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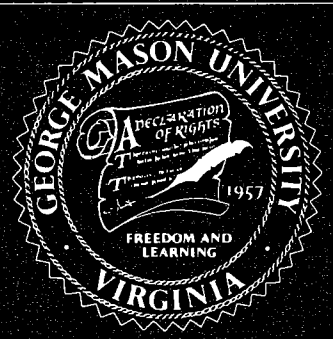

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IMPROVING THE JURY SYSTEM IN VIRGINIA: JURY PATRIOTISM LEGISLATION IS NEEDED

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INTRODUCTION

On June 12, 1776, Delegates to the Virginia Convention met in Williamsburg and adopted the Virginia Declaration of Rights, a document that was to become the model for the Declaration of Independence and the Bill of Rights. George Mason, the drafter of the Declaration of Rights, wrote, "[t]hat in controversies respecting property and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred."[1] Mason also protected a criminal defendant's right "to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty."[2] For over two centuries, both the United States and Virginia Constitutions have guaranteed the right to a jury trial.[3]

National polls indicate that Americans hold the jury system in high regard. According to a 1998 American Bar Association (ABA) opinion poll, seventy-eight percent of the public rate our jury system as the fairest method of determining guilt or innocence; sixty-nine percent consider juries to be the most important part of the justice system.[4]

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1 VA. DECLARATION OF RIGHTS § 11 (1776).

2 *Id.* § 8.

3 *See* U.S. CONST. art. III, § 2, cl. 3; U.S. CONST. amend. VI; U.S. CONST. amend. VII; VA. CONST. art. I, §§ 8, 11.

4 *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 Feb. 27, 2004). Each year, state courts hold approximately 88,000 civil and criminal trials impacting people's lives, liberty, and property. *See* NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 2001, at 102

Despite the strong support Americans have for the jury system, however, many in the public appear to avoid jury service at virtually every opportunity. According to one study by the American Judicature Society, on average, about twenty percent of those summoned to jury duty each year in state courts do not respond.[5] In some urban jurisdictions, fewer than ten percent of all summoned citizens show up in court.[6] Likewise, in some rural areas, sheriffs' deputies recently have been forced to round up people shopping in the local Wal-Mart to fill the jury box.[7]

Why do so many citizens seem to embrace the jury system, so long as they are not actually part of it? This issue was recently examined by the American Legislative Exchange Council (ALEC), the nation's largest bipartisan membership organization of state legislators. ALEC has developed model legislation—the Jury Patriotism Act—that reflects on these issues and seeks to remove the barriers that frustrate jury service in Virginia and elsewhere.[8]

The Jury Patriotism Act finds support across the political spectrum. Just a few of its supporters include the Council of State Governments, the AFL-CIO, National Black Chamber of Commerce, United States Hispanic Chamber of Commerce, National Association of Manufacturers, National Restaurant Association, and National Association of Wholesaler-Distributors. Elected officials have responded to this broad-based support. Within months after its development in the winter of 2002/2003, laws based on the model Jury Patriotism Act were enacted in Arizona, Louisiana, and Utah.[9] Most recently, Colorado joined this trend.[10]

(Brian J. Ostrom et al. eds., 2002) (providing 1999 statistics) [hereinafter EXAMINING THE WORK OF STATE COURTS], *available at* http://www.ncsconline.org/D_Research/csp/2001_Files/2001_Part_II_Section.pdf (last visited Apr. 1, 2004).

5 *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 15 million Americans summoned to jury service each year fail to report for jury duty. *See* David Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider's View*, 36 JUDGES' J. 23, 25 (1997).

6 *See* BOATRIGHT, *supra* note 5, at vii.

7 *See* Amy 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 (reporting on jury summonses for traffic court being served on 55 shoppers in a Shelby, North Carolina, Wal-Mart Supercenter), *available at* 2002 WL 3403962.

8 *See* Victor E. Schwartz et al., *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*, THE STATE FACTOR, Apr. 2003, at 1, *available at* http://www.alec.org/meSWFiles/pdf/0309.pdf (last visited Apr. 1, 2004).

