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# Making Jury Duty a Little Friendlier

By J. Walter Sinclair, Mark A. Behrens and Cary Silverman

*"My dog is in heat and needs me."*

*"I never tell the truth."*

*"I'm 86 years old and deaf as a doornail."*

*"The legal system is perverted."*

*"I cannot sit in judgment of others."*

*"I dislike lawyers."*

*"I'm a soccer mom."*

These are just some of the excuses people have used to try to get out of jury service.<sup>1</sup> Why do so many citizens cringe at the mention of jury duty? Consider the case of the ordinary Joe Juror. Joe receives a juror summons. It requires him to remain available for jury service for a specified period that may last several days or weeks. If Joe had a vacation or a business trip planned, he may need to cancel his plans, or try his luck at getting a deferral from the court. Joe may need to call in to the court each day for a week or more to determine whether he needs to report and take off from work. If selected to resolve a dispute between two private litigants, who may have millions of dollars at stake, Joe may be forced to go weeks or months without any real compensation. All the while, Joe incurs his usual bills and possibly additional expenses, such as day care for his children or in the larger towns, parking fees near the courthouse. While Joe's employer may not fire or threaten to fire him, he may be required to use his leave time for jury service. Jury service is indeed a civic obligation, but perhaps it asks a little too much of Joe.

It is clear that the anxiety that arrives upon Joe's opening of his mailbox to find a jury summons, or that of most jurors, does not reflect a decline in respect for the jury system. In fact, according to a 1998 American Bar Association opinion poll, 78% percent of the public rate our jury system as the fairest method of determining guilt or innocence; 69% consider juries to be the most important part of the justice system.<sup>2</sup> Given this apparent conflict, it is important to consider why citizens have such negative feelings about jury service and to find ways to relieve their concerns.

The American Legislative Exchange Council (ALEC), the Nation's largest bipartisan organization of state legislators, has developed model legislation—referred to as the "Jury Patriotism Act"—that reflects on these issues and provides real solutions for citizens in Idaho. These reforms will make it easier for Joe Juror and people like him or her to fulfill their important responsibility of citizenship.

## Jury Service Should be More Flexible

Currently, when an Idaho citizen receives a juror summons, he or she is required to appear in court at whatever date and time the summons instructs, unless the court has adopted a postponement procedure on its own initiative. Should a juror have a conflict, such as vacation plans or a business commitment, the juror may need go to court or submit a sworn statement demonstrating the need for a

deferral, which must demonstrate undue hardship or extreme inconvenience.<sup>3</sup> Such a procedure can lead to resentment of jury duty. It shows a lack of respect for jurors and tells them that their personal and professional lives are not important to the court system.

All Idaho courts should extend the courtesy of one postponement for any reason to those summoned to jury duty. Allowing jurors to postpone their service would reduce the incentive for professionals who have commitments to patients and clients, educational obligations, or others who have family responsibilities, to avoid jury service. As the American Bar Association has observed, "Deferral of jury service accommodates the public-necessity rationale upon which most exemptions and automatic excuses where originally premised, while enabling a broader spectrum of the community to serve as jurors."<sup>4</sup>

The process for obtaining a postponement under the Jury Patriotism Act would be quick and easy. The summoned juror 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—only a date on which he or she will appear for jury service within six months. The court would be able to grant subsequent postponements only in the case of an extreme emergency that the juror could not have anticipated at the time of requesting the first postponement. In addition to the one automatic postponement, the Jury Patriotism Act would also protect small businesses by requiring the court to postpone and reschedule the service of an employee of a small business if another employee of that employer is summoned to jury service during the same period. This provision would eliminate the chance for a small business to lose multiple employees, who may be essential to the business's operations, to jury service at the same time.

