



A View from the Bench

Do's & Don'ts of Voir Dire

Judge Ethna Cooper

Cincinnati, OH

VOIR DIRE – A JUDGE’S PERSPECTIVE

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2313.08 Annual jury list.

(A) The jury year in each county shall begin on the first Monday of August of each year, provided the court of common pleas may designate otherwise. A new and complete jury list shall be made up annually by the commissioners of jurors, and shall be certified by them and filed in their office before the beginning of each jury year. The names shall be entered in a suitable book or record, to be known as the "annual jury list," shall be arranged alphabetically so far as practicable and under convenient divisions by precincts, districts, and townships, and shall be properly indexed. With each name shall be recorded the occupation, place of business, place of residence, duration of residence in this state, citizenship status, date of birth, and social security number of the person, as nearly as they can be ascertained. A duplicate of the list shall be certified by the commissioners and filed in the office of the clerk of the court of common pleas. The commissioners may, by order of the court, add to the list, or enter on a supplementary list, the names of persons who shall thereafter be discovered to be qualified to serve as jurors.

(B) In the selection of names for the annual jury list, the commissioners may select all names other than names of persons excused from service permanently pursuant to section 2313.16 of the Revised Code from the list of electors certified by the board of elections pursuant to section 2313.06 of the Revised Code or may select all names other than names of persons excused from service permanently pursuant to section 2313.16 of the Revised Code from the list of qualified driver licensees certified by the registrar of motor vehicles pursuant to section 2313.06 of the Revised Code and from the list of electors certified by the board of elections pursuant to section 2313.06 of the Revised Code. The commissioners may not select for the annual jury list names of persons who are excused from service permanently pursuant to section 2313.16 of the Revised Code.

In the selection of the names for the annual jury list, unless otherwise ordered by the court, the commissioners shall assign a consecutive number to each name, starting with one, and shall use a key number that shall be designated by the court. The commissioners shall select the name of each prospective juror, starting with the name that corresponds to a randomly selected number that may range from the number one to the key number, and proceeding accordingly in the numerical sequence of the key number so designated, until the required number of prospective jurors has been selected.

(C) Automation data processing procedures and visual display apparatus may be utilized in the selection of the names for the annual jury list, and in the actual compilation of the list.

Effective Date: 10-01-1984; 05-18-2005

JUROR QUESTIONNAIRE

Hamilton County, Ohio

1) NAME & AGE: _____
(First) (Middle Initial) (Last) (Age)

2) AREA OF COUNTY YOU RESIDE _____ LENGTH OF RESIDENCE _____
 PLACE OF BIRTH _____ YEARS OF RESIDENCE IN HAMILTON COUNTY _____

3) HIGHEST LEVEL OF EDUCATION-WHERE ATTENDED/FIELD OF STUDY _____

5) OCCUPATION & EMPLOYER _____
(IF RETIRED, WRITE "RETIRED" AND GIVE LAST OCCUPATION AND EMPLOYER)

6) IF YOU ARE A WIDOW OR A WIDOWER GIVE LATE SPOUSE'S OCCUPATION AND EMPLOYER _____

7) MARITAL STATUS: Married _____ Separated _____ Widow _____ Number of Children/ _____
(Please Check) Single _____ Divorced _____ Widower _____ Age Range _____

8) LIST LIVING MEMBERS OF YOUR FAMILY: (DO NOT PUT NAMES)

RELATIONSHIP SPOUSE - CHILD	AGE	LIVING WITH YOU		OCCUPATION	EMPLOYER
		Yes	No		

9) Have you served as a juror before? When? Type of Case? _____

10) Have you or a member of your family been charged with a crime? Explain _____

11) Have you or a member of your family been a victim of a crime? Explain _____

13) Have you or a member of your family been involved in a lawsuit? Explain _____

14) Are you related to or a close friend of any law enforcement officer or prosecutor? What are your feelings about police officers? _____