9 *See* H.B. 2520, 46th Leg., 1st Reg. Sess. (Ariz. 2003) (signed by Gov. Janet Napolitano on May 12, 2003); H.B. 324, 2003 Leg., Gen. Sess. (Utah 2003) (signed by Gov. Michael Leavitt on Mar. 17,

This article highlights several key problems with the current jury system in Virginia. It then explains how the ALEC model act would address these issues. It concludes that jury service improvements legislation based on ALEC's model act should be enacted in the Commonwealth.

I. WHY VIRGINIANS AVOID JURY SERVICE

A. *Easy Ways Out*

Some people get out of jury service because Virginia law exempts them from jury duty.[11] For example, lawyers, judges, various government officials, and law enforcement officers are automatically exempt from service.[12] An obsolete Virginia law also exempts mariners from jury duty.[13] Many other people may escape jury service by claiming an exemption available to sole proprietors.[14] Those who do not qualify for a complete exemption from service can request a deferral of service for a "particular occupational inconvenience."[15] Those called for jury duty, particularly professionals, may abuse this lax standard to avoid their obligation to serve.

These laws "not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt," most notably blue-collar workers and retired and unemployed citizens.[16] The privileged should not be allowed to escape jury duty, as some escaped military service in Vietnam, and leave those with less political or financial clout with the burden of service. As a report of the ABA Commission on the 21st Century Judiciary recently concluded: "Meaning-

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2003); H.B. 2008, 2003 Leg., Reg. Sess. (La. 2003) (signed by Gov. Mike Foster on June 27, 2003). Legislation modeled after the ALEC act was introduced in the Virginia General Assembly by Delegate David Albo in 2003, *see* H.B. 1892, 2003 Gen. Assem., Reg. Sess. (Va. 2003), and by Delegate Clark N. Hoganin 2004. *See* H.B. 1397, 2004 Gen. Assem., Reg. Sess. (Va. 2004).

10 *See* H.B. 11598, 64th Gen. Assem., 2d Reg. Sess. (Colo. 2004).

11 *See* Alan Cooper, *Thinking Out of the Box*, RICHMOND TIMES-DISPATCH, Dec. 12, 2001, at H8, *available at* 2001 WL 5341681.

12 *See* VA. CODE ANN. § 8.01-341 (Michie 2003).

13 *See* § 8.01-341.1(4).

14 *See* § 8.01-341.1(12).

15 *See* § 8.01-341.2.

16 AM. BAR ASS'N, STANDARDS RELATED TO JUROR USE & MGMT. 51 (1993) [hereinafter ABA STANDARDS].

ful steps should be taken to ensure that every jury pool represents a fair cross-section of the community from which it is drawn."[17]

Furthermore, the absence of certain individuals from jury pools eliminates many important perspectives. When managers, doctors, accountants, scientists, executives, and other professionals do not serve on a jury, the judicial system does not benefit from their life experiences, values or education. For instance, in a trial involving a corporate defendant, the jury would benefit from the participation of jurors with experience in the business environment. Likewise, a scientist could be helpful in evaluating expert testimony or a financial professional could be of use in arriving at a fair and reasonable damage award.

On the other hand, a jury that lacks professionals, or is disproportionately composed of citizens not in the workforce, may lack the collective knowledge of a more representative jury. It is also possible that this small slice of our society may not evaluate or properly weigh complex technical, scientific or other evidence. Such jurors may even believe that their role is to transfer wealth and not render justice on the merits of the case. Plaintiffs and defendants would all benefit from the diverse experience, values, and education of a truly representative jury.

B. *The Length and Inflexibility of Jury Service*

Ask almost anyone why they want to avoid jury service and they will tell you it is a headache—jury service is inconvenient and the system is not very "user friendly." In Virginia, citizens summoned for jury duty must be prepared to serve one term of court. Depending on where the prospective juror lives, this term may be as long as four months. It is no wonder that some citizens cringe upon opening the jury summons, fearful of the possible disruption to their lives. Citizens 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 commitments. Although some courts provide for a substantially shorter term, as in Fairfax County where jurors are "on call" for two to three weeks, such terms still represent a serious interruption of personal, business, and family commitments.

