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STATE OF WASHINGTON

No. 81219-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

LOUIS LANCILOTI, Petitioner

OPENING BRIEF OF PETITIONER/APPELLANT

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I. INTRODUCTION

When Louis Lanciloti appeared for trial in King County Superior Court in January 2008, the jury panel summoned to hear his case was drawn from a venire that excluded eligible jurors from almost half of King County.

The prosecutor presenting the State's case suffered no similar disability. King County Local Criminal Rule ("LCrR") 5 authorized the State to seek an *ex parte*, pre-filing exception from the area from which the venire would routinely be drawn.

The truncated jury venire was created in September 2007 when the King County Superior Court adopted Local General Rule ("LGR") 18. Under LGR 18 jurors from north King County were ineligible to serve in superior court cases heard at the Regional Justice Center ("RJC") in Kent, Washington. Jurors from south King County were ineligible to serve in cases heard at the Seattle courthouse. Because all King County capital cases are heard in Seattle, LGR 18 presumptively excluded eligible jurors living in South King County from service in a capital case.

Mr. Lanciloti objected to the proposed venire on the grounds that RCW 2.36.055, which permits Washington counties to divide their jury venire, and LGR 18, which split the jury venire, violate Article I, § 22 of

the Washington Constitution and the Sixth Amendment to the United States Constitution.

In support of his objection, Mr. Lanciloti presented data from the 2000 census demonstrating significant differences in the split jury venire created by LGR 18.

The trial judge overruled Mr. Lanciloti's objection. However, at least two members of the King County Superior Court, in other cases, found that the split jury venire violated Washington law.

The King County Superior Court suspended its implementation of LGR 18 effective April 2, 2008, pending a decision from this Court on the issues raised here.

II. ASSIGNMENTS OF ERROR

Assignment of Error 1: The trial court erred in entering the Order of February 6, 2008, denying Petitioner's objection to the jury venire and his motion to have the court declare RCW 2.36.055 and LGR 18 unconstitutional.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Does the trial court's holding that it may exclude previously eligible jurors from the venire, solely because the jurors live in the southern part of the county, violate Article I, § 22 of the Washington Constitution? (Assignment of Error 1.)

2. Did the trial court err in holding that the racial, ethnic and other differences related to suspect classes and distinctive groups, created by splitting the jury venire, did not violate the Sixth Amendment right to a jury venire that includes a representative cross section of the community? (Assignment of Error 1.)

3. Does the exclusion of jurors who live south of Interstate 90 from service on capital cases violate Article I, § 22 of the Washington Constitution and the Sixth Amendment of the United States Constitution? (Assignment of Error 1.)

4. Does the King County Superior Court procedure for establishing a jury venire, which gives a trial judge the discretion to summon a jury panel from (a) the Jury Assignment Area approved by the Administrative Office of the Courts, (b) a countywide venire, or (c) a judicially defined “Case Assignment Area,” violate RCW 2.36.055? (Assignment of Error 1.)

IV. STATEMENT OF THE CASE

On September 1, 2007, the King County Superior Court implemented LGR 18, splitting the jury source list for the Superior Court into two separate lists—a northern list of possible jurors to be summoned to serve at the Seattle courthouse, and a southern list of possible jurors to

be summoned to serve at Norm Maleng Regional Justice Center in Kent.
CP 39.

On January 28, 2008, when Petitioner Louis Lanciloti appeared for trial, he challenged RCW 2.36.055 and LGR 18 as violating the Washington Constitution and the Sixth Amendment to the United States Constitution. CP 21. In support of Petitioner's objection, he submitted demographic data from the 2000 United States census demonstrating significant racial, economic, marital and educational differences between the jury assignment areas for the northern portion of King County and the southern portion of King County. CP 71-94; CP 77, 81, 83, 84, 86, 90, 92, 93. The two "half" populations were different from each other, as well as from the King County population as a whole. CP 71-94.

On February 6, 2008, the trial court denied Mr. Lanciloti's motion and found the split jury venire did not violate either Article I, §§ 21 and 22 of the Washington Constitution, or the Sixth Amendment to the United States Constitution. CP 1539-1540.

Two other King County Superior Court judges who addressed the question of the split jury venire issued conflicting rulings. On October 18, 2007, Judge Joan DuBuque found RCW 2.36.055 and LGR 18 constitutional. CP 101-109. However, on January 3, 2008, Judge Cheryl

Carey held that RCW 2.36.055 and LGR 18 were unconstitutional under Article I, § 22 of the Washington Constitution. CP 96-99.

Mr. Lanciloti timely filed a Notice of Discretionary Review which the State joined. The trial court certified the issue as one of pressing importance and in need of review by the Court. CP 1541-1543.

V. SUMMARY OF ARGUMENT

Article I, § 21 of the Washington Constitution provides that “the right of trial by jury shall remain inviolate.” Article I, § 22, further provides:

In criminal prosecutions, the accused shall have the right...to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed...

Article I, § 22 (emphasis added). The state Constitution guarantees a jury of the county, not a jury of part of the county. The use of the mandatory term “shall” in both sections is unequivocal, leaving no room for modification except by constitutional amendment.

Similarly, the Sixth Amendment to the United States Constitution guarantees the right to trial by a fair and impartial jury. The right to trial by an impartial jury belongs not only to the accused but also to eligible jurors.

The first step toward satisfying these constitutional requirements is an impartial process for selecting a jury venire. The Local Rules for King

County, however laudably intended, impermissibly reduce selection of a jury venire to a discretionary decision exercised by each of King County's more than 50 trial courts.

King County LGR 18(1) divides the jury source list into a Seattle Jury Assignment Area and a Kent Jury Assignment Area.

LGR 18(2) then creates a second set of jury lists, based on court-designated "Case Assignment Areas." "The Court on its own may assign cases to be heard by jurors from another case assignment area, or from the entire county or may assign or transfer cases to another case assignment area... whenever required for the just and efficient administration of justice." LGR 18(2).

The Case Assignment Area boundaries may be adjusted by the Presiding Judge "when required for the efficient and fair administration of justice in King County." (LR 82(C)(3).) A separate rule allows the prosecutor to seek an *ex parte*, pre-filing exception from the Case Assignment Area "for good cause shown." (LCrR 5.1.) (See Appendix 1, copies of LGR 18, LR 82 and LCrR 5.1.)

LGR 18(2) also allows the trial court "on its own" to assign cases to be heard by jurors drawn from the entire county. Read in its entirety LGR 18 permits the trial court to draw a jury venire from the Jury Assignment Area approved by the Office of the Administrator for the

Courts, from the Case Assignment Area drawn by the Presiding Judge of the superior court or from the county as a whole. The interplay between the local rules creates three, not one, jury source lists for King County—and gives each trial court the discretion to choose among them.

The divided Jury Assignment Area excludes eligible jurors from the venire in capital cases. For security reasons, King County death penalty cases are tried only in the Seattle Courthouse. South end jurors are excluded from serving on a death penalty case unless a trial court exercises its discretion to call jurors from the entire county.

The statute and court rule state that dividing the venire is intended to minimize the distance jurors must travel to the courthouse. While the statute refers to future adjustments to the venire based on the most recent census data, it includes no standards for what data is to be used and the purpose to which it is to be put.

The most recent census data is now eight years old. Every person ages ten or older at the time of the 2000 census is now old enough to be included in the jury venire. Should the Jury Assignment Areas be adjusted to reflect that change? Are the Jury Assignment Area boundaries to be set based only on the numbers of residents in each area? Should the size be adjusted to reflect the difference in size of the bench in Seattle versus the bench at the RJC, which is only one third the size of its Seattle

counterpart? Should the Jury Assignment Area take into account the considerable differences in economic status, race, gender, age, education and culture shown by the 2000 census data?

