APPENDIX "D"

AMENDED PLAN PROVIDING FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS IN THE WESTERN DISTRICT OF TEXAS

This amended plan for the random selection of grand and petit jurors in the United States District Court for the Western District of Texas is hereby adopted subject to the approval of the Reviewing Panel of the Fifth Circuit Judicial Council as required by the Jury Selection and Service Act of 1968 and the Jury System Improvements Act of 1978 (Title 28 U.S.C. §§ 1861, et. seq.). There is incorporated herein by reference all provisions of Chapter 121, sections 1861, et seq., Title 28, United States Code, and all other laws which hereinafter may be enacted relating to juries and trial by jury.

I.
POLICY

It is the policy of this Court that all litigants in any division of this District 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 wherein this Court convenes; and that all citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose. The use of the word "Court" in this plan shall contemplate any district judge assigned to any division in this District. The phrase "Chief Judge of this District" wherever used in this Plan shall mean the Chief Judge of the Western District of Texas, or in the event of the Chief Judge's absence, disability, or inability to act, the active district judge who is present in the district and has been in service for the greatest length of time.

II.
DISCRIMINATION PROHIBITED

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.

III.
APPLICABILITY OF THE PLAN

This plan shall be applicable to each of the divisions of this Court as established by section 124 (d), Title 28, United States Code. A master and qualified jury wheel shall be maintained for each division. The counties comprising each division of this District are as follows:

(1)	AUSTIN DIVISION:	Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson.
(2)	DEL RIO DIVISION:	Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavala.
(3)	EL PASO DIVISION:	El Paso and Hudspeth[1].
(4)	PECOS DIVISION:	Brewster, Culberson, Jeff Davis, Loving, Pecos, Presidio, Reeves, Ward and Winkler.
(5)	SAN ANTONIO DIVISION:	Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson.
(6)	WACO DIVISION:	Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell.
(7)	MIDLAND-ODESSA DIVISION:	Andrews, Crane, Ector, Martin, Midland and Upton.

IV.
RANDOM SELECTION FROM VOTER REGISTRATION LISTS

The random selection of names of prospective jurors to serve on grand and petit juries shall be drawn from the General Election Voter Registration Lists ("voter registration lists") of the counties comprising each division by the Clerk, any duly authorized deputy clerk, or any other person authorized by the Court to assist the Clerk, either manually or through the use of an electronic data processing system, or through a combination of manual and computer methods. The selection of names shall commence by a purely randomized process through routines approved by the National Institute of Standards and Technology ("NIST"). This Plan is based on the considered conclusion and judgment by the Court 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

[1] On August 22, 2003, the judges of the Western District of Texas entered an order based on a determination that it would be in the best interests of the judicial administration of justice in the El Paso and Pecos Divisions of this Court to have all criminal cases arising in Hudspeth County filed in the El Paso Division as opposed to the Pecos Division, wherein Hudspeth County lies. On May 13, 2006, a second order was entered which supplemented the first order to further provide that all civil causes of action arising in Hudspeth County be filed in the El Paso Division as well. As a consequence of these orders, prospective jurors residing in Hudspeth County have been removed from the Pecos Division Qualified Jury Wheel and placed into the El Paso Division Qualified Jury Wheel. Copies of the above and foregoing orders are included as Attachment "I" and Attachment "II".

supplemented by the inclusion of subsequent registrants to the latest practicable date, as the exclusive source of names of prospective grand and petit jurors, drawn at random and being representative of a fair cross-section of the community.

The voter registration lists referred to shall be those compiled and maintained by the County Tax Assessor-Collector, Elections Administrator, or other such duly elected official for that county reflecting 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. Such voter registration information is supplied by the Tax Assessor-Collector, Elections Administrator, or other such duly elected official from voter registration lists for each precinct within such county to the Office of the Secretary of State for the State of Texas in Austin, Texas. It is the judgment of this Court that the voter registration data used to construct each Master Jury Wheel may be acquired either directly from the County Tax Assessor-Collector, Elections Administrator, or other such duly elected official for each county within the District or from the Office of the Secretary of State for the State of Texas in Austin, Texas, provided the data acquired from either source is reflective of the most current information available and has been updated to the last practicable date.