The inconvenience of jury duty is exacerbated by the lack of flexibility provided to potential jurors. Summoned jurors are instructed to appear on a certain date and are not provided with an easy means of rescheduling their service should they have a conflict. Therefore, those summoned are left with three options: drop all other commitments during the allotted time,

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17 AM. BAR ASS'N COMM'N ON THE 21ST CENTURY JUDICIARY, JUSTICE IN JEOPARDY 86 (2003).

request that the court excuse them from service for hardship, or, if the other two alternatives are not available, ignore the jury summons.

C. *Loss of Income*

Another major reason that people seek to avoid jury duty is the financial burden service may impose. In Virginia, jurors receive a $30 daily fee for their service from the Commonwealth,[18] which may barely cover the cost of transportation, parking, and lunch.[19] The ABA has recognized that "[f]ew persons making more than the minimum wage can afford [the] . . . sudden and involuntary cut in pay" imposed by jury service.[20]

As a result, courts must excuse from service many laborers, salespersons, parents with childcare expenses, and professionals because of the economic hardship that they may suffer. Those who remain in the jury pool are primarily those who are not employed or whose employers will continue to pay their salary. Consequently, the basic democratic right to be tried by a jury of one's peers may be largely illusory in a system whose juries are disproportionately composed of retired and unemployed individuals, especially in lengthy trials. Such juries may be non-diverse and unrepresentative of the community as a whole. They also may produce arbitrary results for plaintiffs, defendants, and prosecutors. Equally important, many people who would like to serve on a jury, and have both a right and obligation do so, are not, in practice, able to participate.

The lack of available compensation may be particularly troublesome for jurors selected to serve on lengthy trials. Somewhere between one-half and three-quarters of all trials conclude within three days, and very few cases extend beyond ten days, but jurors who find themselves called to serve on the rare, lengthy trial may be subject to extreme financial hardship.[21]

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18 *See* VA. CODE ANN. § 17.1-618 (Michie 2003).

19 Virginia law provides that employers may not discharge, take adverse personnel action, or require the use of sick leave or vacation time because of absence from work due to jury duty, but businesses are not required to pay their employees during any period of jury service. *See* VA. CODE ANN. § 18.2-465.1 (Michie 2003).

20 *See* ABA STANDARDS, *supra* note 15, at 133-34 (quoting J. THOMAS MUNSTERMAN ET AL., THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE (1991)).

21 *See* ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 165, tbl. C-8 (2002) (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 12-month period ending September 30, 2002), *available at* http://www.uscourts.gov/judbus2002/contents.html (last visited Feb. 26, 2004); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STAT., CIVIL TRIAL CASES AND VERDICTS IN LARGE COUNTIES, 1996, at 13 (1999) (finding that the median number of days in jury trials in the nation's 75 largest counties was three days), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc96.pdf (last visited Feb. 26,

Lack of adequate compensation for jurors has several unfortunate results. Some jurors may opt to simply not show up in court. Those with jobs who will lose their salary during jury service are likely to plead with the court to be excused, particularly when the trial is expected to last several days, weeks or months. Individuals who are not excused from service may be forced to make an inequitable and unfair personal sacrifice.

D. *Lack of a Significant Penalty*

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." In Virginia, those who do not respond to a jury summons face a fine of between $25 and $100 from the court.[22] When the penalty for not showing up for jury service is comparable to driving above the posted speed limit, it is no wonder that so many people disregard their jury summons with impunity. Furthermore, courts have little resources to follow up and penalize those who do not show. It is no secret that what is already a minimal fine rarely is imposed.

II. PROMOTING JURY SERVICE IN VIRGINIA

There are many ways the jury system could be improved to make jury service a more pleasant experience for Virginians. Some courts have focused on improving jury services and facilities. Other efforts have aimed at making jury service a more interesting and active process. A Task Force convened by then Virginia Supreme Court Chief Justice Harry Carrico examined some of these issues. That Task Force was composed of a statewide cross-section of former jurors, academicians, civil and criminal attorneys, and trial and appellate judges. In 2000, the Task Force submitted a report recommending jury service improvements in the Commonwealth.[23]

Some jury improvements can and should be implemented by courts. But there are also certain measures that the General Assembly should take to safeguard the right to a representative jury. A model "Jury Patriotism Act" developed by ALEC would eliminate certain occupational exemptions

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2004).

22 *See* VA. CODE ANN. § 8.01-356 (Michie 2003).

