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Jury Patriotism: The Jury System Should Be Improved for  
Texans Called to Serve

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# ESSAY

## JURY PATRIOTISM: THE JURY SYSTEM SHOULD BE IMPROVED FOR TEXANS CALLED TO SERVE\*

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I. Introduction .....	118
II. Excuses from Jury Duty Should Be Limited to True Hardship.....	121
III. Jury Service Should Be More “User Friendly” .....	123
A. Giving Jurors an Easy Means to Reschedule Service.....	123
B. Limiting Service to One Day or One Trial.....	124

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C. Protecting Employment Rights .....	127
IV. Jury Service Should Not Require Extreme Financial Sacrifice .....	127
V. No-Shows Should Receive an Appropriate Penalty ...	131
VI. Conclusion .....	133

## I. INTRODUCTION

The September 11, 2001 terrorist attacks and recent military operations in Afghanistan and Iraq have created a patriotic spirit in this country that has not been witnessed in a long time. This spirit is evident throughout the United States, particularly in Texas. It mostly takes the form of symbolic acts, such as flying the flag, displaying a patriotic bumper sticker on an automobile, or wearing a lapel pin with the Stars and Stripes on it. Most Americans do not have a direct way of acting on their emotion. In terms of real action, the only two voluntary ways for most Americans to participate in our democracy and support the freedoms we enjoy as Americans are to vote on Election Day and to serve on a jury.<sup>1</sup>

For over two centuries, the jury system has played an important and revered role in the American justice system.<sup>2</sup> In the *Federalist Papers*, the right to jury trial was praised as a "valuable safeguard to liberty."<sup>3</sup> A century and a half ago, Alexis de Tocqueville wrote about the jury system's importance in preserving a free and democratic society.<sup>4</sup> The Texas Constitution provides that "[t]he right of

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1. See Jane Robison, Editorial, *Jury Duty a Revealing Look Inside the Justice System*, L.A. DAILY NEWS, Jan. 28, 2001, at V1, available at 2001 WL 6050175 (stating that jury service may be viewed as an unwelcome burden, but "[i]t's a chore every American should be forced to do at least one time in his or her life").

2. See U.S. CONST. art. III, § 2, cl. 3 (declaring that the trial of all crimes shall be by jury); U.S. CONST. amend. VI (providing for the right of a trial by a fair and impartial jury in criminal cases); U.S. CONST. amend. VII (providing for the right of a trial by jury in certain civil cases).

3. THE FEDERALIST NO. 83 (Alexander Hamilton).

4. 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 265-66 (Henry Reeve trans., 1988).

The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged, and with the notion of right. . . . It teaches men to equity; every man learns to judge his neighbor as he would himself be judged. . . . By obliging men to turn their attention to affairs which are not exclusively their own, it rubs off that individual egotism practise which is the rust of society.

trial by jury shall remain inviolate.”<sup>5</sup>

Not surprisingly, Americans hold the jury system in high regard. According to an American Bar Association (ABA) opinion poll, sixty-nine percent of Americans consider juries to be the most important part of the justice system.<sup>6</sup> Yet, many citizens seem to want no part in the very system they claim to embrace with such strong support. According to the American Judicature Society, about twenty percent of those summoned to jury duty each year in state courts do not respond.<sup>7</sup> In Texas’s Travis County, only about a quarter of the 180,000 to 200,000 citizens summoned to jury service each year actually show up at the courthouse.<sup>8</sup> A joint study conducted by the *Dallas Morning News* and Southern Methodist University found that in Dallas County, “at least 80% of the people summoned each week for jury duty disregard their summonses and refuse to participate in the system.”<sup>9</sup> In 2002, poor juror turnout in El Paso County actually required the delay of a murder trial.<sup>10</sup>

Why do so many citizens seem to embrace the jury system, so long as they are not actually part of it? The answer is not that most

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*Id.*

5. TEX. CONST. art. I, § 15.

6. AM. BAR ASS’N, PERCEPTIONS OF THE U.S. JUSTICE SYSTEM 6-7 (1998), available at <http://www.abanet.org/media/perception/perceptions.pdf>.

7. See ROBERT G. BOATRIGHT, IMPROVING CITIZEN RESPONSE TO JURY SUMMONSES: A REPORT WITH RECOMMENDATIONS 13 (Am. Judicature Soc’y 1998). Others have estimated that as many as two-thirds of the approximately fifteen million Americans summoned to jury service each year fail to report for jury duty. David Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider’s View*, 36 JUDGES’ J. No. 4, at 25 (Fall 1997).

