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Finally, a solution to the pick-a-pal problem

By **Lisa Falkenberg** | November 14, 2014 | Updated: November 15, 2014 6:28pm

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So, what's to be done about it?

Over the past year, I've bellyached a lot about Texas's pick-a-pal grand jury system. How it lets elected judges pick pals who pick other pals to make life-altering decisions in the criminal justice system.

How it's no longer the buffer between the citizen and the government that our forefathers intended, but a system skewed toward law-enforcement-friendly elites.

How, in one case, it let an active-duty Houston police officer oversee an investigation into his own colleague's murder and then bully an alibi witness into changing her story.

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Yep, it's a problem.

Earlier this week, veteran state Sen. John Whitmire, D-Houston, offered a solution.

Whitmire, spurred by the Chronicle's coverage of the flawed system, pre-filed a bill for the upcoming legislative session in January to ban pick-a-pal and require Texas grand juries to be chosen the same way we select trial juries - randomly.

"We just need to remove any perception that politics, favoritism or patronage plays a role in it. It's too important," said Whitmire, who chairs the Senate criminal justice committee.

It's not a novel concept. Congress banned pick-a-pal in federal courts in 1968. Every state except Texas has followed suit, with the limited exception of California, which uses pick-a-pal only in smaller counties for high-profile cases. Whitmire says he doesn't yet have Republican support for the bill, but he's "guardedly optimistic" it will win bipartisan backing.

Republican Harris County District Attorney Devon Anderson, for one, has said she'd switch to the random system if she were still a judge. And some local judges, including



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Republicans Ryan Patrick, Marc Carter, Denise Collins and Brock Thomas, have sought out alternatives to pick-a-pal. Some even schlep over to the regular trial jury room and try to recruit folks for service.

Humor me, skeptics

But really, this issue isn't about politics. It's about fairness.

For you skeptics who still aren't convinced, humor me for a moment. Pretend that we're talking about the rights of ordinary American taxpayers. Imagine the Internal Revenue Service let a citizen panel decide who would be audited, and the ruling party in Washington, currently the Democrats, kept stocking that panel with ACORN activists, MSNBC staffers and Michael Moore devotees.

Those accused of crimes in Texas face the same kind of bias. And a small group of bad cops and unscrupulous prosecutors enjoy a stacked deck. Consider this: the status quo led to Harris County grand jurors clearing every single Houston police officer accused in shootings for nearly a decade – 288 of them in a row, as my colleague James Pinkerton reported last year.

Of course, the pick-a-pal system has its defenders, and there are valid concerns about a random system. Grand jury service can be onerous and time-consuming on many working people, and prosecutors argue it would be hard to find enough randomly selected citizens willing to serve. Harris County grand juries, for instance, serve several hours twice a week for three months.

'No way around' the burden

But federal courts have made it work since the '60s.

"It's a burden. But that's our system. There's no way around it," says Philip Hilder, a former federal prosecutor for nearly seven years, focused on organized crime and drugs. He said federal juries can meet up to 18 months, often for one week per month, possibly several hours per day.

Because of the hours, those grand jurors skewed older, just like they do in the state system, Hilder said, but in terms of race, religion and occupation, federal juries seemed to represent a cross-section of society, as the law requires.

He saw everybody from construction workers to small business owners. He doesn't recall ever seeing a police officer.

"I'm not saying that the federal system is perfect," Hilder said. "But I do think it's a vast improvement to how the county operates."

Not fond of mimicking the feds? Fine. Texas has its own examples. In Bexar County, judges have been using the random system for 15-20 years, as the law allows, according to longtime Judge Pat Priest, who now serves in an unelected, visiting role.

Priest recalls that some judges switched out of a sense of fairness: "It seemed like it would remove all questions about whether the grand jury was assembled properly if we did it this other way."

Today, according to state District Judge Sid Harle, Bexar County judges are given a choice between random or pick-a-pal, also known as the commissioner system. Everyone chooses random, Harle says, in part, because it's just easier.

Common sense

Rather than the judge being responsible for picking grand juries, it's the district clerk's office, which summons grand jurors like it does trial jurors, from voter rolls and a driver's license database.

Then it's the judge's job to sell the experience.

"You're going to learn a lot about the community. You're going to learn about crime," Harle tells people, often adding, "if you don't enjoy this process and find it interesting, after it's all over with, you can come and cuss me out."

He says nearly everyone enjoys the experience, including those who didn't want to be

there in the first place.

Of course, there are those who resist change. Harris County's most senior felony court judge, Michael McSpadden, was quoted in the Chronicle last year saying people chosen through random selection may not be intelligent enough to serve on a grand jury.

But the American judicial system depends on the common sense of regular folks.

"IQ doesn't equate to common sense," says Hilder, the former federal prosecutor. "You have people of high intellect and they may have no common sense. And you have someone who's not educated and they have a lot of common sense. That's the beauty of the system."



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