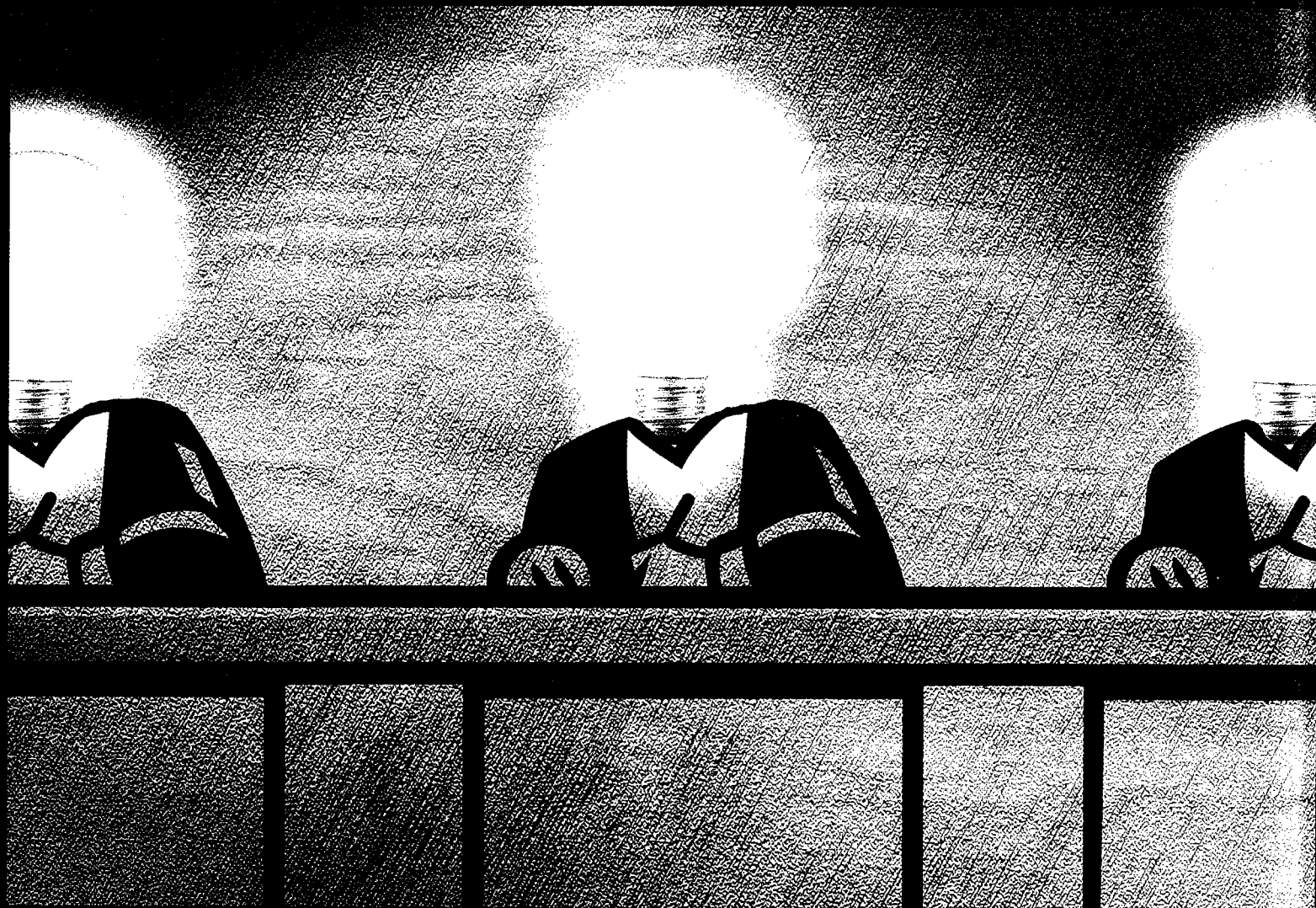


Full Participation of Citizens in the Jury System



by Paul W. Rebein and Cary Silverman

Time and time again, defense lawyers lament that if only they could obtain a truly representative jury, one that includes a fair share of business owners, professionals, and working Americans, then juries would be more likely to reach well-reasoned decisions that more accurately reflect community mores. Unfortunately, the law allows too many people to avoid jury service. DRI and its members should work to encourage jury service reform—not only because more representative juries are in our clients' best interests, but, more importantly, because it is the right thing to do.

