

TASK FORCE ON JURY ASSEMBLY AND ADMINISTRATION

REPORT TO THE SUPREME COURT OF TEXAS February 2, 2007

The Task Force on Jury Assembly and Administration has met and discussed the issues assigned to it by the Supreme Court. The Task Force now makes the following recommendations.

The matters listed in section I should be mandated and uniform throughout the state. The matters listed in section II should be decided by each county in a written jury plan (approved by a majority of the district judges) specifying its procedures for each matter listed. Jury plans should be mandatory, and should be subject to review and approval by the Supreme Court (or its designee) to ensure that they conform to the rules enacted pursuant to this report. It is contemplated that several model jury plans would be prepared and made available for judges to review and use as models when they consider their own local needs and draft individualized plans for their counties.

I. The following matters should be mandated and uniform throughout the state.

(A) The Secretary of State (SOS) will continue to merge the Voter Registration (VR) and Department of Public Safety (DPS) lists and compile a master source list of jurors available for each county to summon.

(B) The SOS will increase its efforts to:

- (i) produce clean juror source lists for the counties (by eliminating duplicates, removing the names of felons and deceased persons, correcting bad addresses, eliminating those who have moved, etc.) and
- (ii) update the lists at least quarterly and keep them current (by periodically adding newly registered voters, newly licensed drivers, and new residents of the county).

In cleaning and keeping current the juror lists for each county, the SOS may need to employ additional personnel, improve existing software, work with the VR and DPS officials in improving their original source lists, contract with outside National Change of Address (NCOA) vendors, and make other efforts. Steps should be taken to ensure that DPS keeps its list more current than is occurring at the present time.

The SOS should be expressly authorized by statute to do the tasks specified in this paragraph.

(C) When a county needs a list of jurors to summon for a day or week or month or any other period of time (see § II-A), it will obtain the needed names of potential jurors on-line from the SOS (see § I-A). In downloading the list of juror names, counties would have two options.

- (i) They could use the SOS on-line software to form jury lists, print summonses, form panels, etc., without further change.
- (ii) Or they could choose to use their own software to form lists, etc., and to perform further cleaning of the list of jurors (see § II-F), provided that they specify the software and the additional procedures in their written jury plan.

(D) Counties will use the data received from SOS to form jury panels and send them to courtrooms. Rescheduled jurors will be mixed in by a predetermined method pursuant to local jury plan (see § II-B). Judges should have the discretion to let jurors pick reschedule dates.

(E) Each week the SOS will return to the master list for each county the names that the county obtained as potential jurors two years earlier. (For example, jurors whose names are sent to a county in week five of 2007 will be returned to the master source list in week five of 2009.) In its local plan a county may:

- (i) choose to return names to the list more often or less often than every two years, and may choose to return to the list immediately the names of those who were summoned but did not “serve,” and
- (ii) define “service” to mean that the juror (i) was mailed a summons, (ii) appeared for jury duty, (iii) served on a panel, or (iv) was selected and sworn in a case.

(F) Judges should expressly be given the discretion to excuse jurors who have recently served on a jury of any kind, including service on a state, federal, or municipal petit jury or grand jury.

(G) In the event these jury assembly procedures are not followed, the statutes should not grant unsuccessful litigants any rights to challenge verdicts or judgments beyond the rights guaranteed by the state or federal constitution.

(H) Any lawyer or other person who desires to observe any of these procedures at the state or county level must be permitted reasonable access and opportunity to observe.

II. The following matters shall be decided by each county pursuant to a written jury plan that is fair, impartial, and objective. Each plan must be approved by the Supreme Court (or its designee). The court should be given express authority to enforce compliance.

- (A) When and how often to summon jurors, and how many jurors to summon.
- (B) How and when to reschedule jurors, and how to randomly mix their names into the pool of jurors on the date for which they are rescheduled.
- (C) How to form panels and assign them to courts.
- (D) Whether to summon jurors to one central location or to individual courts.

(E) The procedure to be followed, and the person or persons to be designated, for juror orientation and for deciding qualifications, exemptions, and rescheduling.