V.
MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The Clerk of Court, one or more designated deputy clerks, or other authorized representative as directed by the Clerk, is empowered to perform every act required or permitted by law or this Plan to manage the jury selection process in the various divisions of this District under the general supervision and control of the Chief Judge, who will perform all duties imposed which cannot be lawfully delegated in accordance with the provisions of the Jury Selection and Service Act of 1968.

The Court finds it advantageous to use an electronic data processing system to maintain the Master Jury Wheels and Qualified Jury Wheels and to perform other clerical services related to the management and use of 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 combination of manual and electronic records system, to perform the duties of Clerk to achieve the same results as following a manual selection procedure.

VI.
MASTER JURY WHEEL

For each division, the Clerk shall provide a Master Jury Wheel 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 Clerk shall select names from the complete source list databases by electronic media for each Master Jury Wheel by a purely randomized process. An electronic data processing system for pure randomized selection shall be used to select names from each Master Jury Wheel for the purpose of determining qualification for jury service, and from each Qualified Jury Wheel for the

purpose of summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in each Master Jury Wheel must ensure that each county within the jury division is substantially proportionately represented in the Master Jury Wheel in accordance with the provisions of 28 U.S.C. § 1863 (b)(3). The selections of names from the source list, the Master Jury Wheels, and the Qualified Jury Wheels must also ensure that the mathematical odds of any single name being picked are substantially equal.

The total number of names placed in the Master Jury Wheel for each division shall be determined by the Clerk after consultation with the Chief Judge. To arrive at the total number of names to be placed in the Master Jury Wheel at each division, the Clerk, or a duly authorized deputy clerk, will determine the total number of registered voters for the particular division. The number taken as the total for each county will be based on the official count of voters registered by county. The Clerk will divide the total number of names on the voter registration lists by the number of persons needed to fill the Master Jury Wheel for each division. The selection of names shall commence by a purely randomized process through routines approved by the NIST.

The total number of names for each Master Jury Wheel shall not be less than one-half of one percent of the total number of persons on the voter registration lists in each division. In no event shall the number of names placed in the Master Jury Wheel for any division be less than one thousand (1,000). The Chief Judge may order additional names to be placed in the Master Jury Wheel as and when needed. From time to time, as directed by the Chief Judge, the Clerk shall publicly draw at random from the Master Jury Wheel the names of as many persons as may be required for jury service. The Clerk shall mail to every person whose name is so drawn, a Juror Qualification Questionnaire Form ("juror qualification form"), with 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 that person and shall indicate the reason therefor. In drawing the names, allowance should be made for the possibility that some forms will not be returned, that some individuals may be exempt by law, and that others may not be able to comply with the statutory qualifications. Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk to appear and fill out such a form; provided, that any person who returns an executed juror qualification form by mail, and who is subsequently summoned for jury service, may be required at the time of his appearance to fill out another juror qualification form in the presence of the Clerk. Any person who fails to appear as directed, or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror, shall be subject to the provisions of Section 1864(b) of Title 28 U.S.C.

The Master Jury Wheel shall be emptied and refilled, pursuant to the procedure set forth in the Plan, not later than September 1, 2007; and thereafter every two years between January 1 and October 1.

VII.
JUROR QUALIFICATION QUESTIONNAIRE FORM

The juror qualification form shall elicit the information contemplated by the questions reflected on the form furnished by the Administrative Office of the United States Courts and as approved by the Judicial Conference of the United States, pursuant to Section 1869(h) of Title 28,

United States Code. Upon recommendation of the Clerk, or on its own initiative, 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, or exempt, or to be excused or excluded from jury service; and such determination shall be entered by the Clerk in the space provided on the juror qualification form.

