# THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

*REVIEWING PANEL --- JURY SELECTION PLAN*

The Southern District of Texas has proposed an amended Jury Selection Plan as outlined in the attached order dated July 21, 2005. The amended plan, having been reviewed by the Reviewing Panel of this Circuit, is approved.

Entered for the Reviewing Panel at Houston, Texas, this 26th day of October, 2005.

Gregory A. Nussel
Secretary to the Judicial Council
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Carolyn Dineen King
Edith H. Jones
E. Grady Jolly
Patrick E. Higginbotham
Jerry E. Smith
Jacques L. Wiener, Jr.
Emilio M. Garza
Fortunato P. Benavides
Carl E. Stewart
Edward C. Prado
Stanwood R. Duval, Jr.
James J. Brady
Rebecca F. Doherty
Michael P. Mills
David C. Bramlette, III
Sidney A. Fitzwater
Hayden W. Head, Jr.
Thad Hearfield
W. Royal Furgeson, Jr.

(b) United States District Judge:

Hayden W. Head, Jr.
Chief United States District Judge
Southern District of Texas
NOV 1 - 2005

United States District Court
Southern District of Texas
ENTERED

NOV 1 2005

Michael N. Milby, Clerk
By Deputy Clerk M. Gossett

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| In the Matter of Revised Order | § | |
| Establishing a Plan For Jury Selection | § | General Order No. 2005-11 |
| For The Southern District of Texas | § | |

ORDER

It appearing to the court that the order establishing the method for the selection of grand and petit jurors in this district adopted July 31, 1968, to comply with the Jury Selection and Service Act of 1968 (Pub. L. No. 90-274, 28 U.S.C.A. § 1861 et seq.), as amended through April 10, 2001 should be modified;

And it being the policy of the United States, as enunciated by the above-named statute, (a) that all litigants 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 in the district or division wherein the court convenes; (b) that all citizens shall have the opportunity to be considered for service on grand and petit juries in the United States District Courts and shall have an obligation to serve when summoned for that purpose; and (c) that no citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status;

IT IS THEREFORE ORDERED:

1. This Plan shall apply and pertain to the entire Southern District of Texas, and to each of the divisions thereof. This district, as provided by 28 U.S.C.A. § 124, is composed of seven divisions, each being comprised of the counties as follows:

Brownsville Division--counties of Cameron and Willacy.

Corpus Christi Division--counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleburg, Live Oak, Nueces and San Patricio.

Galveston Division--counties of Brazoria, Chambers, Galveston, and Matagorda.

Houston Division--counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton.

Laredo Division--counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

McAllen Division--counties of Hidalgo and Starr.

Victoria Division--counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

2. Management of Jury Selection Process. The Clerk of Court, or one or more of his

deputies or other authorized representative as directed by the Clerk, is authorized to manage the jury selection process, acting under the supervision and control of the Chief Judge of this court. In the event of absence or disability of the Chief Judge, the judge in active service and senior in commission shall serve. The judge to whom the work of a division of this court is assigned by the Chief Judge by general order shall be in charge of the day-to-day operation of the jury selection process in that division (i.e. such judge shall, as needed, order the addition of names to the wheel, the drawing of names therefrom, the granting of temporary excuses, etc.).

3. Source of Names. It is the considered judgment of this court that voter registration lists from each county do and will furnish a fair cross section of the community of this district, and of each division thereof, and such voter registration lists shall be the exclusive source of names of prospective jurors to be chosen as hereinafter provided.

4. Authorization for Electronic Data Processing System.

This court finds it advantageous to use a properly programmed electronic data processing system to maintain the master jury wheel and perform other clerical services related to the jury system. Accordingly, the Clerk is authorized to make such arrangements and procure such assistance as necessary to establish an electronic data system, or a combination manual and electronic records system, to perform the duties of the Clerk as hereinafter designated in a manner to achieve the same results as the following manual selection procedure.

Since this district will utilize the automated data processing equipment furnished by a contractor and in compliance with resolution by the Judicial Conference of the United States, a public drawing of a starting number and interval quotient will be held. At such time as the selection of jurors' names from the original source list is commenced, the Clerk shall give public notice of the date, time, and place of such drawing. Alternatively, at the option of the Clerk, and after consultation with the court, the selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system, as more fully described in Section 9(d).