## Jurors Should Be Asked to Serve No More Than One Day or One Trial

Another reason jurors dislike jury service is that it may require them to remain available for as long as six months and attend court as many as ten days during that period, even if they are not selected to serve on a trial.<sup>5</sup> In practice, each Idaho county currently sets the term of service. For example, in Kootenai and Ada counties, the term is one week and a juror can expect to serve two to four days during that period.<sup>6</sup> In Bannock County, the term of service is two weeks.<sup>7</sup> Twin Falls county jurors serve a one-month term. Boundary county jurors are subjected to a four-month term and can expect to be called into court once per month during the four-month term of service.<sup>8</sup> Jurors must regularly call into an answering machine during their term of service to determine when and if they should report at the courthouse.

A shorter term of service would relieve some of the inconvenience placed upon jurors. Today, about half of state courts around the country guarantee that a juror does not have to serve more than one day unless he or she is selected to serve on a trial.<sup>9</sup>

Over the past three decades, courts nationwide have embraced this "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 by lengthy terms of service. According to the National Center for State Courts, every statewide jury reform task force report of the past decade has recommended adopting the change and no state court that has adopted the shorter term of service has returned to the former practice.<sup>10</sup>

The one-day/one-trial system works. For example, by adopting the one-day/one-trial system, New York reduced its statewide average term of service, previously over five days, to just 2.2 days—a decrease of more than 50%.<sup>11</sup> In Massachusetts, which has adopted the one-day/one-trial system, 85% of those who appear complete their jury service in just one day and 95% finish in three days.<sup>12</sup> Not only does the one-day/one-trial system result in less time spent in the courthouse for jurors, it also means fewer days of employee absences from work for jury duty. Research by the California Judicial Council found that the majority of employees in that state returned to work the next business day after reporting for jury service under the one-day/one-trial system.<sup>13</sup>

Jurors favor the one-day/one-trial term of service. In an early study of juror attitudes, 90.8% of 5,500 jurors selected the one-day/one-trial system as preferable to a thirty-day term, and a majority would not object to being called again.<sup>14</sup> The one-day/one-trial system term also may vastly reduce the need for hardship excuses. One court found that requests for excusal after the adoption of the one-day/one-trial system dropped to 1.36%, and most of these requests were accommodated by the court's postponement policy.<sup>15</sup> It should be no surprise that the survey also revealed that the one-day/one-trial system increased positive attitudes about jury duty and about the justice system generally.<sup>16</sup> Recently, the National Center for State Court's Best Practices Institute recognized the one-day/one-trial system as a particularly effective practice.<sup>17</sup>

### **Jury Service Should Not Require Extraordinary Financial Sacrifice**

Anxiety over the prospect of jury service may also result from the chance of being selected to serve on a long trial without any meaningful compensation. Those called for jury duty in Idaho courts receive a nominal ten dollars per full day served or five dollars for each half-day or portion of a day served on a jury.<sup>18</sup> Today's juror fee does not pay for a bus fare and a turkey sandwich, let alone reimburse a juror for lost income. Since employers are not required to pay their employees during any portion of jury service, some working people must seek to be excused from service or suffer severe financial hardship. This situation is particularly problematic when the term of jury service requires citizens to spend several days or weeks in court or a juror is selected to serve on a lengthy trial. Though long trials are rare (between half and three-quarters of trials last no more than three days and only four percent of trials last ten days or more),<sup>19</sup> those who by luck of the draw are selected to serve on an extended case may endure extraordinary financial hardship if not sufficiently compensated by their employer or the state. These citizens effectively lose their right and privilege to serve on a jury. Jury service may be a civic duty, but it should not require such an extraordinary financial

sacrifice of our citizens, particularly when called to decide disputes between private parties.

Lack of adequate pay for jurors has several unfortunate results. Some of those who would lose their salary may opt to simply not show up in court to avoid the risk of being selected for a long trial without pay. Those who do show up at the courthouse are likely to plead with the court to be excused. When it is apparent that a trial will be long and complex, it is likely that the court will excuse many working jurors due to the financial burden jury service will place on them, their families, or their business. Courts often find they have no other choice given that they do not have the resources to provide any significant compensation above the standard jury fee.