23 *See* JUD. COUNCIL OF VA., REP. TO THE GEN. ASSEMBLY AND SUPREME CT. OF VA. ch. 3 (2000).

and flimsy hardship excuses that allow many to avoid jury service while placing a disproportionate burden on blue-collar Virginians, as well as retired and unemployed citizens. The model act also would lessen the burdens placed on citizens that render them unable to serve, or discourages their service on juries.

A. *Unjustified "Loopholes" Should Be Closed*

1. Elimination of Automatic Exemptions

The first step to a more representative jury is the elimination of unnecessary or antiquated occupational exemptions from service. In 2000, the Virginia Jury Task Force recommended eliminating all jury duty exemptions and cracking down on juror excuses.[24] Norfolk took such measures in 1995 after a study found that professionals and small businesspersons were routinely avoiding jury duty.[25] ALEC's Jury Patriotism Act would eliminate Virginia's current occupational exemptions. By doing so, the act would more fairly distribute the burden of jury duty and provide for a jury pool that better reflects the experience and values of the entire community.

Many states have recognized that occupational exemptions to jury service are elitist and unnecessary, and that such exemptions place an unfair burden on those who do not qualify for special treatment. Approximately two-thirds of the states have now taken the positive step of repealing broad occupational exemptions to jury service.[26]

Evidence from other states suggests that even those who receive special exemptions from jury service do not believe they are too valuable to take time off to sit on a jury, or too biased or influential to serve. New York's experience is illustrative. New York once held the record for occupational exemptions.[27] Remarkably, these exemptions excluded over one million of New York's citizens from the jury pool and contributed to a

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24 *See Group Suggests Jury Duty Changes*, RICHMOND TIMES-DISPATCH, Aug. 11, 2000, at B5, *available at* 2000 WL 5044782.

25 *See* Mark Davis, *Jury Duty For Many Citizens, It's Two Words They Dread. A State Task Force Has Recommended 20 Ways to Improve The Process. One Local Man Learned—The Hard Way—That the More You Serve, The Better You Get*, VIRGINIA-PILOT & THE LEDGER-STAR (Norfolk, Va.), Aug. 10, 2000, at A1, *available at* 2000 WL 23680415.

26 *See* ABA STANDARDS, *supra* note 15, at 51. The ABA has recommended the complete elimination of automatic excuses or statutory group exemptions. *See id.*

27 *See* JULIA 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 (2000), *available at* http://www.vera.org/publication_pdf/juryfinal.pdf (last visited Feb. 26, 2004).

shortage of jurors in the 1990s.[28] In 1995, the New York legislature, upon the recommendation of the Citizens Jury Project, under the leadership of Chief Judge Judith Kaye, eliminated all occupational exemptions. When New York doctors were asked whether they should be exempt from jury service following New York's reform, only twelve percent said that physicians should be exempt from service.[29]

New York lawyers had a similar reaction. One attorney who was furious immediately following the elimination of occupation exemptions exclaimed, "Are they out of their minds in Albany? Lawyers are never going to let other lawyers, much less judges or docs, serve on a jury."[30] One year later, the same attorney was selected for a jury and was "quite proud" to have served.[31] "Both sides thought I could be fair," he said.[32] According to the study, only three percent and ten percent of Manhattan and Brooklyn attorneys, respectively, thought they should be exempt from jury service.[33] Even Chief Judge Kaye was called for jury duty. Rudolph Guiliani, 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.[34]

More recently, it was revealed on an "anonymous" 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.[35] In April 2004, jurors in Cincinnati, Ohio found themselves seated next to Neil Armstrong.[36] If judges, mayors, ex-presidents, and the first person on the moon are not be-

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28 *See id.* at 2, 10.

29 *See id.* at 12.

30 *Id.*

31 *Id.*

32 *Id.*

33 *See id.* at 13.

34 *See* Robert D. McFadden, *Court Surprise: Guiliani Picked As Juror No. 1*, N.Y. TIMES, Aug. 31, 1999, at A1, *available at* 1999 WL 30479714; David Rohde, *Mayor Is Praised as Just Another Juror*, N.Y. TIMES, Sept. 8, 1999, at B3, *available at* 1999 WL 30481757; David Rohde, *The Nation: One Angry Man; What's the Verdict When the Mayor is Also Jury Foreman?*, N.Y. TIMES, Sept. 5, 1999, sec. 4, at 6, *available at* 1999 WL 30480634.