5. The Master Jury Wheel and Selection of Names Therefor.

Names of prospective jurors to serve on grand and petit juries shall be selected at random, in the manner hereinafter set out, from the voter registration lists of the various counties comprising each division.

6. The voter registration lists referred to shall be those compiled and maintained by the

County Tax Assessor-Collector of each county showing the names of those persons registered to vote in the last general election as supplemented by the inclusion of subsequent registrants to the latest practicable date.

7. Such voter registration information is supplied by the Tax Assessor-Collector of each county from voter registration lists for each precinct within such county to the Office of the Secretary of State in Austin, Texas. It is the judgment of this court that the voter registration data used to construct the Master Jury Wheel may be acquired either directly from the County Tax Assessor-Collector of each county or from the Office of the Secretary of State in Austin, Texas, provided the data acquired from either source is the most current information available and has been updated to the last practicable date.

8. Having secured such lists as to each precinct in each county, the lists for a given county shall be placed in numerical order (i.e. the list for Precinct No. 1, followed by the list for Precinct No. 2, followed by the list for Precinct No. 3, etc.), which shall constitute the voter registration list for that county. Following the alphabetical order of the names of the counties, the lists from the several counties in a division will be assembled, and collectively will constitute the voter registration list for that division.

Such lists for each of the divisions of this court shall be kept and maintained by the Clerk in each such division, or may be kept either jointly or severally in a duly authorized data processing center.

9. In each division the Clerk shall maintain a master jury wheel for that division, into which the names, or the identifying numbers, of those selected at random from the voter registration lists for that division shall be placed. The random selection of names to be placed in the master jury wheel shall be accomplished by the following procedure:

(a) The court will by order indicate from time to time the number of names to be placed in the master wheel. The total of all registered voters within the division (as appearing from the lists, as reflected above) will be determined. This total (of all registered voters within the division) will then be divided by the number of names required by court order, and the quotient will be the increment to be utilized as hereinafter set out (thus, by example, if by order of court 7,000 names are to be placed in the master wheel, and if the total of the voter registration lists of all of the counties comprising the division be 700,000, then the increment is the figure 100).

(b) The Clerk will, by lot or by chance, draw a number from a beginning range of consecutively numbered cards placed in a drum or box. The last number of the beginning range and the increment should be the same ( e.g. if the increment is the figure 100, the cards should be numbered consecutively 1 through 100). The number so drawn shall be the start number.

(c) The number of names required by court order shall then be secured by selecting the name with the start number; and successive names shall be secured by adding to the start number the increment determined as above set out, and successively thereafter (thus, by example, if the start number selected by chance by the Clerk be 17, and the increment 100 as suggested above, the 17th, 117th, 217th, 317th, etc., name from each county of the division list would be selected and placed in the master wheel). The Clerk will maintain a record of the increment, the chosen start number, and the number of names added to the master jury wheel.

(d) Alternative to subsections (a) - (c), at the option of the Clerk and after consultation with the court, the selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Such random selections of names from the source lists for inclusion in the master wheel by data computer personnel must insure that each county within the jury division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. §1863(b)(3). The selections of names from the source list must also insure that the mathematical odds of any single name being picked are substantially equal.

10. The court may order additional names to be placed in the master jury wheel from time to time as necessary.

11. On the initial refilling of the master wheel in each division, not less than one percent (1%) of the total number of names appearing on the voter registration lists for that division shall be placed in such wheel.

12. The master wheel of each division shall be emptied and refilled no later than October 1 of the year following a presidential general election. Each master jury wheel shall be emptied and refilled periodically every four years.

13. Drawing from the Master Jury Wheel. From time to time as directed by the court, the

Clerk shall draw publicly and at random from the master jury wheel the names of as many persons as may be required by court order for jury service. Alternatively, at the option of the Clerk and after consultation with the court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel provided that the system insures that the mathematical odds of any single name being picked are substantially equal. The Clerk may, upon order of the Court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to this Plan and to 28 U.S.C.A. §§1867 and 1868. The Clerk shall mail to every person whose name is drawn from the master wheel a juror qualification form (as furnished by the Administrative Office of the United States Courts and as approved by the Judicial Conference of the United States), accompanied by instructions to fill out and return the form, duly signed and sworn, to the Clerk by mail within ten (10) days. If the person is unable to fill out the form, another shall do it for him and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the Clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the Clerk within ten (10) days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk forthwith to appear before the Clerk to fill out a juror qualification form.

