judge has the authority to remove a jury commissioner from the position without prior notice or a hearing.

Woods v. State, 222 Ga. 321, 149 S.E.2d 674 (1966), cert. denied, 386 U.S. 994. To base selection of a jury commissioner on race is a violation of the Fourteenth Amendment of the Constitution.

Marchman v. State, 132 Ga. App. 682 reversed on other grounds 234 Ga. 40, 215 S.E.2d 467 (1975). Traverse jury list is not invalid because it was certified by only five of six jury commissioners. All the commissioners need not be present and participate when the commission acts.

Clark v. State, 255 Ga. 370, 338 S.E. 2d 269 (1986). (1) Although a deputy sheriff is not a county officer and therefore not prohibited from service as a jury commissioner, in this case, the Supreme Court of Georgia disapproved of appointment of the deputy sheriff since such appointment raises a question concerning impartiality of the jury commission. (2) Although a person may be disqualified from serving as a jury commissioner, the actions of the jury commission cannot be attacked on grounds of that disqualification.

Pope v. State, 256 Ga. 189, 345 S.E.2d 831 (1986), cert. denied, 484 U.S. 873. The court upheld a defendant's conviction even though only four commissioners in the county participated in drawing the venire despite Georgia's statutory requirement of six commissioners, since the same statute provides that the court can by rule establish a board with fewer than six members.

Frazier v. State, 257 Ga. 690, 362 S.E. 2d 351 (1987). The fact that one jury commissioner was not present and did not participate in the commission's work did not vitiate grand jury pool.

B. Source List

Georgia Case Law:

Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 (1969). Upholds Act of 1967 designating use of voter's list as best sole source for representative jury box.

Quinn v. State, 171 Ga. App. 590, 320 S.E.2d 827 (1984). Ga. cert. den. Appellant's claim that the jury commissioners used unauthorized sources (i.e., city directory, telephone directory, and list of high school graduates) was invalid; this use showed a bona fide effort to reflect a cross section of the community in the jury list.

Hall v. State, 254 Ga. 272, 328 S.E. 2d 719 (1985). Where no recognizable class excluded and jury commissioners follow statutory requirements for establishing jury lists, jury commissioners may compile jury lists from their personal knowledge of county citizens.

Lipham v. State, 257 Ga. 808, 364 S.E.2d 840, cert. denied, 488 U.S. 873 (1988). Jury list must include a fair cross-section of eligible members of the community, not every eligible member of the community.

Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 (1993). Statutes regulating selection, drawing and summoning of jurors are intended to distribute jury duties among citizens of the county, provide for rotation in jury service, and are merely directory. These directory statutes are not intended to provide parties with an impartial jury; however, disregard of the essential and substantial provisions of the statutes will have the effect of vitiating the array.

Other States and U.S. Case Law:

Thompson v. Sheppard, 490 F.2d 830 (5th Cir. 1974), cert. denied, 420 U.S. 984. A jury list drawn randomly by mechanical means from the entire county's voters list is entitled to the presumption that it is drawn from a source which is a fairly representative cross section of the community.

Berry v. State, 577 F.2d 322 (5th Cir. 1978). If procedures used produce a list not representative of the county, commissioners must supplement the list with other sources of potential jurors' names.

C. Definition and /or Constitutionality of "Upright and Intelligent"

Georgia Case Law:

Williams v. State, 12 Ga. App. 337, 77 S.E. 189 (1913). Designates people found guilty or pleading guilty to crimes of moral turpitude to be ineligible for jury duty under standards of "upright and intelligent".

Woods v. State, 222 Ga. 321 (1966). Maintains "upright and intelligent" are not vague and non-ascertainable terms – not unconstitutional.

White v. State, 230 Ga. 327, 196 S. E. 2d 849 (1973), cert. denied, 414 U. S. 1086. The standards of intelligence, uprightness, and experience do not violate the U.S. or Georgia Constitutions, nor does imposing these standards necessarily result in the exclusion of young adults from jury service.