8. Jason Spencer, *Looking for a Way to Boost Juror Pay*, AUSTIN AM.-STATESMAN, Dec. 27, 2002, at A1, available at 2002 WL 101147612. According to the Travis County District Clerk and auditor, twenty-seven percent of those summoned appear for jury service, thirty-four percent are excused from service before appearing in court, twenty-eight percent of summonses are returned as undeliverable, and eleven percent of those summoned ignore the summons completely. *Id.*

9. Ted M. Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1815 (2001). Dallas County officials mailed 13,027 summonses for jury service on civil and criminal trials to begin on March 6, 2000. *Id.* at 1814. An additional 585 people were expected to appear for jury service because they had answered summonses for an earlier court date but had asked to reschedule to that date. *Id.* Of the 13,612 expected to appear for jury duty, only 2,214 showed up in court. *Id.*

10. See Jennifer Shubinski, *Juror No-Shows Delay Murder Trial*, EL PASO TIMES, May 15, 2002, at 3, available at 2002 WL 20104597 (reporting that out of 120 potential jurors summoned to the 41st District Court, twenty-three did not appear in court and eight others were excused from jury service).

citizens are "un-American."<sup>11</sup> Rather, they are frustrated by a system that is on the whole not very "user friendly."<sup>12</sup> In addition, many who would like to serve are unable to do so as a practical matter because of the financial burden that jury service may impose upon them, their families, and their businesses. It is important to consider why many citizens have such negative feelings regarding jury service, and to find ways to relieve their concerns and encourage participation.<sup>13</sup>

The American Legislative Exchange Council (ALEC), the nation's largest bipartisan membership organization of state legislators, has examined the barriers that frustrate jury service in Texas and elsewhere. ALEC has developed model legislation – the Jury Patriotism Act – that reflects on these issues and provides sound solutions for Texas. The goal of the Jury Patriotism Act is simple: to promote jury service by alleviating the inconvenience and financial burden placed on those called to serve. The Act also seeks to make it more difficult for people to escape from jury service for reasons other than true hardship. The model bill safeguards the constitutional right of a person to serve on a jury and promotes the right to a representative jury in both civil and criminal trials. It is common sense legislation that is based on the best practices of state courts.

The Jury Patriotism Act finds support across the political spectrum. Just a few of its supporters include the Council of State Governments, the National Black Chamber of Commerce, the National Federation of Independent Business, the National Association of Wholesaler-Distributors, and the Texas Civil Justice League. Elected officials have responded to this broad-based support. Within months after the Jury Patriotism Act was developed in the

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11. See Jessica Zisko, Editorial, *The Jury Duty Dilemma: Why Do We Hate It So?*, U-WIRE, Apr. 24, 2002, available at 2002 WL 19553783 (indicating a poor attitude toward jury duty, recognizing that "[s]adly, a majority of the people called for jury duty have this negative attitude" and declaring that "[s]omewhere between our founding fathers and our palm pilots, jury duty became a bad ex-boyfriend – disrupting and better if avoided").

12. *Id.*

13. See generally G. Thomas Munsterman & Paula L. Hannaford, *Reshaping the Bedrock of Democracy: American Jury Reform During the Last 30 Years*, 36 JUDGES' J. No. 4, at 5 (Fall 1997) (providing an insightful discussion of administrative, structural, and procedural reforms adopted by state courts and legislatures to increase the representativeness and effectiveness of juries).

winter of 2002/2003, laws based on the ALEC model were enacted in Arizona, Louisiana, and Utah.<sup>14</sup>

This Essay highlights some problems with the Texas jury system. It also proposes a few suggestions for legislative changes based on the Jury Patriotism Act that would make jury service easier for Texans and restore the fundamental democratic concept of having civil and criminal defendants judged by juries that reflect the entire community.

## II. EXCUSES FROM JURY DUTY SHOULD BE LIMITED TO TRUE HARDSHIP

One reason many Texans avoid jury service is that it is easy for them to do so. Texas law provides that the court or the court's designee may excuse a person from jury service "for any reasonable sworn excuse."<sup>15</sup> The statute does not provide any further guidance as to the situations that constitute grounds for an excuse, thus allowing courts discretion to decide whom to dismiss from jury duty.

Some excuses proffered by Texans summoned for jury service include "the legal system is perverted," "I cannot sit in judgment of others," "I dislike lawyers," and "I have to take my dog to the

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14. H.B. 2520, 46th Leg., 1st Reg. Sess. (Ariz. 2003) (signed by Gov. Janet Napolitano on May 12, 2003); H.B. 324, Gen. Sess. (Utah 2003) (signed by Gov. Michael Leavitt on Mar. 17, 2003); H.B. 2008 (La. 2003) (signed by Gov. Mike Foster on June 27, 2003). Legislation modeled after the Jury Patriotism Act was introduced in the Texas Legislature in 2003 by Representative Kenny Marchant (R-Dist. 115) and sponsored by Senator Kip Averit (R-Dist. 22). H.B. 2923, 78th Leg., Reg. Sess. (Tex. 2003). Both the House Judicial Affairs Committee and the Senate Committee on Jurisprudence reported H.B. 2923 favorably, but the bill did not reach a floor vote.