After all is said and done, too many people find a way out of jury service or are forced out of jury duty. The result may be a jury that lacks many working people and professionals. Its composition may not be "representative of a cross section of the community," as required by both the Constitutions of the United States and the State of Idaho.<sup>20</sup> With many life experiences, educational backgrounds, and other perspectives absent, juries may lack the collective wisdom to best understand scientific evidence, expert testimony, or other complex issues. Plaintiffs and defendants all would benefit from a diverse and truly representative trial jury.

Better juror compensation may be key to obtaining more representative juries.<sup>21</sup> Unfortunately, a significant increase in the juror fee by the state is not in the cards in the near future. In this time of a tight state budget, it is unlikely to be politically or fiscally feasible. Nevertheless, there are other alternatives to increasing juror pay from the state that can lessen the burden and anxiety placed on Idaho jurors. One option is the establishment of a "Lengthy Trial Fund," financed through a minimal court filing fee, which would provide wage replacement or supplementation to jurors who serve on civil trials lasting longer than three days. Such an innovative system, which is included in ALEC's Jury Patriotism Act, would make it less likely that Idaho citizens would be excused from service when a civil trial is expected to last several days, weeks, or months. These individuals would be eligible to receive supplemental compensation from the Fund if they would otherwise be excused from service due to financial hardship. Any juror who is not fully compensated by his or her employer would be eligible for additional wage replacement or supplementation of up to three hundred dollars after the ninth day of service on a civil jury. While this is not a large sum of money, in most cases it would provide some reasonable compensation to offset the jurors' lost income. This system would lend considerable support to jurors serving on lengthy trials.

### **No-Shows Should Receive an Appropriate Penalty**

Given the increased flexibility of jury service, shorter term of service, compensation protection, and employment security provided by the Jury Patriotism Act, there is really no excuse for people to ignore a juror summons. Unfortunately, it is all too easy to drop a summons in the trash can. Research shows that a significant number of those who do not respond to jury summonses fail to do so because they have little fear of receiving a penalty, or believe that the penalty will be a mere "slap on the wrist." Currently, Idaho courts may punish those who do not respond to a juror summons with a fine of up to one hundred

dollars, and imprisonment of not more than three days, or both.<sup>22</sup> It is no secret, however, that courts rarely take action against those who fail to appear for jury service.

Jury service is an important obligation of citizenship. Criminal defendants rely on a representative jury to receive a fair trial. Parties in civil litigation also have a right to a representative jury. A person's failure to appear in court hurts the judicial system and impairs the rights of litigants. Quite simply, ignoring a jury summons has real and serious consequences. The state should threaten those who do not appear in court with a penalty that offers appropriate deterrence. This penalty should communicate to jurors the importance of jury service and notify them that shirking one's civic obligation to serve will be criminally punished as a misdemeanor. Under this provision, those who fail to appear for jury service will have a criminal record, a threat sufficient to cause one to pause before ignoring a jury summons. Enforcement will lie not only with the courts, but also with state prosecutors.

### **Too Many People are Excused for Reasons Not Reflecting True Hardship**

Even if increased penalties and enforcement draw more jurors into the courthouse, this effort will be in vain if those who show up for jury duty take advantage of Idaho's broad standard for obtaining a hardship excuse. Idaho law provides that the court may excuse a person from jury service upon a showing of "undue hardship, extreme inconvenience, or public necessity."<sup>23</sup> The statute does not provide any further guidance on what situations constitute grounds for an excuse and provides courts with a great deal of discretion to dismiss people from jury duty. Consequently, some called for jury service, particularly professionals, may abuse Idaho's flimsy standard to avoid their civic responsibility. Some jurors who will not suffer true hardship may invent excuses and, all too often, they may be successful in avoiding jury service.