A defendant in a criminal case is entitled to a jury venire drawn under the same rules as those that apply to the prosecution. That is not true in King County, where the State may seek an *ex parte* pre-filing exception from the presumptive venire. LCrR5.1. Parties before a court are entitled to assume that a jury in their case will be summoned under the same rules as the jury summoned to hear the case in the courtroom next door. That is not true in King County, where the judge may choose between a venire summoned from all of King County or from half of King County. LGR 18; LR 82. Citizens eligible to serve on a jury who are summoned, or more importantly not summoned, to serve are entitled to assume the decision to summon or not summon them was made on the same basis for all eligible citizens. That is not true in King County, where jurors may be summoned from all the county or half the county. LGR 18; LR 82.

The split jury venires violate the Washington Constitution requirement that jurors be “of the county,” not just part of the county. The racial, economic and other differences between the Jury Assignment Areas and between the Areas and King County as a whole, skew the pool from

which jurors are selected in a manner that violates the Sixth Amendment requirement that the jury venire be drawn from a fair cross-section of the community. The multiple possible “Areas” from which jurors can be drawn violate the statutory process in Title 2, Chapter 36, designed by the Legislature to give each county a transparent and impartial method for creating a jury venire.

This court should find RCW 2.36.055 and LGR 18 unconstitutional and direct King County to create a single jury source list from which all jurors are summoned at random.

VI. ARGUMENT

A. Standard of Review.

Interpreting a statute and determining whether a statute is unconstitutional are questions of law, which are reviewed *de novo*. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 109 P.3d 405 (2005).

B. Article I, § 22 of the Washington Constitution Requires All Counties to Draw Superior Court Juries from a Countywide Venire.¹

Washington Constitution, Article I, § 22 provides:

[I]n criminal prosecutions, the accused shall have the right...to a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed.

¹ Petitioner wishes to acknowledge and thank Richard Hansen of Allen, Hansen and Maybrown, P.S. for significant assistance on this portion of the brief.

Article I, § 29 provides:

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

There is no provision in the Washington Constitution empowering the Legislature to alter Article I, § 22's requirement that juries be selected from the county as a whole.

Washington is one of the few states in the Union that does not have a record of the proceedings at its Constitutional Convention. Shorthand reporters took notes of the proceedings, but there was not enough money to pay for transcription. The shorthand notes were later destroyed. C. Gates, *Foreword* to JOURNAL OF THE 1889 WASHINGTON STATE CONSTITUTIONAL CONVENTION, WITH ANALYTICAL INDEX, ed. by B. Rosenow, (1962). The detailed Minutes of Proceedings, while meticulously recording votes, reflect only that the phrase "and by counsel" was added to the list of rights guaranteed a defendant in criminal proceedings in Article I, § 22. *Id.* at 510-512.

While Washington does not have a record of the discussion and debates that led to its constitution, it does have a series of cases decided by this Court within twenty years of the Constitutional Convention. This line of cases holds that the Legislature has no power to divide the county wide courts of record created by Article IV, §§ 5 and 6 of the Washington

Constitution. While Article I, § 22 does not require a uniform method be used to draw a superior court jury venire, the method must allow jurors to be drawn from the entire county. The Legislature may prescribe and limit the authority of courts of limited jurisdiction created under Article IV, § 10 of the Washington Constitution. Even in courts of limited jurisdiction the presumption is that the venire will be drawn from the entire county absent an express prescription from the Legislature limiting the jury venire to the area served by the court of limited jurisdiction.

In *State ex. Rel. Lytle v. Superior Court*, 54 Wn. 378, 103 P. 464 (1909), the Supreme Court considered the validity of a 1909 statute authorizing counties to create judicial districts, or parallel superior court systems within a single county. Section 13 of the statute provided “that the only liability for jury duty shall be in the district in which the citizen may reside,” effectively dividing the county jury venire in the same manner as RCW 2.36.055, the statute at issue here.

In *Lytle*, the Supreme Court found the entire statute violated Article IV, § 5 of the Washington Constitution, which limits each county to one superior court:

The Constitution being a limitation of power, it follows that there is no power vested in the Legislature, nor in any board of county commissioners, nor in any judge of any superior court, to divide this constitutional judicial unit into

judicial districts, or other territorial limitations less than the county itself.

Lyle, 54 Wn. at 384 (emphasis added). In keeping with this restriction, the King County Superior Court in Seattle and the Regional Justice Center were designed to operate as one court. All King County Superior Court judges are elected from the county as a whole. All King County Superior Court judges can be assigned to the Regional Justice Center courthouse. No judge can be re-assigned to the RJC, other than at his or her own request, until all other judges have served at the south King County courthouse. LGR 0.3.

The Legislature cannot split counties into separate judicial districts nor can the Legislature delegate to superior courts the authority to split the county into separate jury districts that do not provide for a jury drawn from the county as a whole.

In *State v. Newcomb*, 58 Wash 414 (1910), this Court approved a Pierce County practice, based on another 1909 statute that provided:

each county should be divided into not less than three nor more than six jury districts; that in July of each year the county clerk should make up a list of all the qualified jurors in the county, ascertaining the residence of each juror, and deposit his name in the jury box of the district in which he resided; that, whenever a jury should be called in any county, the names of the jurors should be drawn in equal number from each jury box.

Id. at 416-17.

The Court found the Pierce County Superior Court procedure satisfied Article I, § 22 because it did “not attempt to provide for a jury from any division or district less than the whole county.” *Id.* at 417. The Court reasoned:

The names of all the qualified jurors of the county are placed in boxes, arranged according to the district in which the juror may reside, and the jury, when drawn by the clerk for service in any month, is drawn in equal numbers from each box, thus providing each litigant and each person accused of a crime a jury drawn from the entire county and not from any particular section or division of the county.

Id. at 417 (emphasis added).

The King County rule limits jurors to a “particular section or division of the county...” and flies in direct opposition to the court’s holding in *Newcomb*. *Id.* at 417. In *Newcomb*, unlike the King County rule, each jury venire drew potential jurors from all of Pierce County. King County has created a procedure that draws jurors from only half of King County.

Following its holding in *Lytle* and *Newcomb*, this Court, in *Fugita v. Milroy*, 71 Wn. 592, 129 P. 384 (1913) invalidated a jury selection procedure in the North Yakima City Municipal Court, a court of limited jurisdiction. In *Fugita*, a Yakima County police court judge directed the North Yakima police chief to summon “sixteen good and lawful men from the body of your city” instead of from the county at large. *Id.* at 593. The

conviction was overturned and a new trial ordered because “the jury was illegally drawn” in violation of Article I, § 22. *Id.* at 598. The court reasoned:

We think the plain intent of the words “jury of the county” is that the defendant is entitled to have the venire extended to the body of the county, and that it may not be restricted to a less unit; at least, without express legislative sanction. *Lyle v. Superior Court* 54 Wn. 378, 103 Pac. 464 (1909) ...It would seem that the words “jury of the county” mean a jury of the whole county, and not a jury of some particular part of the county.

Fugita at 386-87 (emphasis added). The court acknowledged that the Legislature had the authority to limit a jury venire to the area served by a court of limited jurisdiction. However, even in courts of limited jurisdiction limiting the jury venire to less than the full county could only be done upon express direction from the Legislature. The phrase “of the county” in Article I, § 22 meant of the entire county.

Since the Legislature has no authority to create or restrict the powers of superior courts created under Article IV, §§ 5 and 6, it has no authority to limit, or to delegate limiting the scope of the jury venire. The King County jury venire should be drawn from the area served by the court—in this case the entire county.

Neither *Newcomb*, *Lytle* nor *Fugita* has been limited or overruled.²

Taken together the three prohibit the Legislature and the court from creating jury venires that exclude a vast portion of the county.