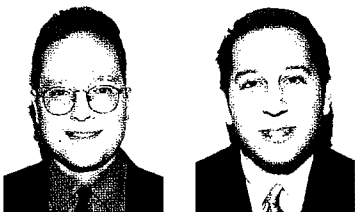
Note that this article deals with the problem of encouraging more Americans to agree to serve on juries—or at least respond to the call to serve—and thus ensuring that the composition of each jury more closely reflects the general populace. The article does not deal with the next steps of *voir dire*, qualifications and selection of jurors for a particular trial, and juror conduct during trial. Since many state jury laws systematically eliminate many people from the jury pool before these later steps, making certain that everyone can and will serve on a jury is a critically important piece of the jury selection process.

Introduction

Jury service is often hailed as an important obligation of good citizenship and treasured as one of our society's most valued liberties. Not surprisingly, national polls indicate that Americans hold the jury system in the highest regard. According to an American Bar Association opinion poll, 78 percent of the public rate our jury system as the fairest method of determining guilt or innocence; 69 percent consider juries to be the most important part of the justice system.

It is indeed ironic that despite the strong support Americans have for the jury system, many in the public appear to avoid service on a jury at virtually every opportunity. For example, a joint study conducted by the *Dallas Morning News* and Southern Methodist University found that in Dallas County, Texas, "at least 80 percent of the people summoned each week for jury duty disregard their summonses and refuse to participate in the system." *The Wall Street Journal* has reported that sheriffs' deputies in some rural areas have been forced to round up people shopping in the local Wal-Mart to fill the jury box. Some of this poor turnout may be attributable to summonses being mailed to the wrong addresses, but most appears to be caused by citizens who simply ignore their patriotic duty and civic obligation to serve.

The contradiction between strong public support for the jury system and the avoidance of jury duty suggests that the jury system needs to be reformed to better serve Americans. It needs to become more "user friendly."



Paul W. Rebein and Cary Silverman are lawyers with Shook Hardy & Bacon LLP. Mr. Rebein, a partner in the firm's Tampa office, specializes in business, products liability, and civil rights litigation. A member of DRI, he is Publications Chair of the Trial Tactics Committee and a frequent author on trial practice issues. Mr. Silverman is an associate in the public policy group in the firm's Washington, D.C. office, where he serves as an advisor to ALEC's Civil Justice Task Force.

Innovative model jury service legislation recently developed by the American Legislative Exchange Council (ALEC), a bipartisan membership organization of over 2,400 state legislators, is now working its way through state legislatures across the country, and legislation based on the model act has already become law in Arizona and Utah. ALEC's "Jury Patriotism Act" (available at www.alec.org) would promote jury service by alleviating the inconvenience and financial burden placed on those summoned, while making it more difficult for people to escape from service without showing true hardship. It would safeguard a citizen's right to serve on a jury as well as a litigant's right to a jury representing a true cross-section of the community.

Breaking Down Barriers to Jury Service

ALEC's model Jury Patriotism Act would make important changes to the jury system to reduce the barriers to serving on juries that confront many working Americans.

First, the Jury Patriotism Act would provide more flexibility in the scheduling of jury service. Citizens have many time demands and other obligations in their lives. They have jobs that require their presence, children or other family members for whom they are responsible, travel plans that cannot be altered without penalty, and other personal and professional commitments. When faced with a jury summons that requires their presence at court on a particular date, many people look at their full calendars and choose simply to disregard the summons. Even if it is likely that the court will excuse them, some people may not be able to make the trip to the courthouse or may resent the time necessary to obtain an exemption.

To accommodate busy people, the Jury Patriotism Act would provide an individual

with one automatic postponement of jury service. This means that if one receives a summons requiring him to report on a date that is inconvenient for any reason, he may postpone that appearance to another time. An automatic deferral of jury service works hand-in-hand with the elimination of occupational exemptions and tightening of the standard for hardship excuses that are also accomplished by the model act (and are discussed below). As the ABA has observed, "Deferral of jury service accommodates the public-necessity rationale upon which most exemptions and automatic excuses were originally premised, while enabling a broader spectrum of the community to serve as jurors."

The process for obtaining a postponement under the Jury Patriotism Act would be quick and easy. The summoned individual would simply contact the appropriate court official via telephone, electronic mail, or in writing. He or she would not have to provide any reason for the postponement. The only prerequisites would be that the requestor had not previously received a postponement and the requestor provides a date on which he or she will appear for jury duty within six months.