15) What clubs/organizations do you belong to? _____

16) What magazines do you read? _____

17) Do you think you would be a good juror? Why? _____

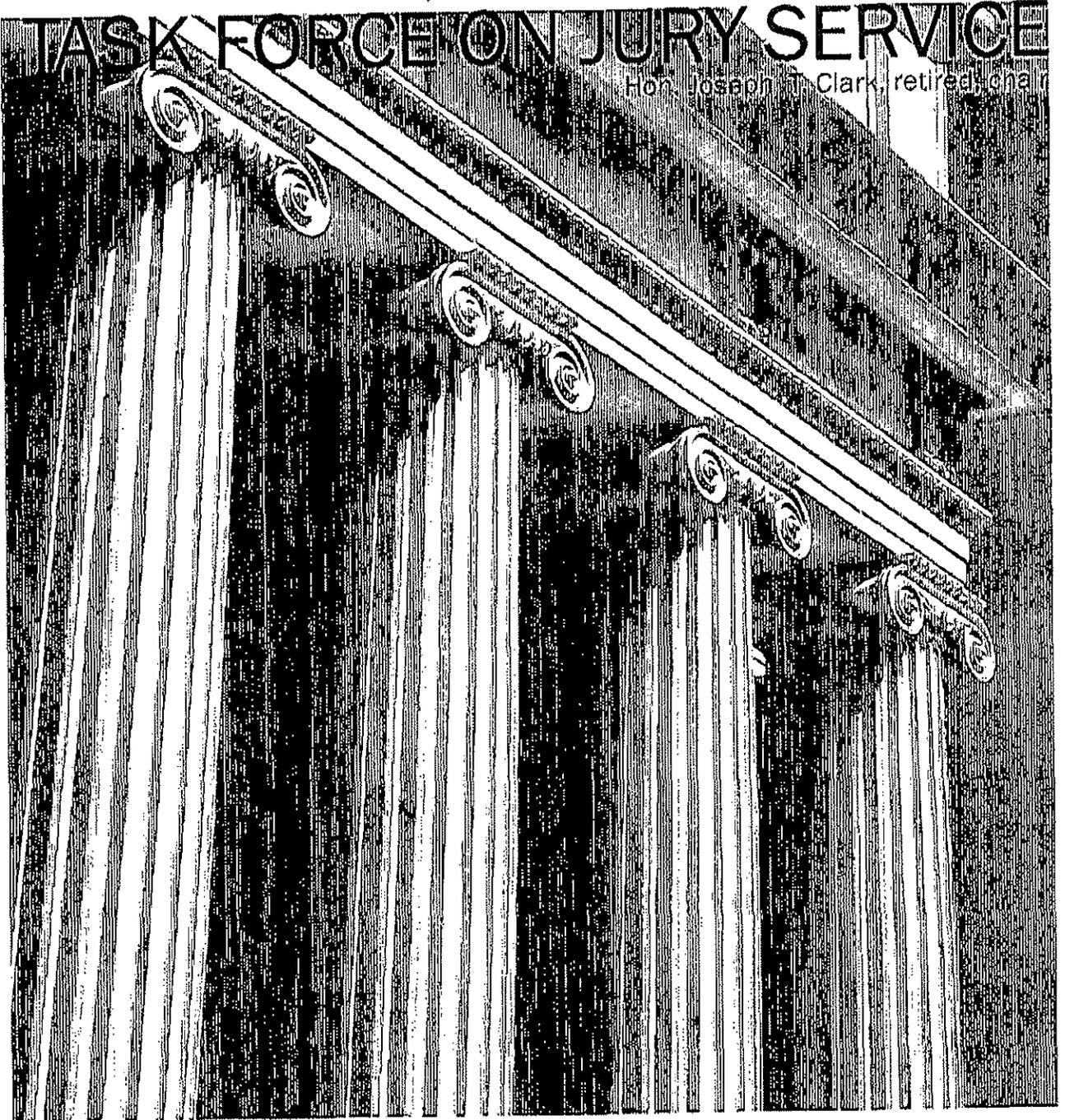
Juror Signature



REPORT and RECOMMENDATIONS
of the Supreme Court of Ohio

TASK FORCE ON JURY SERVICE

Hon. Joseph W. Clark, retired, chair



February 2004

OVERVIEW OF RECOMMENDATIONS

TRIAL PRACTICE

The Task Force on Jury Service considered improvements to make the judicial process comprehensible to jurors thereby creating a more satisfactory jury experience. The Task Force had volunteer judges participate in pilot projects to test innovative practices in the courtroom and surveyed all courtroom participants, including judges, attorneys and jurors. The Task Force concludes that implementation of trial innovations will improve juror comprehension and satisfaction and will enhance the quality of justice. Therefore, The Task Force strongly recommends that the following jury procedures be implemented and that the other steps described below be taken.

- Jurors are entitled to a brief statement of the case by the court or counsel prior to the beginning of voir dire and also interim summaries by counsel as the case proceeds, especially in lengthy, complex litigation.
- Courts are encouraged to try alternative methods of jury selection and also encourage judicial education on various selection alternatives.
- Jurors are entitled to understand the proceedings in the courtroom and "plain English" should be used at trial and in jury instructions.
- Jurors are entitled to be provided a copy of written instructions, including any preliminary instructions and final instructions. Rule of Civil Procedure 51 should be amended to reflect that a court shall reduce its instructions to writing and provide the written instructions to the jury. The rule also should be amended to include "the legal claims and defenses of the parties" in the list of instructions the court may give at the commencement of trial.

- Jurors are entitled to receive preliminary instructions on some aspects of the law and procedure prior to the taking of evidence in a case.
- Jurors are entitled to take notes during trial with appropriate instructions from the court that note taking should not interfere with the trial process. The Supreme Court of Ohio should promulgate a rule allowing jurors to take their notes into the deliberation room.