Upon determination of disqualification based on non-citizenship, the Clerk will provide such non-citizenship information to the Elections Division of the Secretary of State for the State of Texas in Austin, Texas in compliance with the provisions of section 1867(f), Title 28, United States Code.

If a juror has changed residence from one division in this District to another division within this District, that juror shall be disqualified from the division of original residence and the juror's name shall be placed into the Qualified Jury Wheel of the division in which that juror resides, provided that the responses on the juror qualification form or follow-up questionnaire otherwise render that person qualified to serve as a juror. If the responses render this person unqualified, then that juror shall be pulled from the Qualified Jury Wheel of the original division and designated disqualified.

VIII.
QUALIFICATIONS TO SERVE

Any person shall be deemed qualified to serve on grand and petit juries in this Court unless that person: (1) is not a citizen of the United States; or (2) is not eighteen years of age; or (3) has not resided for a period of one year within the judicial district; or (4) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; or (5) is unable to speak the English language; or (6) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or (7) has a charge pending for the commission, or has been convicted in a State or Federal Court of record, of a crime punishable by imprisonment for more than one year and that person's civil rights have not been restored.

In any two-year period, no person shall be required to: (1) 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 (2) serve on more than one grand jury; or (3) serve as both a grand and petit juror.

IX.
EXCLUSIONS OR EXCUSES FROM JURY SERVICE

Except as provided herein, no person or class of persons shall be disqualified, excluded, excused or exempted from service as jurors; however, any person summoned for jury service may be: (1) excused by the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary, at the conclusion of which such person shall be summoned again for jury service; or (2) 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; or (3) excluded upon peremptory challenge as provided by law; or (4) excluded

pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or (5) excluded upon determination by the Court that such service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. Any exclusion pursuant to clause (5) shall be in accordance with 28 U.S.C. Section 1866 (c).

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 may be granted upon individual request:

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

(2) Any student enrolled in a public or private secondary school and any full-time student enrolled at an institution of higher education.

(3) Persons who serve without compensation as a volunteer firefighter or member of a rescue squad or ambulance crew for a federal, state or local government agency.

X.
EXEMPTIONS FROM JURY SERVICE

The Court finds that the exemption of members of the following occupational classes or groups of persons is in the public interest, consistent with law, and not 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 the State or any 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, or 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.)

XI.
QUALIFIED JURY WHEEL

The Clerk shall maintain separate Qualified Jury Wheels for each division in the District, and shall place in such wheels the names of all persons drawn from the respective Master Jury Wheels who are not disqualified, exempt or excused pursuant to this Plan. The names of both grand and petit jurors for each division shall be publicly drawn at random, as defined in 28 U.S.C. 1869(k), from the Qualified Jury Wheels which shall contain the names of not less than 300 qualified persons in such division at the time of each drawing. Into such wheel shall be placed from time to time as needed the names of persons drawn from the Master Jury Wheel, who are deemed to be qualified as jurors and not exempted or excused. The Qualified Jury Wheel shall be emptied and refilled, pursuant to the procedure herein prescribed, after the Master Jury Wheel has been emptied and

refilled but not later than October 1, 2007, and thereafter every two years between January 1 and October 1. Any unanticipated shortage of petit jurors can be supplied only by drawing the names of additional jurors from the Master Jury Wheel for that division.

In drawing names from the Qualified Jury Wheels for the purpose of summoning persons to serve as grand or petit jurors, the Clerk shall maintain a properly programmed electronic data processing system which provides for names to be selected in a purely randomized process through routines approved by the NIST. Such random selections of names from the Qualified Jury Wheel must ensure that the mathematical odds of any single name being picked are substantially equal in accordance with the purely randomized process.