35 *See* Benjamin Weiser, *Civic Duty, Sure, But Wasn't the White House Enough?*, N.Y. TIMES, Mar. 1, 2003, at B1, *available at* 2003 WL 15169815. Ultimately, the judge excused former President Clinton from jury duty out of concern that his presence might sensationalize the trial. *See* Benjamin Weiser, *Ex-President Passed Over for Jury*, N.Y. TIMES, Mar. 5, 2003, at B6, *available at* 2003 WL 15171120.

36 *See* Kimball Perry, *Armstrong Serving on Theft Jury*, CINCINNATI POST, May 7, 2004, at A13, *available at* 2004 WL 58458064.

yond jury service, no one should expect that their profession puts them above this civic duty.

2. Excuses Only for True Hardship

The Jury Patriotism Act also would repeal Virginia's "particular occupational inconvenience" ground for an excuse from jury duty. Instead, it would provide that a juror might be excused when jury service would result in an "undue or extreme physical or financial hardship." In addition, the act would limit the acceptable grounds for such hardship to three circumstances: (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. These grounds would more closely reflect true hardship and limit the opportunity for abuse.

In addition to limiting the available grounds for a hardship excuse, the model act would establish a procedure to make it more likely that the excuses will be strictly applied. Jurors would be required to provide the court with documentation supporting their request for an excuse. This minimal requirement would ensure that jurors are not inventing or exaggerating claimed hardships. The model legislation also places the responsibility for deciding all requested excuses with a judge, rather than a court clerk or other judicial employee. This practice might make people think twice about articulating a bogus hardship excuse. As one jury officer in a Virginia court observed, people who become argumentative with court staff "about serving become much more conciliatory when they speak to a judge."[37]

B. *Jury Service Should be Made More Appealing*

ALEC's model 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.

37 Alan Cooper, *Thinking Out of the Box*, RICHMOND TIMES-DISPATCH, Dec. 12, 2001, at H8 (quoting a jury officer in Richmond), *available at* 2001 WL 5341681.

1. Jurors Should Be Given an Easy Means to Reschedule Service

Requiring all citizens to serve on juries, regardless of their importance or position, does not mean being disrespectful of their business or personal lives. Citizens summoned to jury duty should have the opportunity to postpone and reschedule their service to a more convenient date if necessary. An automatic postponement would reduce the incentive for professionals who have commitments to clients or patients, or others who have family responsibilities or vacation plans, to avoid jury service. The ABA has observed that such procedures "enable a broader spectrum of the community to serve as jurors."[38]

For these reasons, the Jury Patriotism Act would provide jurors with one automatic postponement of service for any purpose. This provision is unlike the current deferral procedure, which appears to apply only to busy businesspersons. Rather, it would apply to all people and may be used for any reason. 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. Subsequent postponements would only be available in emergency situations.

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 of his or her business is already serving jury duty. This postponement would not count toward the one postponement for any reason extended to all jurors.

2. A Shorter Term of Service: One Day or One Trial

A shorter term of service would also relieve some of the hardship placed upon Virginians called to jury service. As the 2000 Virginia Jury Task Force concluded, "Long terms of service disrupt prospective jurors' schedules, thereby discouraging many from wanting to serve."[39] The Jury

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38 ABA STANDARDS, *supra* note 15, at 51.

39 *Group Suggests Jury Duty Changes*, RICHMOND-TIMES DISPATCH, Aug. 11, 2000, at B5, *available at* 2000 WL 5044782; Marc Davis, *Lightening The Jury's Load*, VIRGINIAN-PILOT & THE LEDGER STAR (Norfolk, Va.), Aug. 10, 2000, at B3, *available at* 2000 WL 23680433.