C. **Article IV, § 10, Which Authorizes Legislative Restriction of Jury Venires in Courts of Limited Jurisdiction, Does Not Authorize the Legislature to Restrict Jury Venires in Article IV, § 6 Courts of Record.**

At the trial level the State argued that *State v. Twyman*, 143 Wn.2d 115, 17 P.3d 1184 (2001), supports King County's local rule dividing the jury venire. *Twyman* is limited to inferior courts, which are creatures of statute.

In *Twyman*, the Supreme Court addressed the constitutionality of RCW 2.36.050 ("Juries in Courts of Limited Jurisdiction"), which provides:

In courts of limited jurisdiction, juries shall be selected and impaneled in the same manner as in the superior courts, except that a court of limited jurisdiction shall use the master jury list developed by the superior court to select a jury panel. Jurors for the jury panel may be selected at random from the population of the area served by the court.

Twyman, 143 Wn.2d 115 (emphasis added). This Court rejected the argument that this practice violated Article I, § 22, holding that Article IV, § 10 specifically delegates authority to the Legislature to determine the

² The issue has not arisen in recent years because no other county has attempted to divide its population for superior court jury selection. Legislatively created district courts, which are not subject to Article I, § 22, are discussed *infra* in Section C.

powers, duties and jurisdiction of the district courts. *See Twyman*, 143 Wn.2d at 124 fn. 34.

Supporting the constitutionality of RCW 2.36.050 is the fact that while the Washington Constitution has, since its enactment, defined the jurisdiction of superior courts, *see* Const. Art. IV, § 6, it was left to the Legislature to determine the powers, duties and jurisdiction of district courts. Justices of the peace were the historical antecedents of today's district court judges. *See* RCW 3.30.015. Const. Art. IV, § 10, provides: The Legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace; *provided*, that such jurisdiction granted by the Legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns.

Twyman, 143 Wn.2d at 124, fn. 34.

The Court distinguished its decision in *Twyman* from its decision in *State ex rel. Fugita v. Milroy*, *supra*, stating:

[In *Fugita*] the venire was especially restricted to a definite part of the county. We think the plain intent of the words 'jury of the county' is that the defendant is entitled to have venire extended to the body of the county, and that it may not be restricted to a less unit; *at least, without express legislative sanction*.

Twyman, 143, Wn.2d at 135 (emphasis in original) (citing *State ex. Rel. Lytle v. Superior Court*, *supra*).

Both the *Fugita* and *Twyman* rulings involved the selection of venires for courts of limited jurisdiction. The police court in *Fugita* was an inferior court created by the Legislature. Its practice of summoning

North Yakima City jurors could have been authorized by the Legislature. Without that express legislative direction, however, the court could not restrict the area from which the jury venire was drawn. In *Twyman*, the Legislature provided the authorization missing in *Fugita*. Both *Fugita* and *Twyman*, address the legislative authority to define the courts of limited jurisdiction under Article IV, § 10. Superior courts are created by Article IV, §§ 5 and 6, and the Legislature has no authority to restrict those constitutionally created courts—or to give such authority to any other body. Neither *Fugita* nor *Twyman* tread that ground, and neither can the Legislature. *Twyman* specifically noted the difference between the legislative authority permitted over courts of limited jurisdiction under Article IV, § 10 and the absence of such legislative authority over superior courts under Article IV, §§ 5 and 6. Courts of limited jurisdiction depend upon legislative action. Courts of record are the province of the Constitution.

D. Arbitrarily and Inconsistently Defining the Area From Which a Jury Venire is Drawn Violates RCW 2.36.080 and the Right to an Impartial Jury Drawn from a Fair Cross Section of the Community.

- 1. The state and federal constitutions require a jury venire to include a “fair cross section” of the community.**

“The right to a trial by an impartial jury is guaranteed by the Sixth Amendment to the United States Constitution and Article I, § 22 of

the Washington Constitution.” *State v. Gonzales*, 111 Wn.App. 276, 277, 45 P.3d 205 (2002) (citing *State v. Brett*, 126 Wn.2d 136, 157, 892 P.2d 29 (1995)). The Sixth Amendment guarantee of an impartial jury requires that it be drawn from a fair cross section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). “[T]he source from which juries are selected [must] ‘reasonably reflect’ a cross section of the population.” *State v. Hilliard*, 89 Wn.2d 430, 440, 573 P.2d 22 (1977) (quoting *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975)). “A criminal defendant has a Sixth Amendment right to be tried by a jury that is drawn from a source fairly representative of the community.” *State v. Rupe*, 108 Wn.2d 734, 746, 743 P.2d 210 (1987) (citing *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975) and *State v. Hilliard*, 89 Wn.2d 430, 440, 573 P.2d 22 (1977)).

Excluding distinctive community groups, even in part, is not permitted. *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975).

We have never attempted to precisely define the term “distinctive group,” and we do not undertake to do so today. But we think it obvious that the concept of “distinctiveness” must be linked to the purposes of the fair-cross-section requirement. In *Taylor, supra*, we identified those purposes as (1) “guard [ing] against the exercise of arbitrary power” and ensuring that the “commonsense judgment of the community” will act as “a hedge against the overzealous or mistaken prosecutor,” (2) preserving “public confidence in the fairness of the criminal justice system,” and (3) implementing our belief that “sharing in

the administration of justice is a phase of civic responsibility.” *Id.*, 419 U.S., at 530-531, 95 S.Ct., at 697-98.

Lockhart v. McCree, 476 U.S. 162, 174, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986) citing *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975).

2. The right to a jury drawn from the community as a whole is belongs to jurors, not just defendants.

The United States Supreme Court, in *Batson v Kentucky*, 476 U.S. 79, 106 S.Ct.1712, 90 L.Ed2d 69 (1986), recognized that the right to an impartial jury drawn from the community belongs as much to the prospective jurors as it does to an individual defendant.

Washington courts have echoed that concern and extended that protection to discrimination in jury selection based on sex. *State v. Burch*, 65 Wn.App. 828, 830 P.2d 357 (1992). The rights asserted by Petitioner here belong to all those charged with a crime and to the jurors who would hear his case.

3. RCW 2.36.080 and the Sixth Amendment prohibit excluding jurors based on race, color, religion, national origin, economic status and “distinct” group.

The United States Supreme Court has extended “distinct groups” beyond the economic parameters referred to in RCW 2.36.080. In *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 66 S.Ct. 984, 90 L.Ed.2d 181 (1946),

the Court held that day laborers constitute a distinct group. The Court returned to the issue in *Holland v. Illinois*, 493 U.S.474, 486, 110 S.Ct. 803, 107 L.Ed 905 (1990) stating, *in dicta*, that postmen, lawyers, and clergymen were distinct groups under the Sixth Amendment. The Court in *Thiel* confirmed that prospective jurors must be selected without systemic exclusion of economic, social, religious, racial, political, and geographical groups of the community.

To further the constitutional goal of an impartial jury selected from a cross selection of the community, the Legislature has directed that “all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court...” RCW 2.36.080 (1) (emphasis added). The area served by the King County Superior Court is King County, not part of King County. Any area less than the entire county results in the judicial districting prohibited by Article IV, § 6 of the Washington State Constitution and squarely rejected in *Lytle* and *Newcomb*.

Dividing King County into two jury venires significantly reduces the participation by certain identifiable and distinctive groups in the jury process. The superior court recognized the potential for disparate jury pools and made efforts to “balance” the Jury Assignment Areas. CP 1523.

(See Appendix 2, letter from James McCurley of the Washington Center for the Court to Jim Roe, CP 1523.³)

The United States census tracks groups such as the disabled, single parent households and the high school or college educated. It has determined that the social, political, and economic experiences of these groups are a distinct and important part of an accurate census. In some cases Congress has found them significant enough to require laws designed specifically to protect them.⁴ And, most importantly, the Legislature has directed that such census data be used to adjust the boundaries of the Jury Assignment Areas. RCW 2.36.055.