The Jury Patriotism Act provides a second type of postponement aimed at protecting small businesses. Currently, it is possible for more than one employee of a business to be called for jury service during the same period. Though perhaps rare, such a situation may be particularly hard on labor-intensive, small businesses. For this reason, the model act requires the court to postpone and re-schedule if a second employee of the business is already serving on a jury. This provision of the model act is supported by employer groups, including the National Federation of Independent Business (NFIB).

A second important change contained in the Jury Patriotism Act would be to reduce the length of time one would be expected to serve on a jury. Not only are the dates on which a prospective juror must appear often inflexible, some jurisdictions require summoned jurors to sit in the courthouse or otherwise be available for an extended period of time. For example, Kentucky requires that within any 12-month period, a person must be prepared to serve as a petit juror for up to 30 days. According to the guide-

book for Kentucky jurors: "In some metropolitan areas, a person may be required to serve as few as 14 days, while in some rural areas a person may be asked to serve as many as 150 days," based on the discretion of the trial judge. In many jurisdictions, the commitment to be available for two weeks, 30 days, or even longer can cause severe disruption in domestic schedules, personal plans, and business activities. In fact, one of the most frequent complaints about jury service is that it lasts too long.

Service can be made more appealing by guaranteeing potential jurors that they will not be required to spend more than one day at the courthouse unless they are selected to serve on a jury panel; in the event of the latter, they would be limited to one trial. This practice is generally known as the "one-day/one-trial" system. It has been adopted by about half of state courts nationwide and is included in the ALEC model act. Courts have embraced the one-day/one-trial system as a response to high excusal rates, the inconvenience and hardship resulting from lengthy terms on those who are unable to obtain an excuse, and the frustration and boredom imposed on jurors. Recently, the National Center for State Courts recognized the one-day/one-trial system as a particularly effective practice. According to the NCSC, "no state court that has made the change to the shorter term of service has 'looked back' and returned to the former practice."

Adoption of the one-day/one-trial system has impressive results. For example, New York reduced its statewide average term of service, previously above five days, to just 2.2 days. In Massachusetts, 85 percent of those who appear complete their jury service in just one day, and 95 percent finish in three days. In an early study of juror attitudes, 90 percent of 5,500 jurors selected the one-day/one-trial system as preferable to a 30-day term, and a majority would not object to being called again. The survey also revealed that the system increased positive attitudes about jury duty and about the justice system generally.

Employers like the one-day/one-trial system because it means fewer days of employee absences from work. Research by the California Judicial Council found that the majority of

employees return to work the next business day after reporting for duty. In announcing the adoption of the system throughout the California courts, a Los Angeles judge commented: "We know that one-day/one-trial is in the best interest of our employers and the communities we serve."

One-day/one-trial also furthers the goal of promoting jury service by vastly reducing the need for hardship excuses. Indeed, the experience of one court found that re-

Juries are often not diverse or representative of the community, and their decisions may be arbitrary, unwelcome results for plaintiffs, defendants, and prosecutors.

quests for excusal after adoption of the system dropped to around one percent, and most of these requests were accommodated by the court's postponement policy. As a Georgia commission recognized, this reduction in excuses "increased the representativeness and inclusiveness of the jury pool."

A third major provision of the Jury Patriotism Act would protect employment rights. Most states prohibit employers from terminating or threatening to terminate an employee because he or she takes time off to serve on a jury. Several states go further and protect employees from any adverse action taken as a result of their responding to a jury duty summons. The Jury Patriotism Act provides even more protection for employees. It explicitly states that a business may not require its employees to use their annual, vacation, or sick leave time for jury service. Employees should not fear that by responding to a juror summons they may be required to sacrifice their annual vacation. This provision is one reason why the AFL-CIO supports the ALEC model act.

A final provision of the Jury Patriotism Act would ensure that jurors are adequately compensated for their service. A major reason that people avoid jury duty is the financial burden that such service may impose and the anxiety that they may be selected to serve on a drawn out trial without adequate compensation. Most state courts provide a nominal daily fee for those who serve, generally ranging from absolutely nothing on the first day to minimum wage for each hour of attendance in New Mexico. Juror compensation is regarded as so insignificant by some that they do not even bother to cash their paychecks.

