Nov. 17, 2008

To: SCAC

From: Judge Tracy Christopher, Chair, PJC Oversight Committee

Re: Bias and Prejudice language in 226a and other updates

The latest draft of 226a is the November draft. Revisions are noted in the comment section as Nov. 08 changes.

The Pattern Jury Charge Oversight Committee has provided a definition of bias and prejudice pursuant to a previous vote of the SCAC. However the committee still thinks that a definition is unnecessary.

Providing a plain language definition of prejudice was not difficult and all members of the committee agreed with the definition. Providing a plain language definition of bias was more difficult given its definition in case law. Here is the pertinent law:

Government Code 62.105(4) (formerly art. 2134)

A person is disqualified to serve as a petit juror in a particular case if he:

(4) has a bias or prejudice in favor of or against a party in the case.

Case Law

Bias or prejudice is extended to subject matter of the suit and not just the parties. *Compton v. Henrie,* 364 S.W.2d 179, 181-182 (Tex. 1963) The court held:

> To a greater or lesser extent, bias and prejudice form a trait common in all men; however, to fall within the disqualifying provision of Article 2134, s 4, supra, certain degrees thereof must exist. Bias, in its usual meaning, is an inclination toward one side of an issue rather than to the other, but to disqualify, it must appear that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality. Prejudice is more easily defined for it means prejudgment, and consequently embraces bias; the converse is not true.

This definition of bias is repeated in more recent Supreme Court cases. *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 751 (Tex. 2006).

Plain Language

The PJC tries to stick to Supreme Court language when possible in drafting jury charges. The committee felt that using the language of *Compton* would only serve to confuse the jury panel. First-we struggled with inclination (which is a leaning) but the court has held

that leaning is not enough to disqualify. Second we struggled with impartiality-a word that the jury panel almost always thinks has the opposite meaning. Finally the definition requires that it appear to someone (to the judge or to the public?) that the juror will not act with impartiality.

The definition that we have now provided reflects our attempt to make the idea of bias understandable to the jury. We were not trying to establish the legal definition of when a juror should be struck for cause.

Here is our proposed definition:

> A juror is biased if a juror's prior experiences, thoughts or beliefs are so strong that a juror cannot follow the law provided by the court or if a juror cannot decide the case based only on the evidence seen and heard in court. A juror is prejudiced if a juror has prejudged a party or the case and will not follow the law or will not decide the case based only on the evidence.

We used the words "cannot" and "will not" because these are the words most often used by jurors, lawyers and judges when questioning jurors.

With this definition, a minority of our group feels we will confuse practitioners and judges. The minority believes that if the court adopts this definition that it should provide a comment to judges and practitioners, pointing out that this definition does not change current case law. Here is the proposed comment.

> Although this instruction refers to jurors who "cannot follow the law" or "cannot decide the case based only on the evidence" or "will not follow the law or will not decide the case based only on the evidence," this is not intended to change the legal standard for the disqualification of jurors for cause. Potential jurors are disqualified for cause if they have "an inclination toward one side of an issue rather than to the other" to a degree "that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality." Hyundai Motor Co. v. Vasquez, 189 S.W.3d 743, 751 (Tex. 2006) (citing Compton v. Henrie, 364 S.W.2d 179, 182 (Tex. 1963)).