- Jurors are entitled to ask questions of witnesses unless the court, in its discretion, finds in a specific case that the process will not contribute to the search for truth.
- Jurors are entitled to be provided notebooks for collating admitted evidence in lengthy, complex cases or where it will enhance a juror's comprehension of the evidence.
- Jurors should be instructed on the substantive law prior to the attorneys' closing arguments.
- Ohio Revised Code section 2945.29 should be repealed and Rule of Criminal Procedure 24(F) be amended to allow an alternate juror to substitute after the case has been submitted to the jury, if one of the deliberating jurors, for any reason, is unable to continue to perform the juror's duties.
- Jurors are entitled to be given suggestions regarding the procedures they can follow in conducting deliberations.
- Jurors are entitled to ask questions about the court's instructions.
- Jurors shall have the opportunity to meet with the judge and the trial attorneys after the jury is discharged, unless it is determined that such a meeting would not be in the interests of justice.
- Counseling services should be made available to jurors after especially stressful trials.
- Ohio Revised Code Sections 2939.06 and 2945.28 should be revised to simplify the oath for grand jurors and petit jurors.
- Ohio Revised Code Section 2939.07 should be amended to provide grand jurors, in writing, the elements of each crime the grand jury may be considering while hearing the evidence on each case and during deliberations.

JUROR SELECTION

The Task Force explored issues relating to the representativeness of the jury system and developed recommendations to address any identified concerns. A primary focus was to develop a process by which courts could evaluate their jury systems, using local demographic information in comparison with juror demographic information. To ensure a broad perspective on this issue, the information reviewed included the relevant sections of the Ohio Revised Code, the Ohio Trial Court Jury Use and Management Standards, the Ohio Courts Futures Commission Report, the Action Plan of the Racial Fairness Implementation Task Force, responses to an inquiry sent out through the National Center for State Courts concerning experiences with combined lists for the selection of jurors and reports issued by other state jury task forces.