Prospective jurors in each division may be summoned separately to serve exclusively as either grand or petit jurors; or prospective jurors may be summoned to appear at the same time for later assignment to either the grand jury or the petit jury panel. In the latter event, the Clerk shall publicly draw at random the names of all persons summoned for service as either grand or petit jurors, a sufficient number to be then and there sworn as grand jurors, and the remainder shall be sworn as petit jurors. In either event, the Clerk shall prepare a separate list of names of persons assigned to grand and petit juries. The drawing of names of prospective jurors by the authorized automated selection method shall be at the District's primary computer center in San Antonio, Texas. The location and approximate time for such drawings shall be publicly announced by the posting of a notice in a public place within the office of the U.S. District Clerk.

When the Court orders a grand and/or petit jury to be drawn for any division or divisions, the Clerk shall issue summonses for the required number of jurors. Service of summonses may be made by personal service, first class mail, or by registered or certified mail. If service is to be made by first class mail or by registered or certified mail, the summonses may be served by the Clerk or a duly designated deputy clerk who shall make affidavit of service. If service is effected by registered or certified mail the addressee's receipt shall be filed with the affidavit of service.

However, upon approval of the district judge supervising the grand jury before which a case is presented, nothing herein shall preclude a grand jury exclusively drawn and empaneled in one division of this District from considering a matter chargeable in another division of this District provided that the borders of said division are contiguous to the division in which the offense was committed, in whole or in part.

XII.
DISCLOSURE OF NAMES OF JURORS

In each division of this District, the names of prospective grand jurors and/or petit jurors drawn from the Qualified Jury Wheel shall not be disclosed prior to the date of appearance and qualification of such jurors, unless otherwise directed by the Court; however, the Court in any case may keep such names confidential for such period of time as the interests of justice may require or as otherwise required by the privacy provisions found in the E-Government Act of 2002.

XIII.
UTILIZATION OF PETIT JURORS IN MULTI-JUDGE DIVISIONS

It is the policy of this Court to utilize the services of all qualified jurors summoned to appear for jury service as fully and efficiently as circumstances permit. To that end, it is contemplated that the judicial officers in multi-judge divisions of this District will coordinate their jury settings to permit the same pool of petit jurors to serve more than one judge. Jurors summoned for jury service shall appear at the time and place designated in the summons.

XIV.
CHALLENGING COMPLIANCE WITH SELECTION PROCEDURES

In all civil and criminal cases, the exclusive method of challenging any jury on grounds that such jury was not selected in conformity with the provisions of Chapter 121 of Title 28, United States Code, shall be that provided by any existing statute and rule of civil and criminal procedure, including but not limited to section 1867, Title 28, United States Code. Requests to inspect, reproduce, and copy records or papers used by the Clerk in the jury selection process must be submitted in writing to the Clerk or by properly filed motion, for determination by the Court.

XV.
MAINTENANCE OF JURY RECORDS

The Clerk shall retain and, upon request, provide access to the following public documents:

(1) the Court's "Amended Plan for the Random Selection of Grand and Petit Jurors";

(2) a verbal description, flow chart, or algorithm of the procedure(s) employed in the automated selection process;

(3) a copy of the Court's order authorizing or instructing the effectuation of the automated, random selection of names from the Qualified Jury Wheel; and

(4) a copy of the public notice.

After any Master Jury Wheel is emptied and refilled as provided above, and after all persons selected to serve as jurors before such Master Jury Wheel was emptied have completed their service, all papers and records compiled and maintained by the Clerk before the Master Jury Wheel was emptied shall be preserved in the custody of the Clerk for four (4) years, or for such longer period as may be ordered by the Court, and shall be available for public inspection for the purpose of determining the valid selection of any jury. At the conclusion of such four year period, unless a longer period has been ordered by the Court, such records and papers shall be destroyed.

XVI.
REPORTING STATEMENT

This Plan is based on the conclusion and judgment of the Court 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 review of information received from the Office of the General Counsel of the Administrative Office of the United States Courts and the Judicial Council of the Fifth Circuit.