The typical fee paid to jurors does not cover bus fare and a salami sandwich, let alone reimbursement for lost income. This lack of adequate compensation may be particularly troublesome for jurors who are selected to hear lengthy civil trials. Although somewhere between one-half and three-quarters of trials conclude within three days, and very few cases extend beyond ten days, jurors who find themselves called to sit for the rare, lengthy civil trial may be subject to extreme financial hardship. For this reason, when it is apparent that a trial will be long and complex, many courts will excuse prospective jurors because of the financial burden the service will place on them, their families, or their businesses. The judge may have no other choice, given that his or her court does not have the resources to provide any significant compensation above the jury fee. As jury consultant J. Thomas Munsterman of the National Center for State Courts recognized:

The minimal size of the daily fee means that "[f]ew persons making more than the minimum wage can afford [the]... sudden and involuntary cut in pay" imposed by jury service. As a result, excuses from jury service because of economic hardship are common in many jurisdictions for laborers, sales people, unemployed parents with child care expenses, and sole proprietors of small businesses. Only those who are not employed or whose employer will continue to pay their salary are then available for jury service.

Consequently, the basic democratic right to be tried by a panel of one's peers may morph into a jury that is disproportionately

composed of retired and unemployed individuals, especially in lengthy trials. Such juries are often not diverse or representative of the community, and their decisions may be arbitrary, unwelcome results for plaintiffs, defendants, and prosecutors.

Ideally, states should be able to provide adequate compensation for jurors. After all, jury service is a civic obligation. In these times of tight state budgets, however, significantly increasing the juror fee through payments out of the state treasury may not be a realistic option. Even as long ago as 1993, the ABA recognized that "raising juror fees to compensate citizens for their time at current wage levels would place a nearly impossible burden on many financially hard-pressed jurisdictions." This observation is no less true today.

Although the number of jurors selected to serve on lengthy civil trials is relatively small, those who do may suffer severe financial hardship. While jurors indeed have a civic duty to serve, there is a limit on how much an individual citizen can be asked to sacrifice for the civil justice system, particularly when the case involves a dispute between private parties. For this reason, ALEC's Jury Patriotism Act contains an innovative provision establishing a "Lengthy Trial Fund" to help relieve the burden.

The Lengthy Trial Fund in ALEC's model act would provide jurors who sit for longer than three days with supplemental compensation of up to \$100 per day if they would otherwise be excused from service due to financial hardship. In the rare case that a civil trial lasts ten days or more, jurors who are not fully compensated by their employers would be eligible to receive as much as \$300 per day from the fund. In order to qualify for payment, the juror would have to present documents verifying the amount of income he or she would be losing.

The Lengthy Trial Fund would be financed by a small fee collected from each attorney who files a civil case. In effect, the model act would establish a nominal user fee on civil litigants who make use of the jury system to resolve disputes. The fund is based on the premise that those who use and benefit from the jury system should help pay to finance and support it. The filing fee is not intended to be a barrier to the filing of lawsuits. Its amount

would be the minimum necessary to fairly support jurors who serve on lengthy civil trials. A court administrator, hired by the judicial system and compensated by the fund, would manage the fund under rules and guidelines established by the state supreme court. This system would be self-sustaining and not require any allocation of resources by the legislature.

Eliminating Jury Service Loopholes

The foundational principle of ALEC's Jury Patriotism Act is that all citizens have a civic obligation to serve on juries regardless of their occupation or income level. This cross-section of the public is necessary to ensure a diverse and representative jury, and to distribute the burden of jury service equally throughout the population. The privileged should not be allowed to escape jury duty and leave those with less political or financial clout with the burden of service. Everyone serves!

Presume that the Jury Patriotism Act is adopted by your state. Then, given the ease with which one can postpone and reschedule service, the guarantee of serving no more than one day or one trial, and the assurance of fair compensation if selected for a lengthy trial provided by the ALEC model, there are few legitimate reasons for not serving on a jury.

Repealing Automatic Occupational Exemptions

Some states unnecessarily limit the jury pool by automatically exempting certain individuals based on their occupations. For some reason or another, these people are regarded as too important, socially, politically, or economically, to serve on a jury. As the ABA has recognized, these "broad categorical exceptions not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt."