14. Persons Exempt from Jury Service and Excuses on Individual Request.

(a) Persons Exempt.

The court finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act; accordingly, members of such groups are barred from jury service.

(1) Members in active service in the Armed Forces of the United States.

(2) Members of the fire or police departments of any state, city, municipality, district, territory, possession, or subdivision thereof.

(3) Public Officers in the executive, legislative, or judicial branches of the government of the United States, or of any state, district, territory, possession, or subdivision thereof, who are actively engaged in the performance of official duties. ("Public Officer" shall mean a person who is either elected to public office or who is directly appointed by

a person elected to public office.)

(b) Excuses on Individual Request.

The court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, and shall be granted upon individual request:

(1) Persons having active care and custody of a child or children under the age of ten (10) years whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of the aged or infirm persons and who is not employed outside of the home.

(2) Persons who have served as a grand or petit juror in federal court within the past two years. In this connection, in any two-year period, no person shall be required to

(i) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or

(ii) serve on more than one grand jury, or

(iii) serve as both a grand and petit juror.

(3) Persons over seventy (70) years of age.

(4) Members of federal law enforcement agencies (i.e., FBI agents, postal inspectors, customs agents, etc.).

(5) Members of volunteer safety organizations who work in an official capacity, without compensation, as fire fighters, members of a rescue squad or members of an ambulance crew.

15. Determination of Qualifications, Excuses, and Exemptions.

(a) The court upon its own initiative or upon recommendation of the Clerk, or the Clerk under supervision of the court, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, exempt, or to be excused from

jury service. The Clerk shall enter such determination in the space provided on the juror qualification form and on any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination, the court or Clerk under supervision of the court, shall deem any person qualified to serve on grand and petit juries in the district unless he:

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service, or

(5) has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

16. Qualified Jury Wheel. The Clerk shall maintain separate qualified jury wheels for each division in the district, and shall place in such wheel the names of all persons drawn from the master jury wheel who are not disqualified, exempt, or excused pursuant to this Plan. He shall insure that at all times at least 300 names are contained in each division's qualified wheel. The qualified jury wheel in each division shall be emptied and refilled effective October 1 of each year in which the master jury wheel is emptied and refilled, pursuant to Section 12 of this Plan. The qualified wheel shall then be periodically supplemented with the names of additional qualified persons from time to time as the need should occur during the four year life of the master jury wheel.

17. Drawing of Names From the Qualified Wheel. In each division, the names of persons for service as grand or petit jurors shall be drawn by the Clerk publicly and at random from the qualified wheel at such times and in such numbers as shall be ordered by the court. Alternatively, at the option of the Clerk and after consultation with the court, a properly programmed

electronic data processing system for pure randomized selection may be used to select names from the qualified wheel provided such system insures that the mathematical odds of any single name being picked are substantially equal. Such names shall form a pool from which both grand and petit jurors may be summoned. The Clerk shall use the following procedure for insuring the privacy of those people whose names are selected.

(a) The names so drawn shall not be disclosed to any person other than employees of the United States in the performance of their official duties, until after such jurors have been qualified and sworn by a judge or officer of the Court. The court may direct an earlier disclosure of the names drawn from the qualified jury wheel when the interests of justice require, and shall do so when required by statute (see, e.g., 18 U.S.C.A. § 3432). Unless ordered by the court, the names of jurors summoned for service shall not be disclosed except as provided in subsections (b) and (c) of this section.

(1) In each division, the Clerk shall prepare a list of names of persons drawn from the qualified wheel for grand or petit juror service. He shall issue or cause to be issued summons directed to the persons so drawn by use of first-class mail. In the event of an unanticipated shortage of available petit jurors, additional names may be drawn from the qualified wheel on order of the court.

(2) In the Galveston and Houston divisions, all grand juries shall sit in the Houston division, with members summoned from among those qualified for service in the Galveston or Houston division. The Clerk shall prepare a list of names of persons drawn from the qualified wheel of each division in a proportion equal to the proportion of registered voters between the two divisions. He shall issue or cause to be issued summons directed to the persons so drawn by use of first-class mail, requiring that such persons report for service to the Houston divisional office.

(b) After petit jurors have been qualified and sworn by a judge or officer of the Court, the names of such petit jurors who will proceed through voir dire in open court shall be made available to those parties and attorneys participating

in the trial. The presiding judge may order that the names remain undisclosed when it is in the interests of justice to do so. Upon completion of voir dire, all papers on which juror names appear shall be collected. Copies of the strike list and other papers associated with voir dire will be filed by the Clerk for maintenance according to Section 21 of this Plan.

