

JURY DUTY REFORM: ARIZONA LEADS THE WAY

by

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Since the founding of our country, juries have been the bedrock of our justice system. Entrusting the final decision on legal disputes to ordinary citizens is an important part of what makes our country a democracy. The right to a trial by a jury of one's peers is enshrined in our Constitution.

For the jury system to work, however, citizens must participate. There can be no jury trials without jurors. Unfortunately, many citizens shirk their obligation to perform jury duty. One leading study found that 20% of all who are called for jury duty don't even show up.¹ Other studies have estimated the number of no-shows to be as high as 67%.² In some rural areas, over 90% of those called fail to appear.³ In some rural areas, sheriffs' deputies have been forced to obtain jurors by rounding up people at the local Wal-Mart.⁴ Many of those who do report to the courthouse attempt to avoid service through occupational exemptions or tales of "hardship" (most of which amount to mere inconvenience).

Part of the responsibility for this disgraceful situation lies in Americans' shrinking respect for the obligations of citizenship. Far too many of us want the benefits of living in America without bearing our share of the burdens. Whether it is paying taxes, serving in the military, or serving on a jury, the "something for nothing" attitude all too often rules the day.

¹Boatright, *IMPROVING CITIZEN RESPONSE TO JURY DUTY SUMMONSES: A REPORT WITH RECOMMENDATIONS* vii (American Judicature Society 1998).

²Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider's View*, *JUDGES' J.*, vol. 36, no 4 at 25 (Fall 1997).

³Boatright, *supra* note 1, at 13.

⁴See Merrick, *When the Jury Box Runs Low, Deputies Hit Wal-Mart: Personal Summonses Get Job Done When Mail Doesn't; Out for Milk, Off to Court*, *WALL ST. J.*, Aug. 20, 2002, at A1.

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But much of the blame for citizens' reluctance to serve on juries lies with the government. Under the best of circumstances, jury service is a burden. Jury service keeps us from meeting our responsibilities at work, forcing us to work long hours to catch up when we return. Time to care for our children is drastically reduced, imposing hardship on our families. And the experience of jury service itself can be stressful. Jurors are called upon to make decisions of huge importance in the lives of other people. Sometimes the decisions are literally life and death. The least the government can do is to avoid making the process of jury service more difficult than it needs to be.

The government, however, has made jury service much more difficult than it needs to be. Consider the issue of scheduling. Jurors typically are ordered to report on a certain day. This date is chosen without any consideration of the person's other obligations. Worse yet, jurors are given very short notice of the day on which they are to report. This system maximizes the burden on jurors. They have no opportunity to schedule their work and family obligations around jury service.

In some areas, jurors are often required to report for an entire week or more, whether or not they are chosen for a jury.⁵ People end up sitting around for five straight days with nothing more to do than read (and reread) the newspaper and drink bad coffee from a courthouse vending machine. The boredom is excruciating.

Worst of all, jurors are penalized financially. The average compensation received by a citizen who serves on a jury ranges from \$18.53 to \$24.26 per day (depending on the length of service).⁶ This is barely enough to cover travel expenses and lunch. In many cases, jurors' net pay is nothing. Some jurors are forced to spend their own money just to cover expenses. The most generous state in the nation, New Mexico, pays jurors only the minimum wage.⁷

This would not be a hardship if employers made up the difference between juror compensation and a person's regular pay. But they often don't. In 42 states, employers have no legal obligation to pay employees anything for time spent on jury service.⁸ Even in the eight states that require employers to contribute, only three require employers to make employees financially whole.⁹ Most large employers make up this difference voluntarily.¹⁰ The large majority of employees, however, do not work for large employers. Only 29% of all employees work for companies with more than 250 employees.¹¹

The bottom line is that most people who serve on juries are financially penalized for being good citizens.

The obligation to serve is also spread unfairly among citizens. Many states allow members of certain occupations to escape jury service completely. New York, for example, exempted twenty-six different professions from service before recent reforms.¹² While doctors and lawyers are most commonly exempted,

⁵Approximately 50% of U.S. courts require jurors to serve for an entire week.

⁶See American Bar Ass'n, *Perceptions of the U.S. Justice System* (1998).

⁷See N.M. STAT. ANN. § 38-5-15 (2001).

⁸See Schwartz, Behrens, & Silverman, *Safeguarding the Right to a Representative Jury: The Need for Improved Universal Jury Service Laws*, National Legal Center for the Public Interest (2002).

⁹*Id.* at 10, note viii.

¹⁰See Boatright, *supra* note 1, at 16.

¹¹See Commission on the Future of Worker-Management Relations, United States Department of Labor, 1995.

¹²See Vitullo-Martin et. al., *Five Years of Jury Reform: What Jurors Are Saying: Final Report on Juror Concerns to the Unified Court System 2*, 10-11 (Vera Inst. of Justice 2000).

some states have also made certified public accountants, clergy, teachers, and nurses exempt from jury service. This elitist approach forces jury duty on those least able to bear the financial burden. Imagine the feeling of a blue collar worker who can barely keep his head above water financially going off to jury duty knowing his lawyer (who earns more than twice as much) has been excused.

Under these circumstances, is it any wonder that people try to avoid jury duty?

This May, Arizona enacted legislation (HB2520) that addresses these problems. For example, section 21-336 increases flexibility for citizens called for jury duty by allowing them to schedule their service at any time during the next three months. This is an absolute right. The citizen does not have to convince a judge or other official that it would be a hardship to serve at the present time. All the citizen needs to do is select a date within the next three months when he or she will serve. In addition, the Arizona law protects citizens from being called repeatedly for jury service by limiting the frequency of jury duty to once every two years.