Idaho should amend its standard for an excuse to make it difficult for the privileged to avoid jury service by providing greater guidance to the courts with respect to the acceptable reasons for excusing a prospective juror from service. Grounds for excuses might be limited to three circumstances set forth in ALEC's Jury Patriotism Act: (1) the impossibility of obtaining an appropriate substitute caregiver for a person under the prospective juror's personal care or supervision; (2) the incurring of 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 primary means of support; or (3) physical illness or disease. Summoned jurors should also be expected to appear in court and provide the judge with documentation supporting their request for an excuse. These grounds would seem to more closely reflect true hardship and limit the opportunity for abuse. Jurors who would experience lesser inconveniences would benefit from the Act's liberal postponement system, can reschedule their service, and would not need to request a hardship excuse.

### **Idaho Can Further Improve Jury Service**

Idaho citizens 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 are discouraged from jury service due to the hardship and headache imposed by a system that no longer serves either our jurors' or our courts' needs, that does not provide adequate financial compensation for jurors, leaves little or no flexibility as to the dates of service, and may involve unnecessary time in a waiting room. Moreover, the loosely defined standard for an excuse from service and the lack of a sufficient deterrent to ignoring a summons provides many with an easy means of escape.

In early 1999, the Idaho Supreme Court appointed a Jury Committee composed of judges, lawyers, court administration, prosecutors, and former jurors to examine the jury system and make recommendations for improvement. After holding a series of meetings and conducting a survey of Idaho judges on jury practices, the committee issued its report in February of 2001.<sup>24</sup> Most of the committee's recommendations involved trial innovations to make jury service a more active and meaningful experience, educational efforts aimed at promoting jury service, particularly among young people, and efforts to protect juror privacy. In July of 2001, the Idaho Supreme Court acted on many of these suggestions by revising its court rules.<sup>25</sup> The court also amended its administrative rules to encourage each judicial district to adopt procedures governing excuses and postponements from jury service and required, at a minimum, that there be no automatic excuses from service, that postponements to a date certain are preferred over excuses, and that the court be made aware of multiple requests for postponement by any individual prospective juror.<sup>26</sup> While acknowledging the financial burden that jury service may sometimes place on jurors, the Committee deferred to the legislature to find a way of providing better compensation to jurors.<sup>27</sup>

ALEC's Jury Patriotism Act would build upon these efforts and try to further reduce the barriers that frustrate jury service in Idaho. All jurors would be able to postpone their service one time, for any reason. Jurors will not have to call into the courthouse for perhaps days or weeks to determine if they must appear in court, and may spend less frustrating and boring time in a courthouse waiting room, with a one-day/one-trial system. They also would not take the risk of service on a long trial without fair compensation. Through these additional reforms, Idaho citizens, regardless of income or occupation, will be better able to fulfill

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their patriotic duty to serve on a jury. Idaho also would have a more friendly jury system. The Idaho legislature would be wise to adopt the sound reforms contained in ALEC's model Jury Patriotism Act.