BACKGROUND INFORMATION

Ohio Revised Code

Current Ohio law (R.C. 2313.06, R.C. 2313.08) requires that jurors be selected from either the list of registered voters *or* a combined list of registered voters and licensed drivers. The majority of counties in Ohio use only the list of registered voters. Those that use a combined list are generally less populated counties. Legislation has been proposed in the past mandating the use of the combined list. That legislation did not move forward because of numerous concerns about the issues associated with a combination of the two lists. Additional information on the experiences of other states in using more than one list for the purpose of jury selection will be provided later in this report.

Ohio Trial Court Jury Use and Management Standards

The Supreme Court of Ohio adopted the Ohio Trial Court Jury Use and Management Standards in August 1993. The standards are guidelines, not mandates, for the trial courts in Ohio. Each Court is required to have a jury management plan which addresses

the standards. The following standards have an impact upon jury selection:

Opportunity for Service

- The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group in the jurisdiction.
- Jury service is an obligation of all qualified citizens.

Jury Source List

- The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.
- The jury source list should be representative and should be as inclusive of the adult population in the jurisdiction as is feasible.
- The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction as is feasible.
- Should the court determine that improvement is needed in the representativeness or the inclusiveness of the jury source list, appropriate corrective action should be taken.

Random Selection Procedures

- Random selection procedures should be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection. These methods should be documented.
- Random selection procedures should be employed in:
 - Selecting persons to be summoned for jury service;
 - Assigning prospective jurors to panels; and
 - Calling prospective jurors for voir dire.
- Departures from the principles of random selection are appropriate:
 - To exclude persons ineligible for service in accordance with Standard 4;

To excuse or defer prospective jurors in accordance with Standard 6;
To remove prospective jurors for cause or if challenged peremptorily in accordance with Standards 8 and 9; and
To provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with Standard 13.

Eligibility for Jury Service

All persons should be eligible for jury service except those who:

- Are less than eighteen years of age;
- Are not citizens of the United States;
- Are not residents of the jurisdiction in which they have been summoned to serve;
- Are not able to communicate in the English language; or
- Have been convicted of a felony and have not had their civil rights restored.

The obvious objective of the above standards is to insure that there are not inappropriate barriers to jury service for those individuals who are a part of the community.

Racial Fairness Implementation Task Force

The action plan issued by the Racial Fairness Implementation Task Force in September 2002 contained a number of recommendations relating to jury service. The report issued by the Commission on Racial Fairness stated that "it is imperative that criteria and procedures of jury selection and treatment of juries within the administration of justice be democratic and free from unfair treatment and bias." The action plan noted that "there is the perception, if not the reality, that this standard is not being met in the state of Ohio. Different racial fairness issues can emerge depending upon widely diverse demographics of the state...an appropriate standard of information and education in racial diversity is not

only essential but also demanded." The following recommendations from the Commission followed by a Task Force Action Plan were presented:

- **COMMISSION RECOMMENDATION:** The sources for jury selection should be further expanded. While currently the source for jurors is the voter registration list, we recommend that driver's license records, state identification records, and other appropriate sources also be used as lists of potential jurors.

TASK FORCE ACTION PLAN: The Task Force recommends including driver's license records as sources for voter registration lists, and excluding state identification records.

- **COMMISSION RECOMMENDATION:** Research should be conducted to determine accurately the pattern of minority under-representation in juries in Ohio state courts.

TASK FORCE ACTION PLAN: The Task Force recommends the Supreme Court facilitate research to determine whether and to what extent there is minority under-representation in Ohio state courts.

The Ohio Courts Futures Commission Report

The Ohio Courts Futures Commission Report, issued in May 2000, also addressed some aspects of jury management which could have an impact upon the diversity of the jury system.