15. TEX. GOV'T CODE ANN. § 62.110 (Vernon Supp. 2003). High school and college students and legislative branch officials and employees, including those of any department or agency, are automatically exempted from jury duty. *Id.* § 62.106(3)-(5). These exemptions eliminate many from jury service and place a disproportionate burden on those who do not have this special privilege. No one is too important or too busy to serve. In 2002, Governor Rick Perry, who does not enjoy the exemption extended to legislative officers, showed up in court for jury service and was designated "Juror No. 1" on a challenge to a speeding ticket. *See Governor Excused from Jury Panel*, ASSOC. PRESS NEWSWIRE (Austin), Aug. 27, 2002 (discussing Governor Perry's selection to a jury panel in municipal court) (on file with the *St. Mary's Law Journal*). An easy first step toward a more representative jury is for Texas to eliminate all exemptions from service and require all citizens to serve.

vet."<sup>16</sup> One juror checked the box indicating that he should be disqualified because he was not of "sound mind or good character."<sup>17</sup> Another submitted an exemption for being a "soccer mom."<sup>18</sup> While such excuses often will be rejected, too often jurors who will not suffer true hardship may receive an excuse from service.<sup>19</sup>

Furthermore, Texas law does not even require those summoned to explain their need for an excuse in court before a judge.<sup>20</sup> Consequently, those called for jury service, particularly professionals, may seek to avoid their civic responsibility.

The Jury Patriotism Act would address this problem by defining the legitimate grounds for jurors to obtain hardship exemptions from jury service. Under the model act, hardship exemptions would be limited to three circumstances: (1) "the impossibility of obtaining an appropriate substitute caregiver" for a person under the prospective juror's personal care or supervision;<sup>21</sup> (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 principal means of support";<sup>22</sup> or (3) physical illness or disease.<sup>23</sup>

Following the model act, Texas should also amend its law to permit only members of the judiciary, and not court employees, to

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16. Jane Greig, *Many Are Called; Some Are Chosen; Few Are Excused from Jury Duty*, AUSTIN AM.-STATESMAN, Mar. 16, 2002, at D1, available at 2002 WL 4817942; see also 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 (exploring the creative excuses used by potential Dallas County jurors).

17. Allen Pusey, *Excuses, Excuses: When Summoned, Some Claim Illnesses, Prejudices Prevent Them From Serving*, DALLAS MORNING NEWS, Oct. 22, 2000, at 22A.

18. *Id.*

19. In one particular week in Denton County, "[o]ut of 1,363 jurors who were called to serve, 838 – more than half – ended up not serving." *Reasons for Not Serving*, DALLAS MORNING NEWS, July 4, 2001, at 2M. The most frequent reasons given included: failed to show/no reason given (214), summons to serve was undeliverable by post office (159), providing care to young children (77), not a Denton County resident (59), not a U.S. citizen (48), job duties/responsibilities (44), over age 70 (33), medical reasons (32), vacation scheduled for that time (17), running late (17), felon/on probation (16), or a miscellaneous personal reason (15). *Id.*

20. See TEX. GOV'T CODE ANN. § 62.110 (Vernon Supp. 2003) (indicating that a designee may hear the reasons those summoned need to be excused from jury duty).

21. MODEL JURY PATRIOTISM ACT § 4(b)(3)(i) (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43>.

22. *Id.* at § 4(b)(3)(ii).

23. *Id.* at § 4(b)(3)(iii).

authorize excuses. Jurors should be expected to appear in court and provide the judge with documentation supporting their request for an excuse. These grounds would more closely reflect true hardship and limit the opportunity for abuse.

### III. JURY SERVICE SHOULD BE MORE "USER FRIENDLY"

The Jury Patriotism Act also seeks to eliminate some of the headaches of jury service by making the jury system more "user friendly" to jurors and their employers.

#### A. *Giving Jurors an Easy Means to Reschedule Service*

In some Texas courts, such as those in Dallas and Harris Counties, jurors can postpone and reschedule their service to a more convenient date through the court's website or by mailing a letter to an address provided on the juror summons.<sup>24</sup> This should be the law throughout the state. 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 or vacation plans, to avoid jury service. As the ABA has observed, "[d]eferral 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."<sup>25</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, elec-

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24. Harris County Dist. Clerk, *Guide to Jury Duty in Harris County*, at <http://www.ccl.hctx.net/jurors/guide.htm> (last visited Aug. 22, 2003) (describing the mail-in process for claiming an exemption) (on file with the *St. Mary's Law Journal*); Harris County Dist. Clerk, *Harris County Dist. Clerk Jury Services Page*, at [http://www.hcdistrictclerk.com/Jury\\_Info/jury\\_services.asp](http://www.hcdistrictclerk.com/Jury_Info/jury_services.asp) (last visited Sept. 5, 2003) (explaining the on-line method for rescheduling jury service) (on file with the *St. Mary's Law Journal*); Dallas County Jury Services, *Jury Services Postponement Request Form*, at [http://www.dallascounty.org/applications/english/juryservices/jury\\_intro.html](http://www.dallascounty.org/applications/english/juryservices/jury_intro.html) (last visited Sept. 5, 2003) (providing an online method to request postponement for jury services) (on file with the *St. Mary's Law Journal*).