Under this approach, jury duty is no longer an obligation that comes out of the blue to disrupt carefully planned lives. The citizen can select a day months into the future when he or she has no conflicting plans, then arrange other obligations as they arise around the jury service date. Jury duty becomes no more disruptive than planning a vacation (although not as much fun).

Disruption of jurors' lives is decreased still further by Arizona's adoption of the "one day/one trial" rule.¹³ This rule, which has been adopted in about half of state courts nationwide and several Arizona counties, provides that, unless a person called for jury duty has been selected to serve on a jury on their first day of service, their service is over and they are free to go home.¹⁴ This means that most people called for jury duty will be excused after a single day. In jurisdictions without this rule, the term of service can be an entire week or longer. This makes an enormous difference. People are used to handling one-day interruptions to their ordinary affairs. Children get sick, cars break down, schools close for bad weather. Reducing the inconvenience of jury duty to this level does a lot to make people's lives easier.

Unfair allocation of jury duty would also be eliminated by this bill. Formerly, almost everyone with a job could get a hardship exemption, leaving the elderly and stay-at-home moms to shoulder the load. HB2520 replaces this "hardship" exemption with the scheduling system described above backed up by a genuine hardship system for people who are responsible for the care of another and cannot arrange a substitute and those who would be unable to support themselves or their families if they served.

Arizona's new jury law also reduces the financial hardship upon citizens who are called for jury duty and need it most — those who are selected to serve on long trials that do not receive full pay from their employer. Section 21-222 provides for payment of up to \$300 per day to jurors after the tenth day of jury service. The amount of the payment would be the difference between the juror's regular pay and what they receive from all sources for jury duty. For example, a juror whose regular pay was \$150 per day and received \$12 per day in regular juror compensation and \$20 per day from her employer (a total of \$32 per day) would receive \$118 per day from the fund (\$150 per day minus \$32 per day). This would leave jurors in the same financial position they would have been in had they not been called for jury service and gone to work. This level of compensation makes the majority of citizens who serve on lengthy trials financially whole. Those who are not completely covered (individuals earning over \$75,000 per year, exclusive of their spouse's income) will generally be able to serve without great hardship.

The Arizona law will also decrease the burden on citizens serving jury duty by prohibiting employers from requiring employees from using accrued vacation or sick leave for time spent on jury duty.

¹³Several Arizona counties wisely implemented the one-day/one-trial system on their own initiative prior to HB2520.

¹⁴HB2520 modifies this rule slightly by also providing courts with discretion to require that a summoned juror telephone a court or check a court's website to determine whether to report on a particular day, for four days within a thirty day period, or provide the court with a valid telephone number and stand ready to serve on the same day, for a period of two days.

Arizona's new law is based upon new model legislation developed by the American Legislative Exchange Council (ALEC), the Jury Patriotism Act (JPA). The JPA is designed to ensure that juries represent a true cross section of America by eliminating the factors that cause people to avoid jury duty.

While the Jury Patriotism Act represents a giant step forward, it could be improved. Salary replacement under the JPA does not begin until the tenth day of service. This means that citizens who are chosen for a jury in a lengthy trial must work for almost two weeks (nine days) for only the current rate of compensation in their state. This represents a significant financial loss for most people. The average compensation for full-time employees in the United States is \$102 per day (\$26,520 per year).¹⁵ The average compensation for jury service is \$21 per day. The average loss for those who serve nine days is thus \$729.¹⁶ This represents a substantial loss for someone earning only \$510 per week.

This could be avoided if the JPA required employers to help support the system. If it required employers to provide employees with full pay for the first ten work days of jury service, the wage loss for most people would be zero. Moreover, this provision would allow the state to focus its resources on the small number of jurors who serve more than ten days. Because this group is only a fraction of all jurors, state revenue would support an even higher cap on wage replacement that would cover virtually everyone.

It is only appropriate that employers make this contribution. Like other citizens, employers benefit from a fair and efficient justice system. Indeed, it would be hard for most businesses to exist without it. Moreover, the cost to an individual business would be small. Of the 137 million employed Americans,¹⁷ only about 2.7 million report for jury duty every year.¹⁸ About one million of these serve on a jury for an average of two days.¹⁹ The remaining 1.7 million, under the JPA, would be released after one day. Thus, a company with 100 employees could expect to lose a single employee every year for two and a half days.²⁰

This is not a great loss, especially when one considers that some of the lost work would be picked up by other employees or completed by the employee when they return for jury service.

Even without this improvement, however, the Jury Patriotism Act would make a great contribution to the administration of justice in America. People would be allowed to schedule jury service months in advance instead of having an arbitrary date forced upon them on short notice. Jury service would be shared equally by all citizens rather than being forced solely on citizens with less prestigious occupations. Those who are not chosen for a jury in one day could go home, minimizing disruption to their lives. Most of all, citizens would no longer be forced to make large financial sacrifices by serving for weeks or months for virtually nothing. These changes would go a long way toward filling our jury boxes with citizens who represent a cross section of society, so that all Americans would actually receive a jury of their peers.

¹⁵See Bureau of Labor Statistics, *supra*.

¹⁶This figure is derived by subtracting \$21 per day from \$102 per day and multiplying by 9.

¹⁷Bureau of Labor Statistics, *supra*.

¹⁸According to the National Center for State Courts (<http://www.nccourts.org>), approximately 4 million citizens report for jury duty each year. Of these, approximately 68% are employed. (137 million employees equals 68% of the total of 200 American adults (United States Census, <http://www.census.gov>).

¹⁹The National Center for State Courts (*supra*) indicates that 37% of those who report for jury service are chosen for a jury.

²⁰1 million people serving on juries for two days each equals 2 million person-days. 1.7 million people serving for one day equals 1.7 million person-days. This gives a total of 3.7 million lost person-days annually, or one lost day for every 50 employees.