Owens v. State, 251 Ga. 313, 305 S.E.2d 102 (1983). A juror convicted of a felony was competent to serve as a grand juror since there was no evidence that the juror had been charged with a crime or arrested at the time of his grand juror service.

D. Representative Jury Box:

1) Proof of Discrimination

Georgia Case Law:

Scudiere v. State, 130 Ga. App. 477, 203 S.E.2d 581 (1974). Ga. cert. denied. Appellant offered only general statistical proof of under-representation of blacks. The defendant did not prove that jury commissioners in his county discriminated in actual selection procedures; therefore, the defendant did not prove racial discrimination in his case.

Payne v. State, 233 Ga. 294, 210 S.E.2d 775 (1974). The mere use of source lists (e.g., voter registration lists) in which blacks are not as well-represented as whites is not racially discriminatory: A witness testified that because blacks did not register to vote in numbers proportionate to whites, the county's voter list over-represented whites. Also, a jury commissioner testified that the commission attempted, though largely unsuccessfully, to find and include additional qualified black persons. Appellant claimed a prima facie case of racial discrimination, but evidence showed that the juror list was created using a race neutral process. A computer formed the juror list from an alphabetically arranged voter registration list by selecting names at fixed intervals set by the machine.

Barrow v. State, 239 Ga. 162, 236 S.E.2d 257 (1977). A prima facie case of discrimination in jury selection requires proof that: (1) opportunity for discrimination existed from the source lists and (2) use of that infected source produced a significant disparity between percentage of the group in the source and those appearing on jury panels. Here, white males were over-represented on the jury list because the jury commission did not understand its duties and used an inappropriate selection method; the jury commissioners' apparent failure to fulfill their statutory duty provided the opportunity for discrimination.

Hudson v. State, 240 Ga. 70, 239 S.E.2d 330 (1977), cert. denied, 439 U.S. 114. There was no evidence of exclusion of any class since jury commissioners used the voters list, other lists, and newspaper advertising to obtain jurors, thereby proving that the jury commission made a bona fide effort to represent all classes.

Walraven v. State, 250 Ga. 401, 297 S.E.2d 278 (1982). (1) A challenge to the array based upon the Sixth Amendment of the U.S. Constitution should compare the jury venire or source lists from which jurors are drawn with the makeup of the community, not the voter registration lists. (2) Purposeful discrimination is irrelevant to a Sixth Amendment challenge. A prima facie case can be rebutted only by showing that a significant government interest justifies an imbalance of the classes.

Sacchinelli v. State, 161 Ga. App. 763, 288 S.E.2d 894 (1982). Ga. cert. denied, U.S. Cert. denied, 459 U.S. 1015, U.S. reh. denied, 459 U.S. 1137. Appellant did not prove the three elements of a prima facie case since he showed only a numerical disparity between the eligible female population and the females included on the jury lists. There was no showing that the source list was gender biased and evidence was available to show that the jury commissioners made a good faith effort to select a fair cross-section of the community.

Other States and U.S. Case Law:

Whitus v. Georgia, 385 U.S. 545 (1966) (This case reversed 222 Ga. 103 and 222 Ga. 116.) The State failed to rebut a prima facie case of discrimination. The State failed to: (1) explain the disparity between the percentage of blacks on the source list and the jury panels; (2) show that the source list was not maintained on a racially segregated basis; and (3) show that an opportunity did not exist for discriminatory selection.

Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532 (1970). The fact that a large disparity existed between the percentage of blacks in the community and the percentage of blacks in the jury box is, in itself, prima facie evidence of discrimination.

Alexander v. Louisiana, 405 U. S. 625, 92 S. Ct. 1221 (1970). Use of questionnaires for prospective jurors which elicited information concerning race and sex and where a large disparity existed between the actual population segments and their representation in the box was prima facie evidence of discrimination.

Peters v. Kiff, 407 U.S. 493, 92 S. Ct. 2163 (1972). The court held valid a white defendant's challenge that blacks were systematically excluded from the jury box from which his jury was chosen.

