

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH  
(Filed Electronically)**

**CRIMINAL ACTION NO. 5:06CR-19-R  
UNITED STATES OF AMERICA,**

**PLAINTIFF,**

**vs.**

**STEVEN DALE GREEN,**

**DEFENDANT.**

**MOTION TO PRESERVE DATA AND RECORDS  
REGARDING PETIT JURY SELECTION PROCESS**

Comes the Defendant, Steven Dale Green, by counsel, pursuant to the Sixth Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment to the United States Constitution, the Jury Selection and Service Act (28 U.S.C. §1861 et seq.), and General Order 2005-02 regarding the qualification and random selection of petit jurors in the Western District of Kentucky and respectfully moves the Court to enter an order directing the Clerk of Court to preserve all data and records generated in the process of issuing summonses for prospective petit jurors in the above-styled case. In support of this motion, the defendant states as follows:

Section 2.05 of General Order 2005-02 states in pertinent part, “The number of names selected initially for the master jury wheel, to be apportioned among the counties are ... Paducah Division Master Jury Wheel 18,000 names.” Under General 2005-02, the Clerk of Court or his designee is required to 1) “publicly draw at random from the master jury wheels the names of as many persons as may be required for jury service;” 2) “mail a juror qualification questionnaire to every person whose name is drawn from a master jury wheel;” and 3) “after review of the

qualification forms, shall place in the qualified jury wheel for each of the jury divisions the names of persons determined to be qualified for jury service.” See General Order 2005-02, §§ 2.09, 2.10, and 4.01. See also 28 U.S.C. §§1864(a) and 1866(a). Section 5.03(b) and (c) of General Order 2005-02 subject the release of Master Jury Wheel Information and Juror Management Records to 18 U.S.C. §1867 and §5.03(d) of the General Order governs the Retention of Juror Management Records in accordance with 18 U.S.C. §1868.

The defendant respectfully submits that the data and records which pertain to the selection of petit jurors in this case and are acquired by the Clerk of Court or his designee must be retained in order to allow the defendant to ensure compliance with the fair-cross section requirement of the Sixth Amendment, see Taylor v. Louisiana, 419 U.S. 522, 530 (1975) and Duren v. Missouri, 439 U.S. 357, 364 (1979), and the Jury Selection and Service Act, see 28 U.S.C. §1861 (“all litigants in Federal courts 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.”).

Furthermore, retention of jury selection records is required for a challenge to the selection process. “In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.” 28 U.S.C. §1867(a). As 18 U.S.C. §1867(d) makes clear, a fair-cross section challenge hinges on the retention and ultimate disclosure of records pertaining to the jury selection process.

Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to

comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

A party's compliance with the procedures set forth in 28 U.S.C. §1867 is essential because those procedures "shall be the exclusive means by which a person accused of a Federal crime ... may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title." See 28 U.S.C. §1867(e). To enable a party to challenge the jury selection process 28 U.S.C.A. § 1867(f) provides:

The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

In summoning prospective, petit jurors for service in the defendant's case, there will inevitably be summonses that are undeliverable because the juror has moved or is deceased. The records pertaining to those "undeliverables" should be retained because they are necessary to demonstrate that a particular community or county is overrepresented or underrepresented for purposes of the fair-cross section requirement. In addition, to make a proper challenge to the jury selection process under 28 U.S.C. §§1867(e) and (f), the records pertaining to prospective petit

jurors who have been disqualified or excused from jury service (see General Order 2005-02, §§ 3.01-3.04) must also be retained. Those records must also include the reason for disqualification or excusal of the jurors.

**WHEREFORE**, the defendant, Steven Dale Green , by counsel, respectfully moves the Court for an order requiring the Clerk of Court or his designee to retain all records pertaining to the summoning and selection of the prospective petit jury including records of all summonses that are returned as undeliverable and the records (and reasons) pertaining to prospective petit jurors who have been disqualified. or excused from jury service.

Respectfully submitted,

/s/Scott T. Wendelsdorf  
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**Certificate of Service**

I hereby certify that on January 14, 2009, I electronically filed the foregoing motion with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney.

/s/ Scott T. Wendelsdorf