The vision statement for 2025 contained in the report declared "persons called for jury duty will respond as responsible citizens performing a valued community service. Jury pools will reflect the full diversity of the communities they serve." To reach this vision, the Futures Commission recommended that "courts use expanded source lists to develop jury pools that are demographically representative of the jurisdiction. In addition to voter registration lists, pools should be drawn from driver license and non-driver license ID card files, vehicle registration lists, public directories, and other sources."

REPRESENTATIVE JURIES

The common theme of all of the above-referenced material is the desire for the jury system to be fair and free from bias. For many people, this means that the jury sitting in the courtroom should reflect the composition of the community in which the case is being heard. While this interpretation is common, it is, in fact, not reflective of either constitutional language or case law.

The Fourteenth Amendment to the United States Constitution states "No state ... shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." Case law has stated that the Sixth Amendment guarantee of a right to a jury trial requires that jurors come from a source that fairly represents a cross section of the community (Taylor v. Louisiana (1975), 419 U.S. 522, 528).

Although there can be no systematic exclusion of distinctive groups in the community, there is also no requirement that a jury seated to hear a case mirror the community and reflect distinctive groups. The use of the voter registration list as a source list for a jury has been repeatedly upheld (State v. Johnson (1972), 31 Ohio St.2d 106).

Use of Combined Lists:

The Lucas County Common Pleas Court engaged in a study in 1997 funded by a technical assistance grant from the Supreme Court of Ohio to develop a methodology to measure the representativeness of the jury system. A subsequent grant from the State Justice Institute allowed the court to enlist the services of the University of Toledo Urban Affairs Center to apply the methodology. The study concluded that the racial and ethnic

composition of registered voters and licensed drivers did not totally reflect the diversity of the population of Lucas County.

The study also revealed that the list of licensed drivers was less representative of minority populations than the list of registered voters. The study determined that the poor quality of the driver's license list and the lack of information to identify duplicates were also deterrents to the use of a combined list to enhance the representativeness of the jury system in Lucas County.

Recommendations included efforts to improve the quality of both the voters and driver's license lists and the more rigorous enforcement of the appearance rate for jury service. This study highlights that the representativeness of the jury system must be measured at many points in the process to gain insight into possible barriers to jury service that may affect the diversity of the jury pool.

Several other states have had experience with the use of a combined list. A number of court professionals shared their perspective on the practice. It was reported that the combined lists of registered voters and licensed drivers have been used in North Carolina since the early 1980s. Challenges arising from using the combined list included the removal of duplicates, since there is no common identifier such as a Social Security number, and the lack of current information due to sporadic purging of the voters list and a five year renewal period for a driver's license. It was noted that the use of the voters and drivers list produced a more representative source list than when North Carolina used the property tax list.

A clerk of court from Wisconsin reported that all courts must use the list of registered voters and that, while the use of secondary lists is permitted, there are so many restrictions on the use, no county uses a combined list.

In the state of Oregon, combined voter and driver's license lists are used and undetected duplicates resulting from citizens not being consistent in how they register their names for the separate systems has proven to be problematic and has reduced juror yield. The issues with the lack of consistent, accurate information from the lists used were repeatedly cited as having a negative impact upon the jury system. It was strongly recommended that, if a combined list is used, stringent standards be established to update and purge data to provide the best information possible for use as a jury source list.

Jury System Statistics

The Task Force recommends that, in order to monitor and improve the representativeness of the jury pool, courts be required to maintain data to allow the statistical evaluation of the jury system. This recommendation is consistent with Ohio Trial Court Jury Use and Management Standard 12, although the language of the standard is permissive, and the Task Force recommends that the collection of data be mandatory.

To ensure compliance and process consistency, it is suggested that funding be provided by the General Assembly to the Supreme Court of Ohio to engage the services of a professional statistician to develop the data collection tools and to analyze the data once it is collected. The results of the analysis should be given to the local court to determine what action, if any, is needed in response.