(F) The procedure for any further local clean-up of the list (e.g., because juror is deceased, has moved, or is felon, etc.) before summonses are mailed (see § I-C(ii)). If there is further clean-up of lists by the county, its jury plan must require that records be kept.

(G) Whether to have a “one day or one trial” policy or to use jurors for more than one day or trial.

(H) Whether to allow immediate re-use of jurors eliminated by challenge for cause or peremptory challenge in a previous case.

(I) Whether and how to use the Internet for juror response and rescheduling.

(J) Whether to use different procedures for death-qualified capital cases.

(K) Whether to allow JPs and/or municipal courts to use county-summoned jurors. If a county chooses to do this, its plan must ensure that the randomness of the pool of jurors available for the district and county courts remains unaffected.

(L) When to let litigants and attorneys learn who has been summoned.

III. The Task Force also recommends the following non-legislative reforms.

(A) Local officials should consider ways to improve the operation of the jury assembly process, such as: (i) free parking, transportation, coffee, and Internet access; (ii) improved and comfortable facilities in the waiting area for jurors; and (iii) on-line filling out of questionnaires.

(B) Local officials should consider making public service announcements that publicize item III-A above and explain other basic details about jury service and pay, one-day-or-one-trial policy (where applicable), protection from retaliation by employer, etc.

(C) There should be educational programs and gatherings designed to assist jury room managers as they adapt to these changes in the jury assembly process.

(D) The new jury assembly and administration procedures should be the subject of judicial education at the annual College for New Judges and at other seminars for judges.

IV. The Task Force believes that the reforms stated above are too extensive to be implemented by amending existing statutes. Instead there should be comprehensive reform through a comprehensive new set of statutes or through a set of rules promulgated by the Supreme Court. The Task Force believes that it would be premature to draft proposed language at this time.

The Task Force urges the Legislature to:

(A) Grant the Supreme Court express rulemaking authority to accomplish the reforms set forth in this report by a comprehensive set of rules. In the alternative, the Task Force urges the Legislature to enact these reforms through a comprehensive statute.

(B) Repeal Gov't Code §§ 62.001-62.021, with the following exceptions: § 62.019 (providing for appointment of jury bailiff and specifying duties, a topic the Task Force did not address) and § 62.020 (providing for alternate jurors, a topic outside the Task Force's purview); harmonize or repeal, as appropriate, other code provisions (e.g., Code of Criminal Procedure articles 35.01-.12).

(C) Amend the existing qualifications for jury service and exemptions from jury service as follows:

• *Qualifications* (Gov't Code § 62.102):

(i) Delete "misdemeanor theft" as a disqualification in ¶¶ (7) and (8).

• *Exemptions* (Gov't Code § 62.106):

(i) Modify ¶ (3) to raise the age of children who would be unsupervised from 10 to 14 years. A corresponding change should be made in the exemption for grand jury service found in article 19.25(2) of the Code of Criminal Procedure.

(ii) Modify ¶¶ (3) and (4) to require that students claiming exemption be in actual attendance.

(iii) Delete exemption for the public officials and employees listed in ¶ (5), who are already entitled to the same automatic six-month postponement that every citizen may claim under Gov't Code § 62.0142(b).

(iv) Delete ¶¶ (6) and (8), which would be rendered moot by adoption of the reforms proposed herein.

(D) Clarify and consolidate statutory penalties and procedures (including existing rights and protections for jurors) for those who fail to respond to a summons. In addition to any other penalties imposed by law, fines should compensate the county for the cost of prosecution. The following statutes should be harmonized:

(i) Gov't Code § 62.0141 (\$100-1000 fine for failure to respond to jury summons)

(ii) Gov't Code § 62.111 (\$10-100 fine for failure to attend)

(iii) Code of Criminal Procedure art. 19.16 (\$10-100 fine for failure to report for grand jury duty)

(iv) Code of Criminal Procedure art. 35.01 (\$50 fine for failure to report for jury duty)

(E) Provide funding for:

(i) Secretary of State to clean up lists and keep them current [§ I-B];

(ii) Software to be used by counties (§§ I-C & I-D);

(iii) Training of jury assembly room managers (§§ I-C & III-C).(Funding could be provided by increasing the fee for jury trials and making the fee nonrefundable.)