As required by the Judicial Conference of the United States, a report will be made within six months after each periodic refilling of the Master Jury Wheels in this District, in a format acceptable to the Judicial Conference, providing general data relating to each 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.

XVII.
EFFECTIVE DATE

The provisions of any plan now in effect are superseded and this amended plan shall become effective upon the approval of the reviewing panel of the Judicial Council of the United States Court of Appeals for the Fifth Circuit, as required by 28 U.S.C. §1863(a), at which time a copy shall be filed with the Clerk in each division of the District.

Adopted at San Antonio, Texas, this 30th day of September, 2006, by unanimous consent of the Court.

WALTER S. SMITH, JR
Chief Judge

This amended Plan approved by the Judicial Council for the United States Court of Appeals for the Fifth Circuit this ____, day of_____, 2006.

GREGORY A. NUSSEL
Secretary to the Judicial Council

FILED, this _____ day of _____, 2006.

_____

WILLIAM G. PUTNICKI
United States District Clerk
Western District of Texas

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO/PECOS DIVISIONS

FILED

AUG 22 2003

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

§
§
§

ORDER

The District Judges of the Western District of Texas, have determined that in order to better and more efficiently handle the Court's burgeoning docket, the business of the court should be adjusted in the El Paso and Pecos Divisions due to the increased number of criminal defendants arrested in Hudspeth County. Considering the number of arrestees and the distance between Pecos and Hudspeth County, the undersigned has determined that the interests of justice and the expeditious administration of the courts and their related agencies will best be served by having those criminal matters arising in Hudspeth County handled in all respects in the El Paso Division rather than the Pecos Division. Accordingly, it is

ORDERED that, pursuant to Rule CR-6B(a)(2) of the Local Court Rules of the Western District of Texas, for all new criminal matters arising in Hudspeth County

after the date of this Order venue shall be in the El Paso Division rather than the Pecos Division in all respects, from initial appearance through final disposition.

SIGNED this 22nd day of ~~July~~ August, 2003.

WALTER S. SMITH, JR.
Chief United States District Judge

SAM SPARKS
United States District Judge

ROYAL FURGESON
United States District Judge

FRED BIERY
United States District Judge

ORLANDO GARCIA
United States District Judge

DAVID BRIONES
United States District Judge

PHILIP R. MARTINEZ
United States District Judge

ALIA M. LUDLUM
United States District Judge

ROBERT A. JUNELL
United States District Judge

JAMES R. NOWLIN
Senior United States District Judge

HARRY L. HUDSPETH
Senior United States District Judge

FILED

MAY 16 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO/PECOS DIVISIONS

§
§
§

ORDER

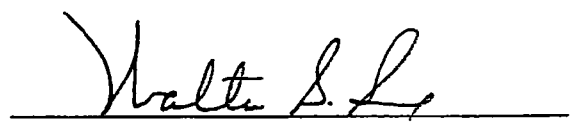
In August of 2003, the district judges of this Court determined that the criminal docket in the El Paso and Pecos divisions could be more efficiently and effectively managed by requiring all criminal matters arising in Hudspeth County to be handled exclusively in the El Paso Division rather than the Pecos Division of this Court. Consequently, on August 22, 2003, an order was entered in accordance with the provisions of Rule CR-6B(a)(2) of the Local Court Rules for the Western District of Texas, requiring that venue for all new criminal matters arising in Hudspeth County be in the El Paso Division in all respects.

It appearing that the same rationale holds true for civil actions as well,

IT IS HEREBY ORDERED that effective the date of this order, all new civil actions arising in Hudspeth County of the Pecos Division are required to be filed in the El Paso Division of this Court.

SIGNED, this 13 day of May, 2006.

For the Court:



WALTER S. SMITH, JR.
Chief Judge

Attachment "II"