The county-wide jury ensures that defendants receive the commonsense judgment of the community. When that community is unevenly divided, justice also becomes uneven.

It must be remembered that the jury is designed not only to understand the case, but also to reflect the community's sense of justice in deciding it. As long as there are significant departures from the cross sectional goal, biased juries are the result-biased in the sense that they reflect a slanted view of the community they are supposed to represent.

³ In its Supplemental Memorandum on Census Data and the constitutionality of LGR 18 the State attached a list of numbers purporting to show there is an almost equal split of men and women in the zip code areas in each Jury Assignment Area. There is nothing to show how this list relates to the study requested by the Office of Administrator of the Courts. CP 1528-38.

⁴ Americans With Disabilities Act of 1990.

Taylor v. Louisiana at 529, citing the House Committee Report, H.R.Rep.No. 1076, 90th Cong., 2d Sess., 8, 1968 U.S. Code Cong. & Admin. News, p. 1797 (1968).

Despite the efforts to balance the Jury Assignment Areas, the most recent United States census data, now eight years old, shows that the economic status of the Northern Jury Assignment Area and the Southern Jury Assignment Area differ dramatically from each other and from King County as a whole.

At the time of the 2000 Census, 48% of the population in the Northern Jury Assignment Area had completed a bachelor's degree or higher level of education. In the Southern Jury Assignment Area only 24% of the population reported a bachelor's degree or higher level of education. The median home value in the Northern Jury Assignment Area was \$286,000, while the median home value in the Southern Assignment Area was \$180,000. The median income in the Northern Jury Assignment Area was \$57,000, the median income in the Southern Jury Assignment Area was \$50,000. The Southern and Northern Jury Assignment Areas were different from each other and from King County as a whole. CP 72, 77, 81, 83, 84, 86, 89, 90, 92, 93.

The skewed division of King County created by RCW 2.36.055 and LGR 18 fails the constitutional requirement that the jury be drawn

from a fair cross-section of the community. “It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.” *Smith v. Texas*, 311 U.S. 128, 130, 61 S.Ct. 164, 165, 85 L.Ed. 84 (1940) (unanimous decision).

Where the venire is drawn from a population that does not represent the county, the promises of the Sixth Amendment and Article I, § 22 are not met. Diversity is a community characteristic that extends far beyond identifiers such as race. Diversity encompasses the amazing amalgam that is our communities. It includes economic disparities, political differences, education and domestic relationships. The jury assignment areas set out by LGR 18 do not reflect the diversity of King County and risks the exchange of diverse and distinct viewpoints critical to the functioning of juries and the jury system.

We accept the fair-cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment and are convinced that the requirement has solid foundation. The purpose of a jury is to guard against the exercise of arbitrary power-to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps over conditioned or biased response of a judge. *Duncan v. Louisiana*, 391 U.S., at 155-156, 88 S.Ct., at 1450-1451⁵. This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool. Community

⁵ *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

participation in the administration of the criminal law, moreover, is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system. Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial. ‘Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case. . . . (T)he broad representative character of the jury should be maintained, partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.’ (citing *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 227, 66 S.Ct. 984, 90 L.Ed. 1181 (1946) (Frankfurter, J., dissenting)).

Taylor v. Louisiana, 419 U.S. 522, 530-531(1975).

4. The procedure for drawing a jury venire must be impartial and random, not arbitrary and inconsistent.

A jury venire must be “selected at random from a fair cross section of the population of the area served by the court.” RCW 2.36.080(1). The local rules adopted by the King County Superior Court are discretionary, unclear and not uniform in application.

In the early 1990’s, King County built a second courthouse, now known as the Norm Maleng Regional Justice Center, in Kent. In 1995, “[i]n order to facilitate the transfer of cases to the Regional Justice Center facility upon completion of construction...” the court divided King County in two Case Assignment Areas. Local Rule (“LR”) 82. (*See* Appendix 1 for Rule in its entirety.) The Court used the same case

assignment boundaries for civil and criminal cases but allowed the prosecutor to seek an *ex parte*, pre-filing exception from the normal Case Assignment areas upon “good cause shown.” LCrR 5.1.

The King County Superior Court bench also authorized the Presiding Judge to “adjust the boundaries between [case] assignment areas when required for the efficient and fair administration of justice in King County.” LR 82(3)(C), LCrR5.1(2)(C). (*See* Appendix 1 for Rules in their entirety.)

In 2007, the Legislature, largely at the request of the King County Superior Court, adopted RCW 2.36.055, which allowed a county with more than one superior court facility to:

divide the jury source list into jury assignment areas...Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges when required for the efficient and fair administration of justice.

RCW 2.36.055.

Using this statute, the superior court judges adopted LGR 18-Jury Assignment Area. The Court did not, however, limit its prospective jury lists to the Jury Assignment Area list contemplated by RCW 2.36.055.

LGR 18(1) directs that the jury source list be divided into two Jury Assignment Areas. This list will be documented on a list maintained by the Administrator of the Court. RCW 2.36.055.

LGR 18(2) specifies that the rule does not create a right to have a case tried before a jury from a specific Jury Assignment Area and allows each judge, on his or her own, to direct that a case be heard by jurors drawn from a Case Assignment Area, to transfer the case to another Case Assignment Area or to summon jurors drawn from the entire county.

The Court on its own may assign cases to be heard by jurors drawn from another Case Assignment Area in the county, or from the entire county, or may assign or transfer cases to another Case Assignment Areas ... whenever required for the just and efficient administration of justice in King County.

LGR 18(2) (emphasis added).

In criminal cases, LCrR 5.1 allows the prosecutor “in advance of filing a particular case, for good cause shown [to] apply *ex parte* to the Chief Criminal Judge for an exception to the normal case assignment area.” LCrR 5.1(3)(H).

The boundaries of the Case Assignment Areas are close but not identical with the Jury Assignment Areas. The interaction of LR 82, LCrR5 and LGR 18 allows the Presiding Judge or Chief Criminal Judge,

by altering the Case Assignment Area boundaries, to expand or restrict the jurors called for a venire.

A court rule that allows a single judge to redraw the area from which a jury venire will be summoned whenever “necessary for the fair and efficient administration of justice...” is not the impartial and transparent process required by the state and federal constitutions or RCW 2.36.080.

And a court rule which allows each trial judge, in every case before him or her, to choose between three jury venires—a venire drawn from the entire county, a venire drawn from one half of the county defined by Jury Assignment Area boundaries approved by the Office of Administrator of the Courts or a venire drawn from one half the county defined by Case Assignment Area boundaries defined at the discretion of the Presiding Judge is not the impartial and random selection of a jury venire required by statute and the Washington state and federal constitutions.

VII. CONCLUSION

The Jury Assignment Areas used to split King County’s jury venire violate Article 1, § 22 of the Washington State Constitution which guarantees each defendant a trial by an impartial jury of the county.

The muddled process created by King County LGR 18, LCrR 5.1 and LR 82 is neither random nor impartial. The jury venires it creates are not drawn from a fair cross-section of society as required by the Sixth Amendment.

The restricted jury venires deny both defendants and potential jurors their rights as guaranteed by the federal and state constitutions.

The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. *Smith v. Texas*, 311 U.S. 128, 130, 61 S.Ct.164, 165, 85 L.Ed. 84 (1940); *Glasser v. United States*, 315 U.S. 60, 85, 62 S.Ct. 457, 471, 86 L.Ed.680 (1942). This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

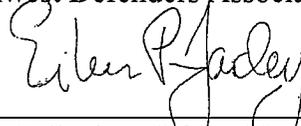
Thiel v. So Pacific at 220 (emphasis added).

This Court should strike down RCW 2.36.055 and the local court rules enacting it and direct that King County create a single jury source list from which all jurors are summoned at random.

DATED this ____ day of July, 2008.