New York once held the record for occupational exemptions. Prior to its 1995 jury reform initiative, there were 26 occupational exemptions covering professions ranging from judges, lawyers, physicians, and police officers to ministers, podiatrists, optometrists, and volunteer firefighters. Remarkably, these exemptions excluded over one million of New

York's citizens from the jury pool and contributed to a shortage of jurors in the 1990s. In 1995, the New York legislature, upon the recommendation of the Citizens Jury Project, eliminated all occupational exemptions. Subsequent press reports hailed the increased diversity of the jury pool and the greater willingness of those summoned to serve.

Missouri and Tennessee now may tie for the title of protector of the privileged and other special classes. Missouri law disqualifies lawyers and judges, and allows clergymen, doctors, osteopaths, chiropractors, dentists, pharmacists, and certain police officers out of jury duty upon request. Tennessee technically provides a postponement upon request to all persons holding public office, practicing attorneys, certified public accountants, physicians, clergy, acting professors or teachers, members of fire companies, full-time law enforcement officers, pharmacists, practicing registered professional nurses, and those serving in the National Guard. In reality, members of these professions easily get out of jury duty in Tennessee.

Surveys suggest that even those who receive special exemptions do not believe they are too valuable to take time off to sit on a jury, or too biased or influential to serve. For example, when New York doctors were asked whether they should be exempt from jury service following New York's reform, only 12 percent said that physicians should be exempt. Although traditionally, lawyers and judges have been exempt or disqualified from jury service based on the belief that their knowledge of the law would inevitably conflict with the jury's fact-finding function, both groups have served on juries and feel that they can and should serve. According to the study, only three percent and ten percent of Manhattan and Brooklyn attorneys, respectively, thought they should be exempt. Even the New York judge that led the state's jury reform efforts, Chief Judge Judith Kaye of the Court of Appeals, was called for jury duty. Rudolph Giuliani, despite being a sitting mayor, lawyer, and former prosecutor, also made headlines when he was summoned and selected to serve on a jury hearing a \$7 million civil suit in 1999.

Most recently, it was revealed on an "anony-
continued on page 61

Jury System Reform, from page 15

mous" juror qualification form for federal jury duty in New York that Juror No. 142's former occupation was "President of the United States," and that he felt that he could be fair and impartial despite his "unusual experience with the O.I.C.," otherwise known as the Office of Independent Counsel. If judges, mayors, and ex-presidents such as Bill Clinton are not beyond jury service, no one should expect that their profession puts them above this civic duty.

The first step to a more representative jury is the elimination of all occupational exemptions from jury service, and is the approach taken by the ALEC model act. Like New York, approximately two-thirds of the states have now taken the positive step of repealing broad occupational exemptions to jury service. Those states that have retained occupational exemptions should follow and ensure that all people have the opportunity and obligation to serve on a jury.

Penalizing No-Shows

An important step toward making juries more representative and to ensure that a sufficient number of people are available for jury duty is to penalize those who do not respond positively to the summons. The system must undertake efforts to address the substantial and increasing number of people who simply choose to ignore the summons. Research shows that a significant number of those who do not respond fail to do so because they have little fear of receiving a penalty, or believe that the penalty will be minimal—a mere "slap on the wrist." Most states currently provide that a person can be held in contempt of court or required to pay a minimal civil fine, comparable to a parking ticket, for failing to appear for duty. It is no secret that such sanctions, however minimal, are rarely imposed or enforced by courts.

For this reason, ALEC's model Jury Patriotism Act provides that a person who has been summoned, and fails to appear in court, may be charged with a misdemeanor, punishable by a fine, imprisonment, or both. Similar sanctions can be imposed for failure to obtain a postponement of service. The intent of the model act is to communicate to society the importance of jury service and to notify everyone that shirking one's civic obligation to serve will be severely punished. Persons who fail to appear will have a criminal record, a threat that should be sufficient—if it is vigorously enforced—to cause one to pause before ignoring a summons.

Limiting Excuses to Situations of True Hardship

While many potential jurors simply choose to ignore their summonses, others appear in court with innovative excuses to avoid service. Some requested, but especially unbelievable, excuses: "My dog is in heat and needs me;" "I never tell the truth;" "I have non-refundable tickets to the Cubs game;" "I'm 86 years old and deaf as a doornail;" "The legal system is perverted;" or "I'm a soccer mom." Even though the courts rejected these excuses, they provide a glimpse at what is regularly occurring today in America's courtrooms.