(iv) Supreme Court's supervision of jury plan process.

(F) Grant to the Supreme Court express authority to ensure that counties prepare and adopt written jury plans in compliance with these reforms.

(G) Review Civil Practice and Remedies Code chapter 122 to ensure that no employer takes adverse action against an employee who answers a jury summons or serves as a juror.

Respectfully Submitted,

David Peebles , Chair

COMMENTS

INTRODUCTION

The Task Force on Jury Assembly and Administration consisted of judges, lawyers, law professors, and jury administrators from every part of Texas — from the large cities and from small and medium-size towns. These members from multi-court counties and from single-court districts encompassing several counties gained a new appreciation of how diverse and varied our state is, and how differently the counties of Texas administer their jury systems. After four months of study, the Task Force has decided to recommend that some aspects of the jury assembly process should be uniform and mandated statewide; other aspects should be decided by each county by written jury plan subject to approval in advance by the supreme court. These comments seek to explain some of the decisions made and the recommendations that are offered below.

Reasons for the Task Force. There are several reasons why the jury assembly and administration process needed to be studied and reformed.

(i) *The need for integrity.* Lawyers have expressed suspicion that in certain Texas counties there may be official tampering with the jury process behind closed doors, which tilts the process in favor of one litigant and against another. Such concerns were expressed publicly at a meeting of the Supreme Court Advisory Committee on May 2005. While the Task Force is aware of no hard proof of malevolent tampering, members were made aware that officials in some counties have eliminated jurors from the venire because of their own assessment of the juror's suitability circumstances, and not because the jurors claimed an exemption or were not qualified.

(ii) *The need to use technology.* Intelligent use of electronic technology can make our system more cost-effective and time-efficient. Yet the statutes of Texas still speak of jury wheels, cards and envelopes. The recommendations in this Report seek to make good use of modern technology and its ability to streamline this process and remove many of the opportunities for human tampering. Such exercise of discretion, out of sight and unreviewable, threatens the integrity of the system.

(iii) *The danger of experimentation.* There is also a need to minimize opportunities for well-meaning experiments that threaten the randomness that is so essential to the system. This became apparent as the Task Force discussed the varied approaches of different counties. One county, in an effort to make sure that its list of already-randomized jurors was especially random, decided to re-do the pool each week to ensure that each zip code in the county contributed the same number of jurors to the venire. Yet the county was doing this without ensuring that each zip code had the same number of residents or potential jurors.

(iv) *The need to harmonize conflicting provisions in the statutes.* Provisions in the government code and the code of criminal procedure are sometimes in conflict and should

be harmonized. The rules for summoning and qualifying jurors in civil and criminal cases should be the same and should be located in the same place in the library.

These four concerns — integrity, technology and modernity, free-lance experimentation, and harmonization — make this project especially timely.

Uniformity and variety. One conclusion that the Task Force reached is that our vast and diverse state needs to mandate uniformity on some issues and to allow variety and difference on others. These two needs — for uniformity and variety — are in tension with each other, and the Task Force found it necessary to strike a balance between them. Accordingly, Section I specifies those aspects of the jury assembly and administration process that are so fundamental and foundational that they should be mandated and uniform throughout the state. On these matters every county will have to follow the same procedures. On other matters, the Task Force recognized that a “one size fits all” approach is not necessary to achieve randomness, integrity, and efficiency; counties should therefore be permitted to choose different ways of administering their jury systems. Section II specifies those aspects of the process that each county should be able to decide for itself.

This does not mean that counties are given complete freedom to home-grow their jury assembly system. The Task Force is aware that to permit local officials to do things their own way is to permit persons with less than complete integrity to undermine the system. Section II therefore requires that each county state in a written jury plan how it intends to perform specified features of the process that are not mandated throughout the state under Section I. To ensure that the overarching goals of the system are achieved, these written plans must be approved by the Supreme Court or its designee.