Ramona C. Brandes, WSBA No. 27113
Attorney for Petitioner Louis Lanciloti
Northwest Defenders Association



Eileen P. Farley, WSBA No. 9264
Attorney for Petitioner Louis Lanciloti
Director, Northwest Defenders Association

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STATE OF WASHINGTON

CERTIFICATE OF SERVICE
2008 JUL 15 P 12:05

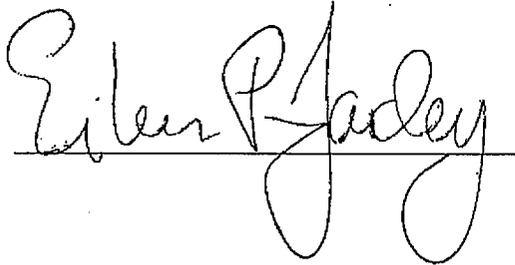
I hereby certify that on July ____, 2008, I electronically filed the
foregoing, and referenced appendices, with the Clerk of the Supreme
Court using the CM/ECF system. A copy was also sent via U.S. mail to:

Supreme Court Clerk
Washington Supreme Court
415 - 12th Ave SW
P.O. Box 40929
Olympia, WA 98504

James Whisman
Office of the King County Prosecutor
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2362

I declare under penalty of perjury under the laws of the state of
Washington, that the foregoing is true and correct.

DATED at Seattle, Washington on July ____, 2008.



A handwritten signature in cursive script, reading "Eileen P. Gadey", is written over a horizontal line.

APPENDIX 1

Statutes

RCW 2.36.050	A-1
RCW 2.36.055	A-2
RCW 2.36.080	A-3
RCW 3.30.015	A-4

Rules

King County Local Criminal Rule 5	A-5
King County Local General Rule 0.3	A-7
King County Local Rule 82	A-10
Local General Rule 18	A-13

APPENDIX 2

Letter from James McCurley of the Washington Center for the Court to Jim Roe, CP 1523	A-14
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STATUTES

RCW 2.36.050

Juries in courts of limited jurisdiction.

In courts of limited jurisdiction, juries shall be selected and impaneled in the same manner as in the superior courts, except that a court of limited jurisdiction shall use the master jury list developed by the superior court to select a jury panel. Jurors for the jury panel may be selected at random from the population of the area served by the court.

[1988 c 188 § 3; 1980 c 162 § 6; 1972 ex.s. c 57 § 1; 1891 c 48 § 4; RRS § 92.]

Notes:

Legislative findings -- Severability -- Effective date -- 1988 c 188: See notes following RCW 2.36.010.

Severability -- 1980 c 162: See note following RCW 3.02.010.

Courts of limited jurisdiction: Chapter 3.02 RCW.

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RCW 2.36.055

Jury source list — Jury assignment areas — Master jury list — Compilation.

The superior court at least annually shall cause a jury source list to be compiled from a list of all registered voters and a list of licensed drivers and identocard holders residing in the county.

In a county with more than one superior court facility and a separate case assignment area for each court facility, the jury source list may be divided into jury assignment areas that consist of registered voters and licensed drivers and identocard holders residing in each jury assignment area. Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

The superior court upon receipt of the jury source list shall compile a master jury list. The master jury list shall be certified by the superior court and filed with the county clerk. All previous jury source lists and master jury lists shall be superseded. In the event that, for any reason, a county's jury source list is not timely created and available for use at least annually, the most recent previously compiled jury source list for that county shall be used by the courts of that county on an emergency basis only for the shortest period of time until a current jury source list is created and available for use.

Upon receipt of amendments to the list of registered voters and licensed drivers and identocard holders residing in the county the superior court may update the jury source list and master jury list as maintained by the county clerk accordingly.
[2005 c 199 § 2; 1993 c 408 § 5; 1988 c 188 § 4.]

Notes:

Findings -- Intent -- 2005 c 199: "The legislature finds that superior courts with more than one superior court facility are asking some jurors to travel excessively long distances to attend court proceedings. In these cases, the legislature further finds that consideration of a juror's proximity to a particular courthouse can be accommodated while continuing to provide proportionate jury source list representation from distinctive groups within the community. The legislature intends to lessen the burdens borne by jurors fulfilling their civic duties by providing a mechanism that narrows the geographic area from which the jurors are drawn while maintaining a random and proportionate jury pool." [2005 c 199 § 1.]

Severability -- Effective dates -- 1993 c 408: See notes following RCW 2.36.054.

Legislative findings -- Severability -- Effective date -- 1988 c 188: See notes following RCW 2.36.010.

RCW 2.36.080

Selection of jurors — State policy — Exclusion for race, color, religion, sex, national origin, or economic status prohibited.

(1) It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with chapter 135, Laws of 1979 ex. sess. to be considered for jury service in this state and have an obligation to serve as jurors when summoned for that purpose.

(2) It is the policy of this state to maximize the availability of residents of the state for jury service. It also is the policy of this state to minimize the burden on the prospective jurors, their families, and employers resulting from jury service. The jury term and jury service should be set at as brief an interval as is practical given the size of the jury source list for the judicial district. The optimal jury term is two weeks or less. Optimal juror service is one day or one trial, whichever is longer.

(3) A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

(4) This section does not affect the right to peremptory challenges under RCW 4.44.130.
[1992 c 93 § 2; 1979 ex.s. c 135 § 2; 1967 c 39 § 1; 1911 c 57 § 2; RRS § 95. Prior: 1909 c 73 § 2.]

Notes:

Severability -- 1979 ex.s. c 135: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 135 § 12.]

RCW 3.30.015

Construction of "justices of the peace," "justice courts," "justice of the peace courts."

All references to justices of the peace in other titles of the Revised Code of Washington shall be construed as meaning district judges. All references to justice courts or justice of the peace courts in other titles of the Revised Code of Washington shall be construed as meaning district courts.

[1984 c 258 § 90.]

Notes:

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW 3.30.010.

RULES

LCrR 5.1 COMMENCEMENT OF ACTIONS; CASE ASSIGNMENT AREA

(d) Location for Court Proceedings for Criminal Cases Filed in King County; Filing of Documents and Pleadings and Designation of Case Assignment Area.

(1) Designation of Case Assignment Area. Each criminal case filed in the Superior Court shall be accompanied by a designation of the Case Assignment Area.

(2) Boundaries of Case Assignment Areas. For purposes of this rule King County shall be divided into case assignment areas as follows:

(A) Seattle Case Assignment Area. All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all of the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; the unincorporated areas of King County Sheriff's Precinct 4; and including all of Vashon and Maury Islands.

(B) Kent Case Assignment Area. All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

(C) Change of Area Boundaries. The Presiding Judge may adjust the boundaries between areas when required for the efficient and fair administration of justice in King County.

(3) Standards for Case Assignment Area Designation, and Revisions Thereof.

(A) Case Assignment Area Designated by Prosecuting Attorney. The indictment or information filed with the Clerk shall contain the Case Assignment Area designation of the case.

(B) Standard for Designation. Except as provided in Section (C) below, the Prosecuting Attorney shall assign the case to the Case Assignment Area where the offense is alleged to have been committed.

(C) Exceptions to Standard Designation.

(i) The Prosecuting Attorney may designate a case assignment area different than provided in (B) above:

a) Where the location of the offense within the county cannot be easily ascertained or the offense was committed in more than one area of the county;

b) Where multiple offenses charged were committed in more than one area of the county;

(ii) The following case categories shall be designated to the Seattle Case Assignment Area:

a) Fugitives from justice.

b) Appeals in criminal cases from courts of limited jurisdiction.

c) Cases accepted into Drug Court.

(iii) When a defendant has an action pending, any new action filed against that defendant shall be assigned to the same case assignment area as the pending case.

(D) Improper Designation/Lack of Designation. The designation

of the improper case assignment area shall not be a basis for dismissal of any action.

(E) Assignment or Transfer on Court's Motion. The Court on its own motion or on the motion of a party may assign or transfer cases to another case assignment area in the county whenever required for the just and efficient administration of justice in King County.