Both common sense and concern for our fellow citizens suggest that there are legitimate hardship situations when a person is appropriately excused from serving on a jury. But the courts' current dealings with proffered hardship excuses raise three primary problems. First, the standard for granting a hardship excuse is often vague or undefined. For example, in many states, the standard for an excuse is simply defined as "undue hardship, severe inconvenience, or public necessity." Texas allows its citizens to propose "any reasonable sworn excuse." Furthermore, some "hardship" standards seem perfectly tailored to allow professionals to avoid service. In Virginia, for example, a person may plead a "particular occupation inconvenience" to receive an exemption from jury duty. Likewise, Illinois courts will excuse those called for service if they show an "undue hardship on account of the nature of the prospective juror's occupation [or] business affairs," among other reasons. Delaware's statute permits the court to decide "that membership in specified groups of persons or occupational classes constitutes a showing of undue hardship, extreme inconvenience or public necessity."

The second problem with hardship excuses is that they give a great deal of discretion to the court official responsible for making such decisions. Often, the court official making hardship determinations is not a judge, but rather an administrative employee or law clerk. Individuals may feel less embarrassment in inventing hardship excuses when the court representative they appear before does not wear a robe and does not have the power to hold them in contempt of court. Furthermore, court staff or clerks may find themselves intimidated by ego-toting professionals.

A third problem with many existing hardship excuses is that they are easy to invent. Not all states require prospective jurors to substantiate the reasons for their proffered excuses. For ex-

ample, a juror does not have to provide a physician's statement to support a medical problem, nor does he have to present a tax return, pay stub, or note from his employer documenting a financial hardship, or an affidavit under oath.

States should move away from the vague "undue hardship, severe inconvenience, or public necessity" standard used by many courts and provide a more precise definition of hardship. The ALEC Jury Patriotism Act, for example, provides that "undue or extreme physical or financial hardship" justifying an excuse from jury service is limited to three circumstances. The first situation is when a person would be required to abandon another under his or her personal care or supervision because of the impossibility of obtaining an appropriate substitute caregiver. This language does not permit an excused absence for just any person with a young child or disabled dependant person in his or her home. Rather, only those who can demonstrate the impossibility of obtaining child care or disabled care, for financial reasons or otherwise, can obtain an excuse. Those who can afford child or disabled care, or have a relative or substitute caregiver they can rely upon, are required to follow that route and appear for jury duty.

The second situation in which a prospective juror can claim a hardship excuse under the model act is when he or she 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. Under this provision, loss of income from employment or other activities would not permit one to avoid jury service automatically. Professionals who stand to lose a substantial sum would be exempt only if they can show that the loss would actually impair their ability to pay for life's necessities. While this may appear to place a burden on some, it serves to fairly distribute the burden of jury service equally among white-collar workers and those who make less money, but for whom lost income may place a greater strain.

The final situation in which a court would be allowed to excuse a person from jury service under the Jury Patriotism Act would be a probability that the person would suffer physical illness or disease by serving. This provision generally codifies existing practice. The model act also is intended to make clear that the disabled can productively serve, and indeed have a right to serve, on a jury.

ALEC's Jury Patriotism Act not only limits the available hardship excuses, it also establishes procedures that make it more likely that the ex-

cuses will be strictly applied. Potential jurors cannot simply claim a hardship. Rather, they must provide the court with documentation supporting the need for an excuse. This minimal requirement will be a big step toward ensuring that individuals are not inventing or exaggerating claimed hardships. For instance, a person claiming a medical condition could provide a statement from a physician. One who claims financial hardship might submit a copy of his or her tax return or pay stub.

The Jury Patriotism Act also places the responsibility for making hardship determinations with a judge, rather than with a clerk of the court or an administrative staff member. This requirement demonstrates the seriousness of the jury service obligation within the judicial system. It also would have an important practical effect. People may think twice about articulating a bogus hardship excuse when in a courtroom, before a judge, and faced with the threat of a sanction.

Conclusion

Americans continue to overwhelmingly support

the jury system. Yet, many people fail to appear for jury duty when summoned, or strive to get out of jury duty once they enter the courthouse. Most of these individuals do not lack a sense of civic duty. Rather, they want to avoid what they perceive to be the hardship and headache imposed by antiquated systems that do not provide adequate financial compensation for jurors, leave little or no flexibility as to the dates of service, and may require them to twiddle their thumbs in a courthouse waiting room. Moreover, occupational exemptions give some privileged members of society an easy way out of service, while loosely defined hardship exemptions provide many others with a means of escape.

