Fulfilling the Promise of the Jury System

The Jury Patriotism Act provides workable solutions to the problem of filling the jury box with diverse, representative citizens.

By Victor E. Schwartz and Cary Silverman

IN BRIEF

The American Legislative Exchange Council's Jury Patriotism Act takes steps to create more representative juries by:

- Eliminating occupational exemptions
- Increasing penalties for no-show jurors
- Tightening the standard for accepting hardship excuses
- Promoting the one-day-one-trial concept of service
- Providing more equitable juror compensation

Time and again, litigators observe that if only they could obtain a truly representative jury, one that includes business owners, professionals, and working Americans, then juries would be more likely to reach well-reasoned decisions. Unfortunately, the law allows many people to avoid jury service. The business community should encourage jury service—not only because more representative juries are in its best interests, but also because it is the right thing to do.

Getting jurors into the courthouse is only the first step. Those who appear may invoke occupational exemptions, which allow entire professions—such as clergy, doctors, lawyers, or law enforcement officers—to avoid jury service. Other jurors may request hardship excuses. State statutes often leave undefined the acceptable grounds for obtaining such excuses, and they enable court clerks or staff to liberally grant such requests. Still other jurors may be legitimately excused due to the financial strain placed on them when asked to commit to a long term of service. Most state courts provide a measly daily fee for those who serve, generally ranging from $10 to $40 per day. Only a handful of states require employers to pay their employees during all or a portion of jury service. People are also discouraged from jury duty by potentially long terms of service and the lack of flexibility as to when they will serve. Summoned jurors are instructed to appear on a certain date and time and, in some jurisdictions, are not provided with an easy means to reschedule their service.

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The combination of occupational exemptions, flimsy hardship excuses, lack of meaningful compensation, long terms of service, and inflexible scheduling results in a jury pool that disproportionately excludes the perspectives of many people who understand business and very basic economics. As a result, the democratic right

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Can you find the juror in this picture? Given the vast number of exemptions, it's likely none of them will serve.

to be tried by a jury of one's peers has vanished.

Restoring the Right to a Representative Jury

On December 14, 2002, the Civil Justice Task Force of the American Legislative Exchange Council, a Washington, D.C.-based bipartisan group of state legislators, unanimously adopted the Jury Patriotism Act. This model legislation, which ALEC will disseminate to state legislators and seek to enact into law, safeguards a citizen's right to serve on a jury as well as a defendant's right to a jury representing a true cross section of the community. It eliminates occupational exemptions and hardship excuses and strives to lessen the burdens placed on citizens that render them unable to serve.

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The first step to a more representative jury is the elimination of occupational

exemptions. Many states have already taken this step. ALEC's Jury Patriotism Act also makes it more difficult for people to avoid jury service by tightening the standard for hardship excuses. Hardship would be limited to three circumstances:

- When a person would be required to abandon someone under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during jury service
- When the juror would incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support
- When the prospective juror suffers from physical illness or disease

The act also makes clear that requests for excuses must be supported by documentation and decided by a judge, rather than a clerk or other court staff.

Research shows that a significant number of people who do not respond to jury summonses fail to do so because they have little fear of being penalized or they believe that the penalty will be minimal. Most states provide that a person can be held in contempt of court or required to pay a minimal civil fine for failing to appear for jury service. Although there may be some notable exceptions by extraordinary judges, it is no secret that courts rarely enforce such provisions, however minimal.

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EMPLOYER COMPENSATION FOR JURORS

Eight states and the District of Columbia require employers to pay employees for some period of jury service.

EMPLOYER PAYS FOR ENTIRE PERIOD	EMPLOYER PAYS FOR FIRST 5 DAYS	EMPLOYER PAYS FOR LESS THAN 5 DAYS
Alabama	District of Columbia	Colorado
Nebraska	Massachusetts	Connecticut
Tennessee		Louisiana
		New York

The Jury Patriotism Act provides that a juror's failure to appear in court is punishable as a misdemeanor. In most states, a misdemeanor is punishable by up to one year of imprisonment, a substantial fine, or both. The intent of this provision is to communicate to potential jurors the importance of service and to notify them that shirking their civic obligation will be severely punished.

The Jury Patriotism Act would provide more flexibility to those called for jury duty by allowing a onetime automatic postponement of service. If a juror receives a summons to report on an inconvenient date, the juror could postpone service to another time. The juror would simply contact the appropriate court official via telephone, via e-mail, or in writing and would not have to provide any reason for the postponement. The juror, however, would have to provide a date on which he or she could appear for jury service within six months.

One Day or One Trial

ALEC's Jury Patriotism Act would make jury service more appealing by guaranteeing potential jurors that they will not spend more than one day at the courthouse unless selected to serve on a jury panel. This practice, generally known as the "one-day-one-trial" system, has been adopted over the past three decades by about 50 percent of state courts.

The primary benefit of the one-day-one-trial system is that it significantly decreases the average length of jury service. New York found that when it adopted the one-day-one-trial system, it reduced the statewide average term of service from more than five days to 2.2 days—a decrease of more than 50 percent. The efficiency of the system can lead to cash savings for the state that offset the costs of summoning more people for jury service.

The one-day-one-trial system can also vastly reduce the need for hardship excuses. The experience of one court found that requests for excusal after the adoption of the one-day-one-trial system dropped to 1.36 percent, and most of those requests were accommodated by the court's postponement policy. States have hailed the system for increasing the diversity and inclusiveness of the jury pool.

Protecting Compensation and Benefits

Given the minuscule juror fee provided in many states, lack of employer compensation during jury service is a primary reason why jurors ignore summonses or request hardship excuses. States ought to protect juror compensation, and the Jury Patriotism Act offers two alternative paths to achieve this goal.

The first approach would require employers with more than five employees to continue to pay jurors during the first 10 days of jury service. As an alternative to employer compensation during the first five days of service, the Jury Patriotism Act offers an option by which courts could provide jurors who experience financial hardship with compensation above the juror fee through a fund financed by court filing fees. The act also provides several means by which state legislators can tailor juror compensation provisions to meet the individual needs of states.

A second alternative to helping individuals who would be otherwise unable to serve is for the court to provide them with additional compensation, above the juror fee, upon a showing of financial hardship. The fund would be financed solely through a minimal fee collected from each attorney who files a civil case. It would not require any allocation of resources from state legislatures. The court would set the amount of the additional compensation on a case-by-case basis to relieve an individual's financial hardship so he or she may participate in jury service.

Although the number of jurors selected to serve on lengthy trials is relatively small, those who find themselves on a long product liability, commercial litigation, or intellectual property case may suffer severe financial hardship. Unless extreme circumstances arise, warranting the judge's intervention, these jurors are required to serve for the entire trial, which may be several weeks or months.

The Jury Patriotism Act's lengthy trial fund will relieve the burden on jurors serving on long cases. Although compensation from this fund would be available to jurors only upon a showing of financial hardship during the first 10 days of service, the fund would provide full wage replacement or wage supplementation of up to $500 per day to any juror who serves on a petit jury in a civil trial that exceeds 10 days. This compensation would become available to jurors immediately upon the 11th day of service.

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A Call to Action

The business community should actively support jury service by taking three simple steps. First, make certain that company policy provides employees with their full compensation during jury service and does not require the use of sick or vacation leave. Second, management should lead by example—through serving on juries and leading education efforts in the workplace—to communicate the importance of jury service. Finally, tell your state legislators that ALEC's Jury Patriotism Act is important to you, to your business, and to fulfilling the promise of the jury system. We cannot complain about juries if we do not do our best to ensure that all who can serve do so.

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