(F) Motions by Party to Transfer. Motions to transfer court proceedings from one case assignment area to another shall be made in writing, with proper notice to all parties. Motions to transfer shall generally be heard prior to trial setting only. All cases shall proceed in the original case assignment area until an order of transfer is entered.

(G) Venue Not Affected. This rule shall not affect whether venue is proper in any Superior Court facility in King County.

(H) Pre-Filing Requests for Exceptions. The Prosecutor in advance of filing a particular case, for good cause shown, may apply ex parte to the Chief Criminal Judge for an exception to the normal case assignment area.

(4) Where Pleadings and Documents Filed. Pleadings and documents in paper form for any criminal action in King County shall be filed with the Clerk of the Superior Court at the court facility in the case assignment area of the case. Documents filed in electronic form, pursuant to GR 30, must be filed in a manner prescribed by the Clerk. Service of documents on the Prosecuting Attorney and the defendant's attorney shall be made at the office of the Prosecutor and defense attorney located in the case assignment area of the case at the time of service.

(5) Inclusion of Case Assignment Area Code. All pleadings and documents shall contain after the cause number the case assignment area code. The Clerk may reject pleadings or documents that do not contain this case assignment area code.

(6) Jury Assignment Area. See LGR 18. The rule provides for Seattle and Kent jury assignment areas, consisting of registered voters and licensed drivers and identicard holders residing in each jury assignment area.

[Adopted effective June 1, 1996; amended effective September 1, 2001; December 1, 2001; September 1, 2004; September 1, 2007]

LR 0.3 DIVISION OF MANAGEMENT AUTHORITY

(a) Powers and Duties of the Judges.

- (1) Elect and remove at-large members of the Executive Committee.
- (2) Elect and remove a Presiding Judge.
- (3) Elect and remove an Assistant Presiding Judge.
- (4) Appoint and remove commissioners.
- (5) Attend judges' meetings.
- (6) Attend committee meetings.
- (7) Create and dissolve standing committees.
- (8) Enact local rules. Local rules shall be enacted only by a majority of all judges of the court. *See CR 83.*
- (9) Adopt policies that govern or provide guidelines for management of the court.
- (10) Adopt general policies for the assignment of cases and judges, as recommended by the Presiding Judge and Executive Committee.
- (11) Approve the budget of the court.
- (12) Request review of any decision made by the Executive Committee. If such a request is made, the decision shall be referred to the judges as a whole for final decision at the next regular judges' meeting.
- (13) Review for final approval all non-unanimous decisions of the Executive Committee at the next regular judges' meeting.
- (14) Attend and participate in a meeting of the Executive Committee, if a judge chooses to do so. Only judges who are members of the Executive Committee, except a committee chair under LR 0.5(e), may vote.
- (15) Participate in administration of the court consistent with CJC 3(B)(1).

(b) Powers and Duties of Presiding Judge.

- (1) Lead the management and administration of the court's business, recommend policies and procedures that improve the court's effectiveness, and allocate financial resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.
- (2) Serve as the spokesperson for the court in all dealings with the executive and legislative branches and with the media. If the matter is of such a nature that the Presiding Judge requires advice and counsel, he/she shall contact the members of the Executive Committee, if possible under the circumstances.
- (3) Call such special meetings of the judges and Executive Committee as may be required.
- (4) Establish, with the approval of the Executive Committee, special calendars or departments and assign judges and commissioners thereto.
- (5) Assign judicial officers to hear cases and other matters pursuant to general policies established by the judges of the court.
- (6) Assign judicial officers to the various special and standing committees of the court and appoint the chairperson of such committees.

- (7) Assign judges to the King County Superior Court facilities. In making these assignments, the Presiding Judge shall consider all relevant factors including the willingness of a judge to serve, the need for diversity, and what assignments will be in the best interest of the court as a whole. A judge who previously has served at the Regional Justice Center, juvenile court, or other facility shall not be reassigned until all other judges have served at that facility, unless such judge volunteers for service at that facility.
 - (8) Select, with the approval of the Executive Committee, the chief judges of the juvenile, civil, criminal and unified family court departments and of the Regional Justice Center.
 - (9) Coordinate the vacations and educational leaves of judicial officers.
 - (10) Supervise all personnel under the judicial branch, including the Chief Administrative Officer and the Director of the Department of Judicial Administration.
 - (11) Develop and coordinate statistical and management information.
 - (12) Supervise the preparation and filing of reports required by statute and court rules.
 - (13) Perform such other duties as are provided in these rules, or as are assigned by a majority of the judges.
- (c) Powers and Duties of the Assistant Presiding Judge.**
- (1) Serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge.
 - (2) Perform such further duties as these rules, the Presiding Judge, Executive Committee or a majority of the judges shall direct.
- (d) Powers and Duties of the Executive Committee.**
- (1) Decide matters of policy affecting the court. Decisions made by unanimous vote shall be final following the next regular judges' meeting, unless modified or rejected by a majority of judges in attendance at the next regular judges' meeting. Provided, however, that decisions involving urgent matters may be implemented after notice to the judges.
 - (2) Make recommendations on policy matters to the judges at any meeting of the judges.
 - (3) Recommend the designation and duties of the committees of the court and receive reports and recommendations from committees. Whenever matters to be considered by the Executive Committee concern the work of another committee, the chair of that committee shall be notified of the meeting and shall be considered a member of the Executive Committee for the limited purpose of voting on such matter.
 - (4) Act in an advisory capacity to the Presiding Judge.
 - (5) Review and advise the Presiding Judge concerning his or her decision, in the capacity of Presiding Judge, to report a judge or commissioner to the Judicial Conduct Commission.
 - (6) Determine whether disciplinary action of a commissioner, short of termination, is appropriate.

- (7) Approve an expenditure budget and review and approve actual unfunded items.
- (8) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners. Training and selection may be delegated to the relevant standing committee.
- (9) Conduct the annual performance review of the Chief Administrative Officer and the Director of Judicial Administration.
- (10) Meet at least once a month and provide written agenda and timely notice of the regular Executive Committee meetings to all judges and commissioners. If attachments are available in electronic form, they shall be distributed with the agenda.
- (11) Promptly distribute to the judges written minutes of action taken by the Executive Committee.
- (12) In the absence of the Presiding and Assistant Presiding Judge, the senior member of the Executive Committee shall serve as Acting Presiding Judge.

LR 82. CASE ASSIGNMENT AREA

(e) Location for Court Proceedings for Civil Cases Filed in King County; Filing of Documents and Pleadings and Designation of Case Assignment Area.

(1) Designation of Case Assignment Area. Each case filed in the Superior Court shall be accompanied by a Case Assignment Designation Form [in the form set forth at LR 82(e)(8)] on which the party filing the initial pleading has designated whether the case fits within the Seattle Case Assignment Area or the Kent Case Assignment Area, under the standards set forth in Sections (2) through (7), below. Civil cases filed prior to September 1, 1995 and criminal cases filed prior to June 1, 1996 are defaulted to the Seattle Case Assignment Area unless otherwise ordered by the Court.

(2) Where Proceedings Held. All proceedings of any nature shall be conducted at the Court facility in the case assignment area designated on the Case Assignment Designation Form unless the Court has otherwise ordered on its own motion or upon motion of any party to the action.

(3) Boundaries of Case Assignment Areas. For purposes of this rule King County shall be divided into case assignment areas as follows:

(A) Seattle Case Assignment Area. All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all of the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

(B) Kent Case Assignment Area. All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

(C) Change of Area Boundaries. The Presiding Judge may adjust the boundaries between areas when required for the efficient and fair administration of justice in King County.

(4) Standards for case assignment area designation, and revisions thereof.