SECTION I.

§ I-A. *Randomness and fair cross section.* Jurors should be summoned at random from a fair cross section of the community.¹ These two requirements of randomness and fair cross section seek to serve the interests of both litigants and citizens. They seek to ensure that *litigants* go before juries that are fairly representative of the community, and that *citizens* have an equal chance of being summoned for jury duty. This Report’s first requirement therefore recommends that Texas continue to use the two source lists that have broadened the jury pool in Texas since the early 1990’s, and that random procedures be ensured throughout the process.

¹ Congress has required that jurors be summoned from a fair cross section of the community in all federal cases. “It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community” 28 U.S.C. § 1861. The Supreme Court summarized this as a constitutional command for criminal cases in *Taylor v. Louisiana*, 419 U.S. 522, 528, 530, 95 S.Ct. 692 (1975): “The unmistakable import of this Court’s opinions, at least since 1940 . . . is that the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial. . . . We accept the fair-cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment”

Because tamper-proof source lists and randomizing are foundational, the Report recommends giving this part of the process to the Secretary of State and requiring counties to use it. (If counties desire to further clean old addresses from the list obtained from the Secretary of State, Section II requires them to state their procedures in writing and get them approved beforehand by the Supreme Court.)

Jury administration has not been one of the Secretary of State's core responsibilities. That office is designed to deal primarily with elections and business filings. For several years it has also been merging the voter's registration list with the driver's license list for jury pool purposes. In recent years, pursuant to federal law it has also been given responsibility for keeping the state's voter registration records.

§ I-B. *Clean-up and update of jury lists.* The Report contemplates an ongoing process to keep the jury list for each county current. This will involve two related but different operations.

(i) *Clean-up.* The Secretary of State would periodically eliminate the names of persons who have died, become felons, or moved away from the county. It would also correct the records when a person has moved to a different address within the county. The Secretary of State would not change the original lists of registered voters or licensed drivers; it would change only its separate stand-alone list of potential jurors.

(ii) *Update.* Updating the list of potential jurors with new names is also important. Young people are constantly registering to vote and becoming licensed to drive. Their names should be regularly added to the list of potential jurors along with new residents in the county.

§ I-C. *Further clean-up of lists.* It is expected that smaller counties will use the Secretary of State's software for the entire process from the beginning; many of them are already accustomed to doing this, and it is cost-effective for them. But some of the larger counties have invested in their own software and have contracted with companies that perform further clean-up of the list they obtain from the Secretary of State. The counties do this for several reasons. (i) They have saved significant postage expense by purging their lists of deceased persons and those who have moved from the county. (ii) Cleaner lists with correct addresses also improve the response rate for minorities. (iii) Moreover, failure to have a clean jury list has adverse consequences: When jury summonses are received by persons who no longer live in the county, they begin to lose confidence in the competence of those who administer the system. In addition, jury room personnel must spend time answering inquiries, which diverts them from their other duties. The Report recommends that these counties be permitted to continue using these additional clean-up procedures, provided that they spell them out in advance in their jury plan and obtain approval. The Task Force believes that as the Secretary of State perfects its clean-up operations, all counties will eventually cease performing further additional clean-up at the local level.

§ I-D. *Rescheduling.* A group of rescheduled jurors is seldom a representative cross section of the entire jury pool. In disproportionate numbers, rescheduled jurors have jobs of responsibility and are engaged in other activities that involve scheduling; this is why many of them have a conflict and ask

to serve on a different date. Rescheduled jurors are of course assertive and self-confident enough to seek rescheduling, and this trait also sets them apart from the general jury pool. Because a group of rescheduled jurors will seldom be representative of the entire jury pool, a county should not be able to skew a jury panel by simply tacking its list of rescheduled jurors onto the front or the end of the list of jurors summoned randomly for a given day or week. Rescheduled jurors must be mixed into the pool randomly by a method stated in advance.