25. AM. BAR ASS'N, STANDARDS RELATED TO JUROR USE AND MANAGEMENT 51 (1993).



tronic mail, or in writing.<sup>26</sup> 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.<sup>27</sup>

The Jury Patriotism Act also 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. Such a situation may be particularly hard on small businesses. For this reason, the model act requires courts to postpone and reschedule the jury service of a summoned juror if another employee in the same small business is already serving jury duty.<sup>28</sup> This postponement would not count toward the one postponement for any reason extended to all jurors. Employer groups, including the National Federation of Independent Business, support this provision of the model act.<sup>29</sup>

### B. *Limiting Service to One Day or One Trial*

A shorter term of service would also relieve some of the hardship placed upon jurors. Texas law does not set a uniform term of service. Several courts, such as those in Dallas and Tarrant Counties, have adopted policies by which jurors are not required to spend more than one day at the courthouse unless they are selected to serve on a jury panel.<sup>30</sup> This practice, known as the one-day/one-trial system, was actually credited to the Harris County court system, which adopted the shorter term of service in 1972.<sup>31</sup> The combination of the one-day/one-trial system and the fact that

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26. See MODEL JURY PATRIOTISM ACT § 3 (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43> (providing for postponement of jury service).

27. *Id.*

28. MODEL JURY PATRIOTISM ACT § 5(e) (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43>.

29. Nat'l Fed'n of Indep. Bus., *Jury Duty Exemption Beats the Clock*, at <http://www.nfib.com/PDFs/StateReports/SC.sr.pdf> (last visited Sept. 5, 2003) (on file with the *St. Mary's Law Journal*).

30. Dallas County Jury Services, *What to Expect*, at [http://www.dallascounty.org/html/citizen-serv/jury-services/juryserev\\_expect.html](http://www.dallascounty.org/html/citizen-serv/jury-services/juryserev_expect.html) (last visited Sept. 5, 2003) (reminding prospective jurors that Dallas County follows the one day/one trial system) (on file with the *St. Mary's Law Journal*); Tarrant County Jury Services, *Tarrant County Jury System*, at [http://www.tarrantcounty.com/tc\\_juryservices/site/default.asp](http://www.tarrantcounty.com/tc_juryservices/site/default.asp) (last visited Sept. 5, 2003) (explaining Tarrant County's "one day or one trial" jury system) (on file with the *St. Mary's Law Journal*).

31. Nat'l Center for St. Cts., Best Practices Inst., *Jury Administration and Management*, at [http://www.ncsconline.org/Projects\\_Initiatives/BPI/JuryAdminManage.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm) (last

eighty percent of prospective jurors are not selected to serve on trials means that only one out of every five jurors will need to serve more than one day of jury duty.

Today, about one-half of state courts around the country use the one-day/one-trial system.<sup>32</sup> Over the past three decades, courts have transitioned to 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 by lengthy terms of service.<sup>33</sup> 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>34</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 fifty percent.<sup>35</sup> In Massachusetts, which has adopted the one-day/one-trial system, eighty-five percent of those who appear complete their jury service in just one day and ninety-five percent finish in three days.<sup>36</sup>

Jurors favor the one-day/one-trial term of service. In an early study of juror attitudes, approximately ninety percent of 5,500 jurors selected the one-day/one-trial system as preferable to a thirty-day term, and a majority of those would not oppose being called again.<sup>37</sup> The one-day/one-trial system term also may vastly reduce

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visited Sept. 5, 2003) (on file with the *St. Mary's Law Journal*). Today, Harris County actually uses an even shorter term of service, a half-day/one-trial system. *Id.*

32. *See id.* (reporting that about fifty percent of United States citizens live in jurisdictions that have adopted this system).

33. David E. Kasunic, *One Day/One Trial: A Major Improvement in the Jury System*, 67 JUDICATURE, 78, 80 (1983).

34. Nat'l Center for St. Cts., Best Practices Inst., *Jury Administration and Management*, at [http://www.ncsconline.org/Projects\\_Initiatives/BPI/JuryAdminManage.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm) (last visited Sept. 5, 2003) (on file with the *St. Mary's Law Journal*).

35. N.Y. ST. UNIFIED CT. SYSTEM, CONTINUING JURY REFORM IN NEW YORK STATE 12 (2001), available at <http://www.courts.state.ny.us/juryreform.pdf>.

36. Office of Jury Comm'r for the Commw., *Introduction*, at <http://www.state.ma.us/courts/jury/introduc.htm> (last visited Sept. 5, 2003) (on file with the *St. Mary's Law Journal*).