Bowen v. Kemp, 769 F.2d 672 (11th Cir. 1985) cert. denied, 478 U.S. 1021 (1986). A twenty-two percent disparity between the percentage of women on the juror list and in the county population was discriminatory. Jury commissioners testified that although they used multiple source lists and women served on the jury commission, they did not place anyone on the juror list whom they did not personally know. The commission's testimony that they acted in good faith was not sufficient to dispel an inference of discrimination. The court must weigh the evidence in absence of an explanation of the under representation of a cognizable group.

U.S. v. Rodriguez, 776 F.2d 1509 (11th Cir. 1985). There is no precise mathematical standard to determine whether a particular class is significantly under-represented, but here, the court found a prima facie case existed when the disparity was less than ten percent.

2) Identifiable Group:

Georgia Case Law:

Bashlor v. Bacon, 168 Ga. 370, 147 S.E. 762 (1929). Exclusion of Jews from juror list is illegal. Evidence tended to show Jews were excluded due to personal prejudice.

Gould v. State, 131 Ga. App. 811, 207 S.E.2d 519 (1974). A marked disparity between the percentage of a class (here blacks, females, and youth) on jury rolls and the percentage of the class in a total community is a prima facie case of discrimination. Testimony alone by jury commissioners that there was no systematic exclusion of classes is insufficient to rebut the evidence of class under-representation. (This case was subsequently reversed in part regarding classifying persons 18-30 years of age as an identifiable group.)

State v. Gethers, 139 Ga. App. 1, 227 S.E.2d 832 (1976), Ga. cert. denied. Under-representation of blacks and females so great as to show jury commissioners to be remiss in their duty to provide for a "fairly representative cross-section."

Sanders v. State, 237 Ga. 858, 230 S.E.2d 291 (1976). Disparity in percentage of women and blacks on grand juror list was too marked a disparity with the county population percentages to conclude that the list fairly represented the community.

Fouts v. State, 240 Ga. 39, 239 S.E.2d 366 (1977). A defendant is not entitled to a jury of any particular composition, but the State must not deliberately and systematically exclude identifiable and distinct groups from jury lists. Despite a significant disparity between the number of eligible women and those in the grand jury pool, testimony that jury commissioners attempted to locate additional qualified women

and that three female jury commissioners actively participated in selection showed there was no discrimination.

Bowen v. State, 244 Ga. 495, 260 S.E.2d 855 (1979), U.S. cert. denied, 446 U.S. 970 (1980). Age is not a recognized class for purposes of jury representation.

Mooney v. State, 243 Ga. 373, 254 S.E.2d 337 (1979) U.S. cert. denied, 444 U.S. 886, U.S. reh. den. in 444 U.S. 975. Age group of 18 to 21-year-olds is not a recognizable class for purposes of jury selection. The fact that this group forms only a small numerical segment of the community does not preclude the group from being a recognizable class. What does preclude recognizing a group as a class is that the group's attitude has never been shown to be unique or significant, and the group has never been discriminated against as a class.

Cox v. State, 248 Ga. 713, 285 S.E.2d 687 (1982). Young adults are not a recognized class to be used to challenge the array on grounds that it under-represents a distinctive class of persons in the community.

Devier v. State, 250 Ga. 652, 300 S.E.2d 490 (1983). [Consolidated with Rogers v. State.] Where women comprised 54% of county population and only 18% of grand jury list, the court held that the grand jury list was not fairly representative of the community despite jury commissioners' testimony of good faith intent and the existence of certain statutory exemptions for women.

West v. State, 252 Ga. 156, 313 S.E.2d 67 (1984). Where 52% of the total county population was female, but females composed only 34.3% of the grand jury list, the 17.7% disparity was sufficient to demonstrate a violation of the fair cross-section requirement even though no mathematical formula for gauging disparity has been formulated.