§ I-E. *Returning names to the list.* Under existing law, the jury wheel is reconstituted (i.e. replenished with new names and the names of those who were summoned in the past) every two or three years, depending upon the county. During this two- or three-year period, the names of new voters and drivers and new residents are not put on the list. The Report recommends that the replenishing process be a continuing process throughout the year. The Secretary of State would regularly put the names of new voters, drivers, and residents into the master list of potential jurors. Each week the names of jurors who served two years before would be put back into the pool of potential jurors. Counties would be permitted to decide whether jurors who did not answer the summons, or who reported for duty but were not picked, have done their service for a two-year period, or whether these names would be placed back into the pool more quickly, making them subject to being summoned again during the next two years. Counties that need to re-use jurors more often than every two years may choose in their jury plan to do so.

SECTION II.

The Report recognizes in Section I that some aspects of the jury system are so fundamental that they should be uniform throughout the state. In Section II the Report also recognizes that a state as vast and diverse as Texas should not have a “one size fits all” jury administration system in all its details. Section II therefore lets each county decide how it will administer many of the details of its system. For example, many larger counties are accustomed to a “one day or one trial” policy; jurors will serve either one day or one trial, whichever is longer. But that policy is not well-adapted for rural counties. In these smaller counties, it would require the routine summoning of larger jury pools in the event that more than one cases goes to trial.

The Report lists the areas of jury administration that each county may decide locally, but it requires the county to decide in advance how it will administer its system and state its procedures in writing, subject to Supreme Court approval. It is contemplated that the district judges in each county would prepare their plans, with opportunity for input by the local bar and with any funding requirements approved by commissioner’s court.

SECTION III.

Section III lists several ways that a county can make its jury assembly system more user-friendly. The Report does not ask the Legislature to mandate these suggestions, but it urges counties to seriously consider implementing them. The suggestions stated in Section III would have at least two

benefits. They would help make jury service a more pleasant experience for those summoned. In addition, the Task Force is convinced that when a jury system is well-administered and user-friendly, and the public is made aware of it, the rate of juror response to summonses will increase and the rate of no-shows will decrease.

SECTION IV.

Disqualification for misdemeanor theft. Under current law a guilty plea for shoplifting or theft by check forever disqualifies a person from jury service, even though the person has successfully completed probation and obeyed the law for many years. The Task Force feels that misdemeanor theft convictions should not be disqualifying. At the very least, there should be a time period after which a misdemeanor theft conviction would cease to be disqualifying.

Exemption for members of legislative branch. Jury summonses usually state and summarize the statutory qualifications and exemptions. Printing this information on the summons helps the recipients determine whether by law they are qualified and whether they may claim an exemption from jury duty. But the exemption for legislators creates resentment. Judges and jury administrators report that jurors read about the legislative exemption and conclude that officeholders have simply exempted themselves from jury duty while requiring everyone else to serve. The Task Force believes that this unfortunate perception undermines public confidence in the fairness of the system and that the exemption is unnecessary because existing law already gives all citizens the right to an automatic six-month postponement. The Task Force respectfully urges the Legislature to discontinue this exemption.

Express rulemaking authority for Supreme Court. For several reasons, the Task Force believes this reform project could be more thoroughly and deliberately addressed by the Supreme Court through its rulemaking process than through a new set of statutes. To implement these recommendations will require a systematic and coordinated body of statutes or rules. It will require significant drafting and re-drafting. Ideally, at some point there should be an opportunity for comment by the bench and bar. And after the rules are in operation, they may need to be modified as counties make the adjustments recommended herein. Reform through the rulemaking process would seem to be better adapted than statutory reform.

Funding. Much of the funding for these reforms would be one-time appropriations for start-up costs (e.g., for software and for initial approval of jury plans) which would not require ongoing appropriations. Additional personnel for the Secretary of State would be a long-term but essential expense. In any event, the Task Force anticipates that the savings that these reforms produce for the system (e.g., postage) will offset the additional costs.