(A) Location Designated by Party Filing Action. Initial designations shall be made upon filing as follows:

(i) Family Law, Paternity and Adoption Cases. For adoption cases, the area where the petitioner(s) resides; for paternity cases, the area where the child resides; and for all other family law cases, the area where either the petitioner or respondent resides or if neither party resides in King County, in the Seattle case assignment area.

(ii) Probate, Guardianship and Trust cases. For probate cases, the area where the decedent principally resided or if the decedent did not reside in King County, the area in which any part of the estate may be; for guardianship cases, the area where the ward resides; and for trust cases, the area where the principal place of administration of the trust is located. If no principal residence or estate is located in King County, the action may be filed in either case assignment area.

(iii) Orders for Protection and Orders for Antiharassment. For orders for protection or for antiharassment, the area where the petitioner resides unless the petitioner has left the residence or household to avoid abuse; in that case, in either the case assignment area of the previous or the new household or residence.

(iv) Other Civil cases. For civil cases involving personal injury or property damage, the area where the injury or damage occurred; for cases involving condemnation, quiet title, foreclosure, unlawful detainer or title to real

property, the area where the property is located; for all other civil cases, including administrative law reviews, the area where a defendant or respondent resides, or if there is no defendant or respondent, or if defendant or respondent does not reside in King County, the area where the plaintiff or petitioner resides.

(v) Appeals from Courts of Limited Jurisdiction and Transcripts of Judgment. For RALJ appeals, the Seattle case assignment area. For small claims appeals and transcripts of judgment, the case assignment area where the court of original jurisdiction is located.

(vi) Actions filed pursuant to RCW 36.01.050. For actions filed pursuant to RCW 36.01.050 (adjoining counties), either case assignment area.

(vii) Domestic Modifications and Support Adjustments. Any Modification Petition or Motion for Support Adjustment in either domestic or paternity cases shall be accompanied by a new Case Assignment Designation form.

(viii) Cases filed pursuant to Trust and Dispute Resolution Act, ch. 11.96A, RCW. Seattle if the primary residence or estate of decedent was in the Seattle case assignment area; all other such cases shall be designated to Kent. If no principal residence or estate is located in King County, the action may be filed in either assignment area.

(B) Improper Designation/Lack of Designation. The designation of the improper case assignment area shall not be a basis for dismissal of any action, but may be a basis for imposition of terms. The lack of designation of case assignment area at initial case filing may be a basis for imposition of terms and will result in assignment to a case assignment area at the Court's discretion.

(C) Assignment or Transfer on Court's Motion. The Court on its own motion may assign or transfer cases to another case assignment area in the county whenever required for the just and efficient administration of justice in King County.

(D) Motions By Party to Transfer. Motions to transfer court proceedings from one case assignment area to another shall be made in writing as required by LR 7; shall be ruled on by the Court without oral argument; and shall be noted for consideration no later than 14 days after the date for filing the Confirmation of Joinder of Parties, Claims, and Defenses in civil cases, as required in LR 4.2(a), or the date for filing of the Confirmation of Issues in domestic cases, as required by LFLR 4(c). All cases shall proceed in the original case assignment area until an order of transfer is entered. Proceedings in the assigned area shall not preclude the timely filing of a motion to transfer.

(E) Venue not affected. This rule shall not affect whether venue is proper in any Superior Court facility in King County.

(5) Where Pleadings and Documents Filed. Pleadings and documents for any civil action in King County may be filed in paper form with the Clerk of the Superior Court at any court facility in any case assignment area in the county. Documents filed in electronic form, pursuant to GR 30, must be filed in a manner prescribed by the Clerk. Working copies of documents for the Judge must be delivered to the court facility where the Judge is assigned.

(6) Ex Parte Proceedings. Proceedings in the Ex Parte Department shall be heard in the case assignment area of the case, except that ex parte matters which do not require court case file review may be heard in any court facility of King County

Superior Court.

(7) Inclusion of Case Assignment Area Code. All pleadings and documents shall contain after the cause number the case assignment area code assigned by the Clerk (or the default case assignment area code pursuant to LR 82(e)(1)) for the case assignment area in which court proceedings are to be held. The Clerk may reject pleadings or documents that do not contain this case assignment area code.

(8) Case Assignment Designation Form. The Case Assignment Designation Form shall be in substantially the following form:

Attachment to Case Indexing Cover Sheet

CASE ASSIGNMENT DESIGNATION

I certify that this case meets the case assignment criteria, described in King County LR 82(e), for the:

_____ Seattle Area, defined as

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all of the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

_____ Kent Area, defined as

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

Signature of Petitioner/Plaintiff

Date

or

Signature of Attorney for
Petitioner/Plaintiff

Date

WSBA Number

(9) Jury Assignment Area. See LGR 18. The rule provides for Seattle and Kent jury assignment areas, consisting of registered voters and licensed drivers and identicard holders residing in each jury assignment area.

[Effective September 1, 1995; amended effective September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2004, September 1, 2006, September 1, 2007.]

LGR 18. JURY ASSIGNMENT AREA

(e) Location for Jury Assignment Areas for Civil and Criminal Cases Filed in King County.

(1) Designation of Jury Assignment Areas. The jury source list shall be divided into a Seattle jury assignment area and a Kent jury assignment area, that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. The area within each jury assignment area shall be identified by zip code and documented on a list maintained by the chief administrative officer for the court.

(2) Assignment or Transfer by Court. This rule shall not create a right in any individual to have a case tried before a jury from a specific jury assignment area. The Court on its own may assign cases to be heard by jurors drawn from another case assignment area in the county, or from the entire county, or may assign or transfer cases to another case assignment area pursuant to LR 82(e)(4)(C) or LCrR 5.1(d)(2)(C), as applicable, whenever required for the just and efficient administration of justice in King County.

(3) Where Jurors Report. Individuals receiving a jury summons shall report for service to the Court facility in the jury assignment area identified on the face of the summons.

(4) Adjustment of Jury Assignment Area Boundaries. The jury assignment areas contained in this rule may be adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

Comment

This rule implements RCW 2.36.055, which allows the jury source list in King County to be divided into jury assignment areas that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. The purpose of the statute and this rule is to lessen the burdens borne by jurors in traveling long distances to attend court proceedings by narrowing the geographic area from which jurors are drawn while maintaining a random and proportionate jury pool.

[Adopted effective September 1, 2007]

Ramona Brandes

From: James Roe [jamesmroe@hotmail.com]
Sent: Thursday, January 24, 2008 10:20 PM
To: Ramona Brandes
Subject: FW: request for information King County jury assignment areas

FYI

This email has the zip codes you wanted. I asked for the most recent zip codes which accounts for my delay in getting a breakdown.

Sent you the response from King Co. Nothing.
Talk Later

Jim Roe

Subject: request for information King County jury assignment areas
Date: Wed, 16 Jan 2008 14:10:14.-0800
From: Carl.McCurley@courts.wa.gov
To: JAMESMROE@HOTMAIL.COM

Dear Mr. Roe,

This letter responds to your January 8, 2008 email message to the State Court Administrator, Mr. N.A. "Butch" Stussy which requested reports, documents, underlying data, and studies pertaining to the Washington State Center for Court Research's analysis of the King County jury assignment areas.

The Washington State Center for Court Research was asked, in April of 2007, to produce an analysis of the composition of jury assignment areas for King County Superior Court as indicated in a draft King County Superior Court Zero Local Rule, later finalized and made effective September 1, 2007.

King County Superior Court requested that the jury assignment areas be examined with regard to their demographic composition. King County Superior Court supplied the Center with Postal Service ZIP code lists for each jury assignment area (the Seattle Jury Assignment Area and the Kent Jury Assignment Area). The ZIP Codes are listed in the documents **SeattleJuryZIPCodes.doc** and **KentJuryZIPCodes.doc**.