Park v. State, 254 Ga. 403, 330 S.E.2d 686 (1985). Young persons (ages 18 through 29) are not excluded as a matter of law from being a cognizable group for purposes of the fair cross-section analysis. For your persons to be cognizable, however, the facts of a case must show that they are a distinct and homogeneous group. But young persons do not comprise a constitutionally high-protected class and therefore, under-representation of young persons is not entitled to judicial scrutiny. The disparity in the traverse jury list did not result from subjective manipulation of the source list. In light of the size of the disparity (here a 15% under-representation) and the difficulty of the task, supplementation of the source list was unnecessary.

Cochran v. State, 256 Ga. 113, 344 S.E.2d 402 (1986). Disparity of the percentage of blacks and women on the grand jury list and in the population of the county of 6% and 7% respectively, is not so significant as to require reversal of defendant's conviction.

Pope v. State, 256 Ga. 195, 345 S.E.2d 831 (1986). The defendant asserted, but failed to establish, that young persons, single persons, new county residents, the marginally educated or unemployed are cognizable groups for purposes of jury selection.

Lee v. State, 258 Ga. 481, 371 S.E.2d 389 (1988). Assertion that persons aged 19 to 29 were under-represented affords no basis for a challenge to the array.

Ballenger Paving Co. v. Gaines, 231 Ga. App. 565, 499 S.E.2d 722 (1998). Whether age is a cognizable class for jury selection purposes is a question of fact which will depend in each case upon such factors as the time and location of trial. Here the defendant failed to produce evidence of common attitudes and values of 18 to 24 year olds which were added to the revised list. Secondly, it is not illegal to add names before the list is exhausted to an electronically created list.

Morrow v. State, 272 Ga. 691, 532 SE2d 78, (2000). Population estimates derived from a “test census” of a small portion of the county and other estimates of specific ethnic group in the county were found to be unreliable when compared to the more-comprehensive 1990 Census.

Other States and U.S. Case Law:

Carter v. Jury Commission of Green County, 396 U.S. 320, 90 S. Ct. 518 (1970). Jury commissioners must make a valid attempt to include all competent jurors. Blacks had been systematically excluded in that no attempts were made to seek out qualified blacks.

Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692 (1975). Systematic exclusion of women from jury duty is a violation of the Sixth Amendment. Alabama’s law allowing all women to be excused from jury duty on request did not fulfill the requirements of providing for a “fair and representative cross-section.”

U.S. v. Afflerback, 754 F. 2d 866 (1985), cert. denied, 105 S. Ct. 3506. U.S. reh. denied, 473 U.S. 927. Persons who choose not to register to vote are not an identifiable group.

Willis v. State, 243 Ga. 185 (1979), 444 U.S. 885 (1979) and 720 F.2d 1212 (11th Cir. 1983) cert. denied, 467 U.S. 1256. Whether or not a class of persons is sufficiently distinct and cognizable, such that the group’s interest cannot be adequately represented if excluded in the jury selection process, is a question of fact. The defendant was entitled to an evidentiary hearing to determine if young adults in South Georgia (ages 18-30) during the late 1970's were a distinct group under the Sixth Amendment. On remand, the District Court held that young adults did not comprise a cognizable group. The Circuit Court upheld the District Court’s opinion in 838 F.2d 1510 stating that 18 to 29 year-olds did not compose a distinctive group that was internally cohesive and did not hold attitudes unique from the rest of the community.

United States v. Artero, 121 F3d 1256, 1262 (9th Cir. 1997). When alleging under-representation of a distinctive group, a defendant must, to establish a prima facie case, present data showing that the percentage of persons in that group [on the jury list] is significantly lower than the percentage *eligible* to serve on juries.

3) Other Juror Selection Cases:

Georgia Case Law:

Burney v. State, 244 Ga. 33, 257 S.E.2d 543 (1979), U.S. cert. denied, 444 U.S. 970. The provisions of Ga. Code §59-106 (currently O.C.G.A. § 15-12-40) which provided for biennial revision of the jury list size (50% of registered voters) are directory, not mandatory. Therefore, failure to revise the Fulton

County list within two years and to include 50% of the voters did not invalidate the jury list or deprive the defendant of his rights.