37. *See* David E. Kasunic, *One Day/One Trial: A Major Improvement in the Jury System*, 67 JUDICATURE 78, 81 (1983) (citing a 1976 study of juror attitudes).

the need for hardship excuses. One court found that requests for excusal after the adoption of the one-day/one-trial system dropped to almost one percent, and most of these requests were accommodated by the court's postponement policy.<sup>38</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>39</sup>

Employers also like the one-day/one-trial approach because it means fewer days of employee absences from work for jury duty.<sup>40</sup> Research by the California Judicial Council showed that the majority of employees resume work the next business day after reporting for jury service under the one-day/one-trial system.<sup>41</sup> In announcing the adoption of the one-day/one-trial system throughout the California judiciary, Los Angeles Superior Court Presiding Judge James Bascue commented, "We know that one-day/one-trial is in the best interest of our employers and the communities we serve."<sup>42</sup>

In addition, implementation of a one-day/one-trial term of service could lead to fiscal savings for the state because the system is so efficient.<sup>43</sup> Rather than have a large number of jurors sitting around in a jury room for days on end, reading the newspaper and playing cards while collecting a juror fee, the one-day/one-trial method would bring in only the number of jurors that the court anticipates will be needed.<sup>44</sup>

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38. *Id.* at 81-82.

39. *Id.* at 81.

40. See Don Wolfe, *Employers: Support Jury Service or Stop Complaining*, SILICON VALLEY / SAN JOSE BUS. J., July 8, 2002, at <http://sanjose.bizjournals.com/sanjose/stories/2002/07/08/editorial3.html> (indicating that employers benefit from the one day/one trial system because most employees return to work the day following reporting for jury service, which benefits employers) (on file with the *St. Mary's Law Journal*).

41. *Id.*

42. News Release, Jud. Council of Cal., *One-Day or One-Trial Rule Now in Effect Throughout California* (June 10, 2002) available at <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR45-02.HTM>.

43. See David E. Kasunic, *One Day/One Trial: A Major Improvement in the Jury System*, 67 JUDICATURE 78, 82 (1983) (noting that Wayne County, Michigan realized a savings of \$288,000 in its first year under the one-day/one-trial jury system).

44. *Id.* at 82; see also Nat'l Center for St. Cts., Best Practices Inst., *Jury Administration and Management*, at [http://www.ncsconline.org/Projects\\_Initiatives/BPI/JuryAdminManage.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm) (last visited Sept. 5, 2003) (stating that "[a]lthough the direct costs of summoning so many more people adds to the budget, jurisdictions that have adopted this practice have

Recently, the National Center for State Court's Best Practices Institute (NCSC) recognized the one-day/one-trial system as a particularly effective practice.<sup>45</sup> According to the NCSC, "no state or court that has made the change to the shorter term of service has 'looked back' and returned to the former practice."<sup>46</sup> In fact, "every statewide jury reform task force report of the past decade has recommended adopting the change."<sup>47</sup>

### C. *Protecting Employment Rights*

Current Texas law prohibits employers from discharging or disciplining an employee who takes time off of work to serve on a jury.<sup>48</sup> 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.<sup>49</sup> Employees should not fear that by responding to a juror summons they might be required to sacrifice their annual vacation.

## IV. JURY SERVICE SHOULD NOT REQUIRE EXTREME FINANCIAL SACRIFICE

Financial hardship provides a primary reason that many Texans seek to avoid jury service. In 1866, the young State of Texas decided to pay its citizens \$2 per day, about equal to a day's wages, for their service on a jury.<sup>50</sup> Today, citizens summoned for jury service receive little more than jurors of over 100 years ago – a minimum of \$6 of compensation per day.<sup>51</sup> In 1997, the legislature

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also realized offsetting cost savings by making other changes to their jury management systems and juror compensation schemes") (on file with the *St. Mary's Law Journal*).

45. See Nat'l Center for St. Cts., Best Practices Inst., *Jury Administration and Management*, at [http://www.ncsconline.org/Projects\\_Initiatives/BPI/JuryAdminManage.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm) (last visited Sept. 5, 2003) (noting the success of the system in those jurisdictions where it has been implemented) (on file with the *St. Mary's Law Journal*).

46. *Id.*

47. *Id.*

48. See TEX. CIV. PRAC. & REM. CODE ANN. § 122.001 (Vernon Supp. 2003) (indicating that employees may not be terminated for missing work due to jury service).

49. MODEL JURY PATRIOTISM ACT § 5(b) (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43>.

50. Jason Spencer, *Looking for a Way to Boost Juror Pay*, AUSTIN AM.-STATESMAN, Dec. 27, 2002, at A1, available at 2002 WL 101147612.