(c) The names of those selected for grand jury service shall not be maintained in any public record or otherwise disclosed to any person other than employees of the United States in the performance of their official duties, except upon written motion for good cause, and in the public interest. Such motion shall be presented to the Chief Judge or, in his absence, to the judge next senior in commission. In connection with such disclosure, certain United States statutes, such as 18 U.S.C.A. § 3432, require disclosure.

18. Disqualification, Exemption, and Excuse After Summons. Except as herein above provided, no person or class of persons shall be disqualified, excluded, excused, or exempt from jury service, provided, that any person summoned for jury service may be:

(a) Excused by the Court, or by the Clerk under supervision of the Court, upon a showing of undue hardship or extreme inconvenience for such period as the court deems necessary. Jurors so excused shall be subject to subsequent jury service, unless the judge granting the excuse should otherwise rule at the time of the excuse.

Any person appearing pursuant to summons and then requesting to be excused for reasons that could readily have been presented prior to his appearance, shall not receive attendance or mileage fees.

When there is an excess of jurors present (e.g. grand jury) and their presence is required for only one day, the court shall, in its discretion, upon excusing excess jurors, inform them that they are subject to subsequent jury service.

(b) Excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings;

(c) Excluded upon peremptory challenge as provided by law;

(d) Excluded pursuant to the procedure specified by law upon a challenge by any

party for good cause shown;

(e) Excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations.

No person shall be excluded under clause (e), above, unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under clause (e), above, shall not exceed one percent of the number of persons who return executed juror qualification forms during the period, specified in the Plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (e), above, together with detailed explanations for the exclusions, shall be forwarded immediately to the Judicial Council of the circuit, which shall have the power to make any appropriate order, prospective, or retroactive, to redress any misapplication of clause (e), but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of Title 28 of the United States Code. Any person excluded from a particular jury under clause (b), (c), or (d), above, shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

19. Utilization of Petit Jurors Among Various Judges in the Same Division. It shall be the policy of this court to utilize the services of all qualified jurors summoned as fully and as efficiently as circumstances permit. To that end, it is contemplated that the judges of this court will coordinate their jury settings to permit the same pool of petit jurors to serve more than one judge. Jurors summoned for service shall appear at the time and place designated in the summons . The names of those appearing shall be listed on separate cards or computerized database records. In choosing a panel to serve in a particular judge's courtroom for a given period of time, or for the trial of a particular case or cases, the panel shall be chosen by shuffling or thoroughly mixing the cards or database records of all jurors in the jury pool then available for such service; and the requisite number to compose such panel shall be taken in order from such commingled cards or database records. On completion of such service, the jurors composing such panel may be returned to the pool for further service in the same or another courtroom.

20. Challenging Compliance With Selection Procedures.

The procedures prescribed by 28 U.S.C.A. § 1867 shall be the exclusive means of challenging any jury on the ground that such jury was not selected in conformity with the provisions of Chapter 121

of Title 28 of the United States Code Annotated.

21. Maintenance of Records. After any master jury wheel is emptied and refilled as provided above, and after all persons selected to serve as jurors before such master wheel was emptied have completed their service, all papers and records compiled and maintained by the Clerk before the master wheel was emptied shall be preserved in the custody of the Clerk for four (4) years and shall be available for public inspection for the purpose of determining the validity of the selection of any jury. At the conclusion of such four-year period, such records and papers shall be destroyed.

22. This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date, as the source of an at random selection of prospective grand and petit jurors who represent a fair cross section of the community. This determination is supported by all the information this court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit. In order to assure the continuous implementation of the policy, purpose and intent of the Jury Selection and Service Act, as required by the Judicial Conference of the United States, a report will be made to the U. S. District Court, Southern District of Texas within six months following each periodic refilling of the master jury wheel, on forms approved by the Judicial Conference, giving general data relating to the master jury wheel, the time and manner of name selection, the source and number of names placed in the wheel and related information, and an analysis of the race and sex of prospective jurors based on returns of juror qualification forms mailed to a statistically reliable sample of persons chosen at random from the master jury wheel.

ADOPTED this 21 day of July, 2005.

HAYDEN HEAD
CHIEF UNITED STATES DISTRICT JUDGE