Machetti v. Linahan, 679 F.2d 236 (11th Cir. 1982), U.S. cert. denied, 459 U.S. 1127. The Georgia statute permitting women to choose not to serve is impermissible. (This part of the Georgia Code, former Ga. Code Ann. § 15-12-1, was repealed in 1975.)

Berryhill v. State, 249 Ga. 442, 291 S.E.2d 685 (1982), U.S. cert. denied, 459 U.S. 1138. (1) Appellant failed to show significant disparity between the number of women in the population and the trial jury panel (11% difference). (2) Neither source list nor selection process provided an opportunity for discrimination where jury commissioners supplemented the voter registration list with the high school graduation list and the clerk conducted a media campaign to secure community participation in the jury process. (3) Targeting percentages of blacks and women for inclusion on jury lists is acceptable if the purpose is to cure under-representation and achieve a fair cross-section of the community.

Larmon v. State, 256 Ga. 222, 345 S.E.2d 587 (1986). Challenge to computer selection of jurors. Although it is desirable that the master list contain no alphabetical, geographical or numerical patterns, the sequences shown in the final computer printout of the master list did not affect representation of any distinct and identifiable group where the computer scanned the complete list and selected names randomly. The court commented that although the geographical arrangement of the list by voter boxes did not affect the randomness of selection in this case, it is possible that a geographical arrangement could result in an improperly constituted jury list.

Meders v. State, 260 Ga. 49, 389 S.E.2d 320 (1990). The Georgia Code does not prohibit jury commissioners from maintaining and operating in the clerk's office the equipment used to store and retrieve jury data. Nor does the Code prohibit programming the jury selection computer to racially balance the venire it selects.

Other State and U.S. Case Law:

Duren v. Missouri, 439 U.S. 357, 99 S.Ct. 664 (1979). A criminal defendant may challenge under-representation of a class of persons of which he is not a member. Appellant's *prima facie* case was not rebutted by the state since it failed to show that an under-representation of women on the weekly juror lists was because of an exemption upon request by women and that a significant government interest existed to justify the disparity in the number of women in the community and the number serving as jurors.

E. Analyzing the Construction of the Jury Box

Georgia Case Law:

Gould v. State, 131 Ga. App. 811, 207 S.E.2d 519 (1974).

Sanders v. State, 237 Ga. 858, 230 S.E.2d 291 (1976).

Barrow v. State, 239 Ga. 162, 236 S.E.2d 257 (1977).

Devier v. State, 250 Ga. 652, 300 S.E.2d 490 (1983), U.S. cert. denied, 471 U.S. 1009, (1985).

West v. State, 252 Ga. 156, 313 S.E.2d 67 (1984).

Cochran v. State, 256 Ga. 113, 344 S.E.2d 402 (1986).

Bowen v. Kemp, 769 F.2d 672 (11th Cir. 1985), U.S. cert. denied, 478 U.S. 1021 (1986), vacated, 810 F.2d 1007 (11th Cir.), reinstated in part, 832 F.2d 546 (11th Cir. 1987).

Berryhill v. Zant, 858 F.2d 633 (11th Cir. 1988).

Smith v. State, 275 Ga. 715, 571 S.E.2d 740 (2002)

Other States and U.S. Case Law:

Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 1221 (1965).

Carter v. Jury Commission of Greene County, 396 U.S. 320, 90 S.Ct. 518 (1970).

Alexander v. Louisiana, 405 U.S. 625, 92 S.Ct. 1221 (1970).

Thompson v. Sheppard, 490 F.2d 830, (5th Cir. 1974) U.S. cert. denied, 420 U.S. 984.

Quadra v. Superior Court of San Francisco (II), 403 F. Supp. 486 (N.D. CA 1975).

The collective conscience of the jury adds a humanistic touch to the strict demands of the law so as to allow a more equitable judgment. The jury system improves the quality of justice and is the sole means of keeping its administration attuned to community standards.

-U.S. Supreme Court Justice Tom C. Clark (1966)

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