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## Endnotes

- 1 See Jane Greig, *Many are Called; Some are Chosen; Few are Excused from Jury Duty*, AUSTIN AMER.-STATESMAN, Mar. 16, 2002, at D1; Juror Excuses Heard Around the State, 73 N.Y. St. Bar J. 34 (2001); Tim Wyatt, *Though Their Chances of Being Chosen Are Slim, Potential Jurors Can Come Up With Creative Reasons to Dodge Their Duty*, DALLAS MORNING NEWS, July 10, 2000, at 16A; Allen Pusey, *Excuses, Excuses: When Summoned, Some Claim Illnesses, Prejudices Prevent Them From Serving*, DALLAS MORNING NEWS, Oct. 22, 2000, at 22A.
- 2 See AM. BAR ASS'N, PERCEPTIONS OF THE U.S. JUSTICE SYSTEM 6-7 (1998), available at <<http://www.abanet.org/media/perception/perceptions.pdf>> (last visited Mar. 14, 2003).
- 3 See IDAHO CODE § 2-212(3).
- 4 AM. BAR ASS'N, STANDARDS RELATED TO JUROR USE AND MANAGEMENT 51 (1993).
- 5 See IDAHO CODE § 2-216(1).
- 6 See Fourth Judicial District, Jury Office, <<http://www2.state.id.us/fourthjudicial/Jury/jury.htm>>; Kootenai County, Jury Information, <<http://www.co.kootenai.id.us/departments/districtcourt/jury.asp>> (last visited Mar. 14, 2003).
- 7 See Bannock County, Jury Duty, <<http://www.co.bannock.id.us/jury.htm>> (last visited Mar. 14, 2003).
- 8 See Boundary County District Court, Jury Duty, <<http://www.boundary-idaho.com/jury/juryduty.htm>> (last visited Mar. 14, 2003).
- 9 See Nat'l Center for State Courts, Best Practices Inst., *Jury Administration and Management: Term of Service*, available at <[http://www.ncsconline.org/Projects\\_Initiatives/index.htm#Best](http://www.ncsconline.org/Projects_Initiatives/index.htm#Best)> (last visited Mar. 14, 2003) [hereinafter Best Practices].
- 10 See *id.*
- 11 See N.Y. STATE UNIFIED COURT SYSTEM, CONTINUING JURY REFORM IN NEW YORK STATE 12 (2001), available at <<http://www.courts.state.ny.us/juryreform.pdf>> (last visited Mar. 14, 2003).
- 12 See Office of Jury Commissioner for the Commonwealth, *Introduction*, <<http://www.state.ma.us/courts/jury/introduc.htm>> (last visited Mar. 14, 2003).
- 13 See Don Wolfe, *Employers: Support Jury Service or Stop Complaining*, SILICON VALLEY / SAN JOSE BUS. J., July 5, 2002.
- 14 See David E. Kasunic, *One Day/One Trial: A Major Improvement in the Jury System*, JUDICATURE, v. 67 no. 2, at 81 (Aug. 1983) (citing a 1976 study of juror attitudes conducted by a professor with a specialty in statistics and sociology).
- 15 See *id.* at 81-82.
- 16 See *id.* at 81.
- 17 See Best Practices, *supra*, note 9.
- 18 See IDAHO CODE § 2-215.
- 19 See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 166, tbl. C-8 (2001), available at <<http://www.uscourts.gov/judbus2001/contents.html>> (last visited Mar. 14, 2003) (finding that 75% of all civil and criminal trials in the federal courts were completed within three days and 4% extended beyond nine days during the twelve-month period ending September 30, 2001); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CIVIL TRIAL CASES AND VERDICTS IN LARGE COUNTIES, 1996, at 13 (1999), available at <<http://www.ojp.usdoj.gov/bjs/pub/pdf/crcvlc96.pdf>> (last visited Mar. 14, 2003) (finding that the median number of days in jury trials in the nation's seventy-five largest counties was three days).
- 20 See U.S. CONST. art. III, § 2, cl. 3 and amend. VI; U.S. CONST. amend. VII; IDAHO CONST. art. I, § 7; see also IDAHO CODE § 2-202 ("It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population . . .").
- 21 See AM. BAR ASS'N, REPORT OF THE ABA COMMISSION ON THE 21ST CENTURY JUDICIARY 87 (Mar. 2003) (draft report).
- 22 See IDAHO CODE § 2-208(3).
- 23 IDAHO CODE § 2-212(3).
- 24 See REPORT OF THE IDAHO SUPREME COURT JURY COMMITTEE, Feb. 6, 2001 (on file with authors) [hereinafter JURY COMM. RPT.].
- 25 See Justice Jesse R. Walters, *Jury Committee Report*, ADVOCATE (Idaho), Aug. 2001, at 7 (discussing the work of the Jury Committee and providing each of the rule changes promulgated by the Idaho Supreme Court in response to the Jury Commission's recommendations).
- 26 See IDAHO CT. ADMIN. R. 62.
- 27 See JURY COMM. RPT., *supra*, note 24, at 6.

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