51. See SUPREME COURT OF TEXAS, JURY-REFORM TASK FORCE, FINAL REPORT app. 7(a) (1997) (recommending an increase in the minimum juror pay to \$40 per day after the first day of service); see also Mark Curriden, *State Panel Seeks Pay Raise for Juries; Task*

provided presiding judges with the discretion to set the juror fee as high as \$50 per day or provide jurors sitting on a specific case with up to \$50 per day.<sup>52</sup> Most courts, however, continue to pay jurors \$6-10 per day, with some courts providing slightly greater compensation after several days of service.<sup>53</sup> In fact, juror compensation is regarded as so insignificant that about one-third of Texans do not even bother to cash their juror checks.<sup>54</sup>

Today's juror fee does not pay for a bus ticket and a ham sandwich, let alone reimburse a juror for lost income. As one summoned juror put it, "If the county paid for parking and maybe a lunch, that'd be nice."<sup>55</sup> That comment came from one of the more fortunate jurors, whose employer paid him during jury service.<sup>56</sup> But, since employers in Texas are not required to pay their employees during any portion of jury service, many working citizens must seek to be excused from service or suffer severe financial hardship. This 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 such trials are rare (only about four percent of trials last ten days or more),<sup>57</sup>

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*Force to Unveil Court Reform Plans, Including Call to Add to Judges' Power*, DALLAS MORNING NEWS, Sept. 15, 1997, at 1A, available at 1997 WL 11520617 (discussing the task force's recommendations).

52. TEX. GOV'T CODE ANN. § 61.001(b), (c) (Vernon Supp. 2003).

53. One exception is El Paso County, which provides \$6 per day for jury service, but increases the amount to \$40 per day to jurors serving on trials. Mark Curriden, *Extra Money Helps El Paso Lure More Prospective Jurors, County Success May Spur Legislature to Raise Statewide Pay Rate*, DALLAS MORNING NEWS, Oct. 24, 2000, at 8A. While the state sets the minimum juror pay, it is the county that pays the jurors. *Id.* El Paso County found that its residents supported an increase in the juror fee and financed the higher juror compensation through property taxes. *Id.* The court found a significant decrease in the no-show rate and better juror satisfaction following the change. *Id.*

54. See Steve Brewer, *Verdict: Underpaid/Jurors, Officials Agree \$6 a Day Woeful*, HOUS. CHRON., Mar. 19, 2002, at 17, available at 2002 WL 3250213 (confirming that thirty-one percent of jurors cash their \$6 check for jury service).

55. *Id.*; see also Annette Fuller, *Demanding Duties; Low Pay, Inconvenience Among County Jurors' Challenges*, DALLAS MORNING NEWS, July 4, 2001, at 1M (quoting a twenty-year-old Denton resident as commenting, "It doesn't even pay for my lunch today, and hardly even the gas to get here.").

56. Annette Fuller, *Demanding Duties: Low Pay, Inconvenience Among County Jurors' Challenges*, DALLAS MORNING NEWS, July 4, 2001, at 1M.

57. See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 165, tbl.C-8, *Length of Civil and Criminal Trials Completed, by District (2002)*, available at <http://www.uscourts.gov/judbus2002/contents.html> (finding that seventy-five percent of all civil and criminal trials in the federal courts were completed within three

those who are selected to serve on an extended case may endure extraordinary financial hardship. Jury service may be a civic duty, but it should not require an extraordinary financial sacrifice, particularly when citizens are called to decide disputes between private parties.<sup>58</sup>

Lack of adequate pay for jurors has several unfortunate results. According to an informal survey of community groups conducted by El Paso District Judge William Moody, low pay is a primary reason why only about one-quarter of those summoned serve on juries.<sup>59</sup> The *Dallas Morning News* and Southern Methodist University joint study also found poor compensation to be a key reason that many citizens fail to appear for jury duty.<sup>60</sup>

Jury pools disproportionately composed of unemployed citizens may lack the perspective of persons working in business, and may have difficulty comprehending scientific evidence, expert testimony, or other complex issues, such as fair and reasonable damages calculations. Some legal experts have even questioned whether the absence of Hispanics, young adults, and wage earners – groups that are particularly hard-hit by the lack of adequate juror pay – is so bad that the situation may violate the constitutional requirement that juries be “representative of a cross section of the community.”<sup>61</sup> Plaintiffs and defendants all would benefit from the

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days, and four percent extended beyond nine days during the twelve month period ending September 30, 2002).

58. See Editorial, *Jury Duty / Ways Needed to Reduce Jurors' Financial Strain*, HOUS. CHRON., Mar. 23, 2002, at 40, available at 2002 WL 3251209 (stating that citizens who participate in jury service take pride in carrying out this civic responsibility).

59. Jason Spencer, *Looking for a Way to Boost Juror Pay*, AUSTIN AM.-STATESMAN, Dec. 27, 2002, at A1, available at 2002 WL 101147612.