The next step in preparation for analysis was to obtain a US Census Bureau file that contained both ZIP code and demographic data; Census data came from the American FactFinder section of the Census Bureau web site. Data from the year 2000 enumeration were used because no post-2000 Census estimate files contained ZIP code identifiers. A copy of the data file is included as **Download US_Census_2000.xls**.

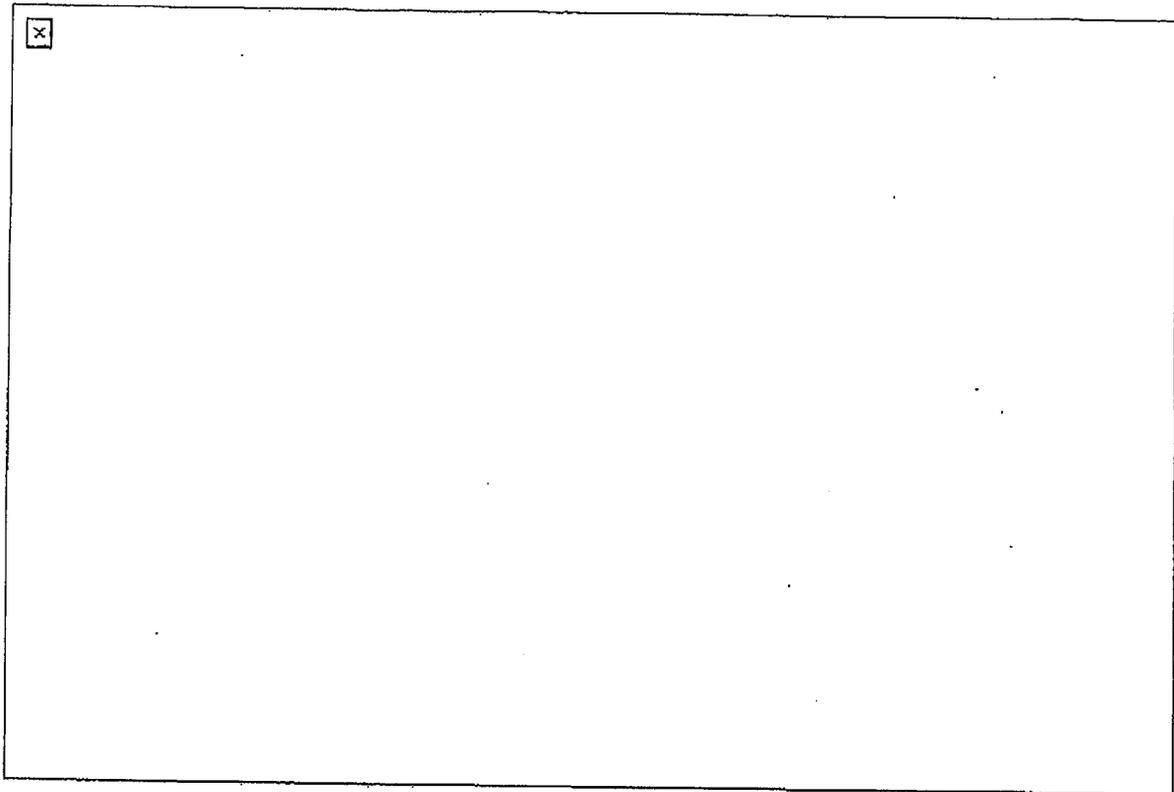
It is important to note that there is not an exact match between the ZIP codes listed by King County Superior Court as part of the jury assignment area and those in the 2000 Census

data. Three factors account for those differences:

- 1) several King County ZIP codes are assigned to PO boxes or to business only and not to an area containing dwellings (for the Seattle Jury Assignment Area, the codes are 98009, 98013, 98015, 98041, 98073, 98082, 98083, 98111, 98113, 98114, 98124, 98127, 98129, 98138, 98139, 98141, 98145, 98151, 98160, 98165, 98170, 98171, 98175, 98181, 98184, 98185, 98190, 98191, 98194, and 98195; for the Kent Jury Assignment Area, the codes are 98035, 98054, 98062, 98063, 98064, 98071, and 98089)
- 2) the geographic area of some densely populated Seattle ZIP codes is also accounted for by other ZIP codes (98154, 98161, 98164, 98174), and
- 3) the Postal Service has revised some ZIP code areas since the 2000 Census to make room for new ZIP code areas. With regard to this last group of ZIP codes—the newer ZIP codes—98074, 98075, and 98077 are located within areas encompassed by the Seattle Jury Assignment Area and 98030, 98057, and 98058 are located within areas encompassed by the Kent Jury Assignment Area, and, of the six, only one is contiguous with the jury assignment area boundary; none of the six straddle the boundary. Therefore, although the ZIP code lists for the 2000 Census and the 2007 jury assignment areas are not identical, the year 2000 Census data can be used to construct a reasonable representation of the current population characteristics of the assignment areas.

It will be noticed that the Census Bureau data file contains population totals for each year 2000 ZIP code area and percentages that describe the population in terms of race, age, and sex (sex was not part of the Center's analysis). It was necessary to construct indicators of demographic characteristics that were aggregated by jury district. Therefore, the total ZIP code population and percentages were used to produce counts of individuals within groups within ZIP code areas. Demographic group counts were then summed by jury assignment area. Finally, the Kent Jury Assignment Area and Seattle Jury Assignment Area demographic group counts were transformed into percentages. For all calculations, see **DEMO_by_ZIPS.xls**.

The year 2000 demographic percentages of the two jury assignment areas are contained in the table below, King County Jury Assignment Areas Demographics. It is this table that supports the observation contained in my September 25, 2007 letter to Mr. Paul Sherfey: "Available demographic data shows that the areas are constructed so that the populations within the two areas are very similar in terms of race and ethnicity."



Please note that the King County request did not encompass wealth or income.

The Advisory Board of the Washington State Center for Court Research was not asked to review the Research Center analysis of the King County jury assignment areas.

There is only tangential connection between the Juror Research Project and the analysis of jury assignment areas. There has been no overlap in planning between the two projects. The only King County court affected by the Juror Research Project is Des Moines Municipal, which administers its own juries, independent of King County Superior Court.

I hope that you find this letter responsive to your request for materials and analysis.

Carl McCurley, Ph.D., Manager
Washington State Center for Court Research
Administrative Office of the Courts
360-705-5312
<http://www.courts.wa.gov/wscrr/>

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OFFICE RECEPTIONIST, CLERK

To: Eileen Farley
Cc: Ramona Brandes; jim.whisman@kingcounty.gov
Subject: RE: State v Lanciloti Supreme Court Cause No 81219-5-Petitioner's Opening Brief and Appendices

Rec, 7-15-08

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Eileen Farley [mailto:Eileen.Farley@nwdefenders.org]
Sent: Tuesday, July 15, 2008 11:59 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Ramona Brandes; jim.whisman@kingcounty.gov
Subject: State v Lanciloti Supreme Court Cause No 81219-5-Petitioner's Opening Brief and Appendices

Dear Sir or Madam,

Attached please find Petitioner Lanciloti's Opening Brief and Appendices in Cause No 81219-5. Copies have also been mailed today to you and James Whisman, counsel for the State/Respondent.

I learned Friday from your office that although the Designation of Clerk's Papers has been filed but you have not received them. I spoke with the King County Clerk's Office and believe should be able to have the papers sent to you in short order.

Please let me know if you have any difficult opening the documents or need additional information. I can be reached at 206-674-4700 ext.3100 or eileen.farley@nwdefenders.org

Very truly yours,

Eileen Farley, WSBA No. 9264
Ramona Brandes, WSBA No. 27113
<<Appeal Brief Lanciloti1.signed1.pdf>> <<Appeal Brief Lanciloti APPENDICES1.pdf>>

Eileen Farley
Director, Northwest Defenders Association
1111 Third Avenue, Suite 200
Seattle, WA 98101
(206) 674-4700 ext 3100

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