

FROM MY SIDE OF THE BENCH

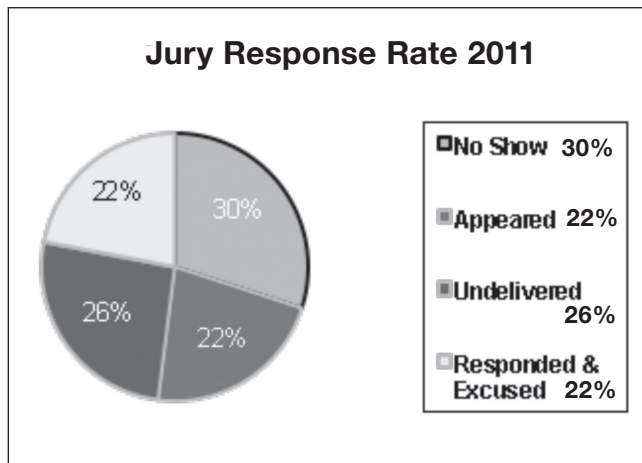
The Problem with Jury Response Rate – Let's Get the Numbers Right

BY HON. RANDY WILSON

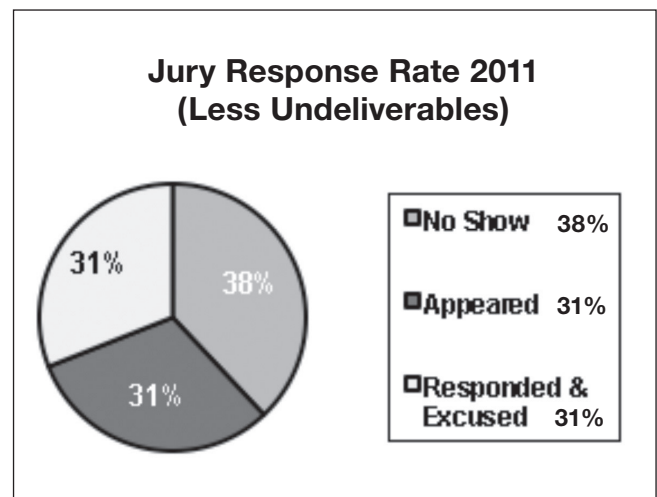
RECENTLY I WAS PRESIDING OVER A VOIR DIRE and one of the lawyers thanked the panel for their service—a fairly common occurrence. However, what the lawyer said next set my teeth on edge. In addition to thanking them, he said, “Most people don’t show up for jury service. Currently, only about 20% of people actually show up for jury service.” Whenever I hear lawyers say this, it’s like fingernails on a blackboard. The number lawyers cite is often wrong and misleading, but moreover, it makes those who did show up feel like saps. They’re sitting there asking themselves why they bothered to show up since so many refuse to.

Harris County has excellent data and provides a good sample to study. The county is large and diverse. Harris County currently has a population of just over 4 million, making it the third largest in the nation.¹ Indeed, if the county was a state, it would rank 27th, between Kentucky and Oregon.

Each year, the Harris County District Clerk sends over a half million jury summons. Technically speaking, only about 22% of those mailed will appear for jury service. However, there’s much more to the story than that. There are at least four things that must be considered in evaluating the data.



First, every year, at least one-quarter of the jury summons are returned as undeliverable. By statute, the jury pool in Texas is comprised of persons on the current voter registration lists from all precincts in the county and all persons in the county with either a valid driver’s license or a personal identification card issued by the DPS.² In Harris County, it takes about three years to exhaust the jury wheel. During that time, people move and people die. The fact of the matter is that, despite best efforts of the clerk’s office, about 25% of the summons are undeliverable. As a result, it’s misleading to include the undeliverable summons in any analysis of appearance rates. When you discard the undeliverable summons, the numbers start looking different.



Second, not everyone who receives a summons is statutorily qualified to serve. Jurors must be 18 years of age, must not have been convicted of or under indictment of any felony or misdemeanor theft, etc.³

Third, the legislature has granted certain persons voluntary exemptions from jury service. The following are exempt from jury service if they choose to utilize the exemption:

- Persons over 70 years of age;

- Persons with custody of a child under 12 and jury service would leave the child without adequate supervision;
- Students in secondary schools or college;
- Primary caretakers of invalids; and
- Active duty military deployed outside the county.⁴

We can hardly criticize people who avail themselves of these voluntary exemptions if the legislature has seen fit to permit the exemption. Of the 31% of people who responded and were excused, about 25% of them were disqualified and the remaining 75% exercised one of the voluntary exemptions.

As a result, when you disregard the summons that are returned as undeliverable, about 62% of recipients respond in some way, either by showing up for jury service or by notifying the clerk that they are disqualified or exempt. That still leaves 38% of recipients who disregard the summons.

The fourth factor that needs to be considered is that you cannot assume that all 38% who fail to respond are necessarily qualified to serve on a jury or do not have a voluntary exemption. If a jury summons is sent and not returned, we all assume that the recipient would have served had he not thrown away the summons. However, there are other possibilities to consider. Perhaps the intended recipient has died, yet his widow is still alive and didn't bother to notify the clerk's office. Perhaps the recipient is in college and his parents still receive his mail. Perhaps the recipient is a college student and doesn't bother to notify the clerk's office that he has an exemption. In other words, just because the post office doesn't return the envelope or the clerk's office doesn't hear from the intended recipient doesn't necessarily mean that the recipient would have served and just ignored the summons. Not all 38% who fail to respond would otherwise be qualified or non-exempt jurors.

However, merely because "only" 38% of citizens fail to respond to a jury summons doesn't mean that we should ignore the problem. Failure to appear is punishable by a fine of up to \$1,000.⁵ The biggest impediment to enforcing the jury summons, however, is proving that the recipient actually received the summons. Since virtually every district clerk in Texas mails jury summons by first class mail, it's impossible to prove that someone received the summons. Sending everyone a summons by certified mail would be cost prohibitive.

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A couple of counties have begun some interesting initiatives. Dallas summons 60 to 80 no show jurors two afternoons a week before an associate judge.⁶ Some of these, of course, are statutory disqualified and are excused or have a voluntary exemption. The remaining are rescheduled or pay a fine. The hope is that this high publicity pilot program will increase the jury response rate. El Paso instituted a similar program several years ago and it appears to have increased juror attendance. Indeed, according to one report, the jury response rate in El Paso has increased to 86%.⁷

Something needs to be done to increase juror participation. The Dallas and El Paso programs may be the solution. Other counties need to explore similar initiatives. However, you cannot merely say that only 20% show up and therefore

everyone else is a deadbeat. You must look more closely at the numbers.

Judge Randy Wilson is judge of the 157th District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective. ★

¹ Harris County is behind only to Los Angeles and Cook Counties. Population Estimates, United States Census Bureau. <http://www.census.gov/popest/counties/CO-EST2009-07.html>

² Tex. Gov't Code § 62.001(a).

³ Tex. Gov't Code § 62.102.

⁴ Tex. Gov't Code § 62.106(a).

⁵ Tex. Gov't Code § 62.0141.

⁶ <http://www.dallasnews.com/news/local-news/20120523-dallas-county-cracks-down-on-jury-duty-no-shows.ece?action=reregister>

⁷ <http://www.legis.state.tx.us/tlodocs/82R/analysis/pdf/SB01195H.PDF>