In order for each court to evaluate the representativeness and inclusiveness of the jury system, information needs to be obtained to outline what happens to the individuals

selected for possible service as a juror. A basic data-collection packet has been prepared and is attached to this report as Appendix D. It is important to track the total numbers of individuals who report for service and, to the extent possible, the reasons for the unavailability of the other jurors to serve. Policies or practices affecting the postponement, excuse, disqualification, service, and appearance rates will have an ultimate affect on the composition of citizens who report to court for service as a juror.

In statistics language, the number of citizens who serve is referred to as the "yield". The collection of data to calculate yield involves categorizing the reason individuals do not serve. If a court employs a two-step system where jurors are sent an initial qualification questionnaire, which is returned to the court for the development of the list from which jurors will be contacted for service at a later date, the yield will need to be calculated for both stages of the summoning process. By analyzing the yield, a court will be able to determine whether or not corrective action needs to be taken to increase the participation rate for jury service.

The Center for Jury Studies, which is affiliated with the National Center for State Courts, has determined various standards against which a court can measure their yield to help ascertain if changes need to be considered or made. A copy of the standards for the various yield categories has been included with this report, along with the possible actions to be taken if there is a need to improve in a particular area, are included with this report as Appendix E.

Demographics

The Task Force recommends that courts be required to collect demographic information on a periodic basis. Again, this data collection expectation is consistent with the current Jury Use and Management Standards. The suggestion of the Task Force is that courts

collect demographic information for at least a one month period every two years. As with the previous recommendation, the Task Force suggests that, in order to ensure compliance and process consistency, the General Assembly provide funding for a professional statistician to develop the data tools and analyze the data.

As previously mentioned, there is some concern that the jury pool does not appropriately represent the demographic profile of the community. This perception can lead to repeated statutory challenges to the jury system. To address this concern, a court should periodically measure the demographics of the jury system. Although it may be difficult to measure the demographics of any group other than those jurors who actually report to the courthouse, it is important to be as comprehensive as possible. Courts may consider using the resources of a local university in a manner similar to the Lucas County project. The university may be able to provide the ability to assess the demographics of the source list, the jurors who serve, and perhaps most important, the demographics of those citizens who are called for jury service but do not serve.

At a minimum, the Task Force recommends that courts should periodically measure the demographics of the individuals who do report for service and compare that data to the most recent census data for the jurisdiction. A sample form has been provided for the collection of demographic information, (Appendix F).

Use of a Combined List

The Task Force recommends that courts utilize a combined list of registered voters and licensed drivers for the purposes of juror selection. Ohio Jury Use and Management Standard 2 states, "The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction." Ohio law permits the combination of the list of registered voters and licensed

drivers for use as the jury source list.

There is a definite benefit to the use of a combined list of registered voters and licensed drivers in that the responsibility for jury service is spread over a larger segment of the population, increasing the probability that the jury pool will be representative of the community. Current limitations on the use of the combined list by larger jurisdictions are the lack of cross-identifiers (for example, Social Security numbers) and the lack of consistent standards to update and purge data. The quality of the list of voters and the list of licensed drivers needs to be improved. The practical realities of combining a list must be addressed to make such a process viable.

It is recommended that strict standards for both voter registration and the licensing of drivers be established to insure that complete, accurate, and comparable information is obtained for both lists and automated in a manner to permit combining the lists and eliminating both duplicates and those from the driver's list who would not be eligible for jury service (for example, those people who are not a U.S. citizen or are younger than 18). Mandated and enforced standards to update and purge the information for both the voters and driver's list will also increase the quality of the combined list. Given the recommended standards, with a basic level of computerization, the combination of the lists should not be problematic.

Use of Volunteers

Citizens often express an interest in serving as jurors, but under current law there is no provision to include volunteers in the jury selection process. The Task Force recommends that, pursuant to a legislative change and a local rule adopted by the court, jury commissions be permitted to collect the names of persons who are otherwise qualified to serve as jurors and add the names into the process to develop the annual jury list for the court.