60. See Ted M. Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1816 (2001) (discussing responses from those who do and do not respond to jury summons and indicating that inadequate compensation for service is a factor); see also *Dallas County Officials Consider Pay Changes for Jurors*, ASSOC. PRESS NEWSWIRE (Dallas), Sept. 8, 2001 (noting that Dallas County officials are looking at the issue of juror pay to address the problem of poor response to summonses) (on file with the *St. Mary's Law Journal*); Mark Curriden, *Jury Pay Scale May Change; County Plan Faulted: No Money for 1st Day, but \$14 After That*, DALLAS MORNING NEWS, Sept. 8, 2001, at 1A (referring to the *Dallas Morning News* and Southern Methodist University study).

61. See Ted M. Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1815 (2001) (suggesting that, without reform, some counties' jury selection processes could be open to federal constitutional challenge).

diverse experience, values, and education of a truly representative petit jury.

Evidence indicates that better juror compensation may be key to obtaining more representative juries.<sup>62</sup> Unfortunately, a significant increase in the juror fee by the state is not in the cards in the near future. The Jury Patriotism Act addresses this problem. It includes an innovative "Lengthy Trial Fund" to help relieve the burden on jurors serving on lengthy civil cases.<sup>63</sup> The model act would provide jurors who serve on civil trials lasting longer than three days with supplemental compensation (up to \$100 per day) if they would otherwise be excused from service due to financial hardship.<sup>64</sup> 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 additional supplemental compensation from the fund (up to \$300 per day).<sup>65</sup> A court administrator, hired by the judicial system and compensated by the fund, would manage the fund under rules and guidelines established by the Texas Supreme Court.<sup>66</sup>

In order to qualify for payment, the juror would complete a form identifying the amount requested and provide the court with verifi-

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62. See AM. BAR ASS'N, REPORT OF THE ABA COMMISSION ON THE 21ST CENTURY JUDICIARY 87, Mar. 11, 2003, at <http://www.abanet.org/leadership/COLLOQUIUM/DRAFT2-26-03.pdf> (draft report) (referring to steps recommended by the Conference of State Court Administrators to improve jury pool representation) (on file with the *St. Mary's Law Journal*).

63. The model act does not provide wage replacement or supplementation for jurors selected for criminal trials. Nevertheless, states might consider providing special compensation to jurors in lengthy criminal trials. See H.B. 2520, 46th Leg., 1st Reg. Sess. (Ariz. 2003) (signed by Gov. Janet Napolitano on May 12, 2003) (adopting special compensation for trials over ten days; applies to both civil and criminal petit juries); H.B. 2008, 2003 Reg. Sess. (La. 2003) (signed by Gov. Mike Foster on June 27, 2003) (adopting a lengthy trial fund that applies to both civil cases and criminal cases in which conviction carries a sentence of twenty years or more at hard labor).

64. The average length of a trial in Texas is one to three days. See, e.g., Denton County Dist. Clerk, *Jury Information*, at [http://dentoncounty.com/dept/District\\_Clerk/juror\\_information.htm](http://dentoncounty.com/dept/District_Clerk/juror_information.htm) (last visited Sept. 5, 2003) (providing prospective jurors with basic information about the jury selection and service process) (on file with the *St. Mary's Law Journal*); Nueces County Court Administrator, *Jury Duty*, at <http://www.co.nueces.tx.us/jury/> (last visited Sept. 5, 2003) (providing basic information to prospective jurors) (on file with the *St. Mary's Law Journal*).

65. MODEL JURY PATRIOTISM ACT § 6(c)(2) (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43>.

66. See *id.* § 6(a) (2003) (describing the requirements for and administration of the Lengthy Trial Fund proposed by the model act).

cation of his or her usual wage and how much the employer paid the employee during jury service.<sup>67</sup> An individual who is self-employed or receives compensation other than wages would submit a sworn affidavit to the court attesting to his or her approximate gross weekly income and attach supporting documentation.<sup>68</sup>

The lengthy trial fund would be self-sustaining and not require any allocation of resources by the legislature. Rather, the fund would be financed through a minimal court filing fee – in essence, a small “user fee.”<sup>69</sup> The fund is based on the premise that those who use and benefit from the jury system should help pay to finance it. The filing fee is not intended to be a barrier to the filing of lawsuits and would be the minimum amount necessary to fairly support jurors who serve on lengthy civil trials (e.g., \$8). At roughly the cost of a movie ticket, the fee will not place any credible burden on lawyers or their clients. Furthermore, since the fee applies to anyone who files a civil suit, it is just as likely to be paid by a business suing another business as it is to be paid by a personal injury lawyer. The lengthy trial fund would lend considerable support to jurors serving on extended civil trials.

#### V. NO-SHOWS SHOULD RECEIVE AN APPROPRIATE PENALTY

Efforts to tighten hardship excuses, make the jury system more flexible and convenient, and reduce the financial burden of jury service would go a long way toward improving the jury system and achieving more representative juries. It is an unfortunate fact, however, that even with these reforms, many citizens may still choose to ignore their important civic obligation to serve.