ALEC's Jury Patriotism Act addresses and breaks down each of the barriers that currently make many juries unrepresentative of their communities. Jurors would benefit from the flexibility of an easy method to postpone and reschedule service, and from adoption of a one-day/one-trial system that would reduce the frustrating and boring time spent in a courthouse waiting room. Moreover, under the

model act, jurors would not risk being selected to serve on a lengthy civil trial without adequate compensation. Through these reforms, all citizens, regardless of income or occupation, will be expected and able to serve on a jury, and they will be welcomed by a friendlier jury system.

The defense bar should actively support service on juries by all members of society by taking three simple steps. First, recommend to your clients (as well as to your own firm) that company policies provide employees with their full compensation during their time in the courthouse, and do not require any use of annual, sick, or vacation leave to fulfill this civic obligation. Second, suggest that corporate management lead by example, through personal service on juries and by leading education efforts in the workplace, to communicate the importance of participating in the jury system. Finally, tell your state legislators that ALEC's Jury Patriotism Act is important to you, to your clients, and to fulfilling the promise of the jury system. **FD**

Forum Shopping, from page 53

ment (Second) Conflicts of Laws §142(2). The previous version of the Restatement treated the statute of limitations as a procedural matter, governed by the law of the forum state. Section 142 was amended in 1988 to encourage the forum court to choose the statute of limitations by a choice-of-law analysis, including consideration of whether maintenance of the claim would serve any substantial interest of the forum, and whether the claim would be barred by the law of a state has the most significant relationship to the parties and the occurrence that gave rise to the dispute.

The 1988 revision aligned the Restatement with the growing trend among courts that have declined to maintain an action where the claims would be barred by the statute of limitations of the state that has the most significant relationship to the dispute. As noted in the comments, maintenance of an action barred in the state most concerned with the claim would disserve the general policy against prosecution of state claims and would not serve any other forum interest, but it would frustrate the policy of the state whose law otherwise governs the claim. The highest state courts in Massachusetts, Arizona, and Florida have already adopted the reasoning of the revised Restatement. For example, the Massachusetts Supreme

Judicial Court, citing Section 142 as amended, explicitly held that its past treatment of the statute of limitations as procedural will no longer be continued. *New England Telephone & Telegraph Co. v. Gourdeau Construction Co.*, 419 Mass. 658, 647 N.E.2d 42 (1995).

Most states simply have not had occasion to rule that statutes of limitations should not be used as a procedural mechanism for wholesale forum shopping. Defense counsel should encourage such courts to update their pre-existing reliance on the Restatement to encompass the amended Section 142(2). The argument can and should be explicit in attacking forum shopping for statutes of limitation as an unnecessary burden to the forum court and an unwarranted boon for plaintiffs.

Statutes of Repose

Defense counsel should research whether there is an operative statute of repose either in the forum state or in the state that applies the substantive law over the action. Such a statute bars a suit for a fixed number of years after the defendant's injurious conduct (such as by designing or manufacturing a product), even if this period ends before the plaintiff suffers any injury.

In some jurisdictions, statutes of repose are considered procedural in nature, so the forum court may apply its own statute of repose in the

same way that it would apply its own statute of limitations. In other cases, the statute of repose is treated as substantive. North Carolina's products liability statute of repose offers such an example. With limited exceptions, the statute bars claims involving defective products that are brought more than six years after the date that the product was purchased. A Michigan appeals court applied the North Carolina statute of repose to bar a products liability claim brought in Michigan by a North Carolina citizen against a Michigan manufacturer, noting "Michigan has no interest in affording greater rights of tort recovery to a North Carolina resident than those afforded by North Carolina." *Farrell v. Ford Motor Co.*, 199 Mich.App. 81, 501 N.W.2d 567 (1993).

Conclusion

Depending on the factual circumstances of the case, a state's procedural rules may offer enough advantages to inspire plaintiffs to file suit far away from where the tort occurred or even where the parties reside. While the problems and possible solutions of forum shopping are only briefly noted here, defense counsel representing pharmaceutical and medical device manufacturers should vigorously pursue strategies to combat unfair stacking of procedural advantages on the plaintiffs' side of the table. **FD**