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.”<sup>70</sup> Texas law authorizes a court to punish

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67. See *id.* § 6(d) (2003) (describing the process through which a juror may be reimbursed through the model act’s proposed Lengthy Trial Fund).

68. *Id.*

69. *Id.*

70. See Annette Fuller, *Demanding Duties; Low Pay, Inconvenience Among County Jurors’ Challenges*, DALLAS MORNING NEWS, July 4, 2001, at 1M (indicating that it is widely known that the penalties for failing to report for jury service are rarely enforced).



those who ignore a juror summons with a fine of between \$100 and \$1,000.<sup>71</sup> It is no secret that fines are rarely, if ever, imposed.<sup>72</sup>

Texas needs greater penalties and enforcement for those who shirk their civic duty. The state should threaten those who do not appear in court with a penalty that offers appropriate deterrence. There are several ways the legislature could accomplish this objective.

One option would be to strengthen the current contempt penalty and provide for more uniform application of the law. This could be done simply by making fines against no-shows mandatory rather than discretionary. Texas also could impose higher fines than provided for under existing law. For example, after notice and an opportunity to be heard, unexcused no-shows could be fined up to \$250 for a first violation, \$750 for the second, and \$1,500 for subsequent violations. These amounts could be remitted by the court if a summoned juror shows good cause for his or her failure to appear.

Another option would be to place a hold upon driver license renewals of those persons who fail to respond to a juror summons, following the issuance of an order-to-show-cause and the failure of the juror to appear at the hearing. Or, the state could require no-shows to perform community service. This period should be at least equal to the time that the citizen would have spent in jury service and could be in lieu of, or in addition to, a monetary fine.

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71. See TEX. GOV'T CODE ANN. § 62.0141 (Vernon Supp. 2003) (demonstrating the possible fines for failing to answer a summons).

72. See Annette Fuller, *Demanding Duties; Low Pay, Inconvenience Among County Jurors' Challenges*, DALLAS MORNING NEWS, July 4, 2001, at 1M (referencing the fact that delinquent jurors are generally not penalized). There have been some notable exceptions when a particularly poor juror turnout provoked the passion of a judge. See, e.g., Roger Croteau, *Jury No-Shows Called, Fined; Judge Upset in Guadalupe*, SAN ANTONIO EXPRESS-NEWS, Dec. 22, 2001, at 1B, available at 2001 WL 32176340 (reporting that when only 46 of 175 people called to jury duty appeared in court in Guadalupe County, District Court Judge J. Andrew Hathcock ordered the clerk of the court to call those who did not show and demand that they appear in court to give an explanation; only one came in); Laura Cruz, *Courts Crack Down on Jury Dodgers*, EL PASO TIMES, Feb. 15, 2002, at 1, available at 2002 WL 20102843 (reporting that courts in El Paso County, faced with incredibly poor juror turnout, began issuing summonses requiring citizens who failed to respond to both an initial and follow up juror questionnaire to appear in court and explain themselves or risk a fine); Joann Loviglio, *Judges Lay Fines, Jail Time on Jury Duty Scofflaws; Summons Getting Teeth*, SAN ANTONIO EXPRESS-NEWS, Aug. 12, 2001, at 33A, available at 2001 WL 24772118 (reporting that judges around the country are more frequently requiring no-shows to appear in court and are imposing fines on those who repeatedly fail to appear).

Under the Jury Patriotism Act, an individual's failure to appear for jury service would be punishable as a misdemeanor,<sup>73</sup> a threat sufficient to cause one to pause before ignoring a jury summons. Enforcement would lie not only with the courts, but also with state prosecutors. 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. "The point is not to punish people, but to encourage people to answer the summons and make arrangements to do their jury service."<sup>74</sup>

## VI. CONCLUSION

Texans continue to overwhelmingly support the jury system. Yet, many citizens 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 an antiquated system 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 citizens with an easy means of escape.

The Jury Patriotism Act developed by the American Legislative Exchange Council would break down each of the barriers that frustrate jury service in Texas. Jurors will spend less frustrating and boring time in a courthouse waiting room with a one-day/one-trial system. They also would receive better compensation. Through these reforms, Texans, regardless of income or occupation, will be better able to fulfill their patriotic duty to serve on a jury.

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73. MODEL JURY PATRIOTISM ACT § 3(d) (2003), available at <http://www.alec.org/viewpage.cfm?pgname=2.1cc43>.

74. Troy Anderson, *Show Up or Else; Courts Get Tough: Ignore Another Jury Summons and Get \$1,500 Fine*, L.A. DAILY NEWS, Jan. 19, 2002, at N1, available at 2002 WL 5528920 (quoting Pomona, California Supervising Judge).