Patriotism Act would guarantee that a potential juror would not be required to spend more than one day at the courthouse unless he or she is selected to serve on a trial. This practice, known as the one-day/one-trial system, has been adopted by about one-half of the state courts.[40] 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.[41]

The one-day/one-trial system works. For example, by adopting this 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.[42] 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.[43]

Jurors favor the one-day/one-trial term of service. In a 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 would not object to being called again.[44] 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 almost one percent, and most of these requests were accommodated by the court's postponement policy.[45] 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.[46]

Employers also like the one-day/one-trial approach because it means fewer days of employee absences from work for jury duty. Research by the California Judicial Council found that the majority of employees return to work the next business day after reporting for jury service under the one-day/one-trial system.[47] In announcing the adoption of the one-day/one-trial

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40 *See* Nat'l Ctr. for State Courts, Best Practices Inst., *Jury Administration and Management: Term of Service*, *at* http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm [hereinafter Best Practices] (last visited Feb. 26, 2004).

41 *See id.*

42 *See* N.Y. STATE UNIFIED COURT SYSTEM, CONTINUING JURY REFORM IN NEW YORK STATE 12 (2001) (on file with authors).

43 *See* Office of Jury Comm'r for the Commonwealth, *Introduction*, *at* http://www.state.ma.us/courts/jury/introduc.htm (last visited Feb. 26, 2004).

44 *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 conduct by a professor with a specialty in statistics and sociology).

45 *See id.* at 81-82.

46 *See id.* at 81.

47 *See* Don Wolfe, *Employers: Support Jury Service or Stop Complaining*, SILICON VALLEY / SAN JOSE BUS. J., July 5, 2002, *available at*

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."[48]

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.[49] 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.[50]

Recently, the National Center for State Court's Best Practices Institute (NCSC) recognized the one-day/one-trial system as a particularly effective practice.[51] 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."[52] In fact, "*every* statewide jury reform task force report of the past decade has recommended adopting the change."[53] One-day/one-trial should be adopted in Virginia.

3. Wage Supplementation or Replacement

Ideally, the Commonwealth would be able to provide greater compensation to jurors to relieve them of the financial hardship that can result from jury service. 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 Commonwealth's treasury may not be a realistic option. Even as long ago as 1993, the ABA recognized generally 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."[54] This observation is no less true today in Virginia.

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http://sanjose.bizjournals.com/sanjose/stories/2002/07/08/editorial3.html (last visited Feb. 26, 2004).

48 Judicial Council of Cal., News Release No. 45, *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 (last visited Feb. 26, 2004).

49 *See* Kasunic, *supra* note 42, at 82.

50 *See id.* at 82; *see also* Best Practices, *supra* note 38 ("Although the direct costs of summoning so many more people adds to the budget, jurisdictions that have adopted this practice have also realized offsetting cost savings by making other changes to their jury management systems and juror compensation schemes.").

51 *See* Best Practices, *supra* note 38.

52 *Id.* (emphasis in original).

53 *Id.* (emphasis in original).

54 ABA STANDARDS, *supra* note 15, at 134.

ALEC's 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.[55] 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. 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). 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.

In order to qualify for payment, the juror would complete a form identifying the amount requested and provide the court with verification of his or her usual wage and how much the employer paid the employee during jury service. 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 attaching supporting documentation.

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."[56] 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., $5). At roughly the cost of a Happy Meal at McDonald's, 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.

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55 The ALEC 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) (applies to civil and criminal petit juries); H.B. 2008, 2003 Leg., Reg. Sess. (La. 2003) (signed by Gov. Mike Foster on June 27, 2003) (lengthy trial fund applies to civil cases and criminal cases in which conviction carries a sentence of 20 years or more at hard labor).

56 Recently, the Michigan Legislature adopted its own "Juror Compensation Reimbursement Fund," which is similar to the Jury Patriotism Act in that it relies, in part, on a small increase in court filing fees to increase compensation for jurors serving on lengthy trials. *See* H.B. 4551, 4552, 4553 & S.B. 1448, 1452, 91st Leg. Sess. (Mich. 2002).

C. *An Appropriate Penalty for No-Shows*

In light of the added flexibility, shorter term, and better protection of compensation during jury service, those who still choose to ignore their civic duty should be punished appropriately. 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 not only damages the judicial system, it may also impair the rights of litigants. Ignoring a jury summons is an offense more serious than driving a few miles per hour over the posted speed limit. It should be dealt with accordingly.

Virginia 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. Virginia 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 $100 for a first violation, $250 for the second violation, and $500 for a third violation.[57]

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 Commonwealth 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.

Under the Jury Patriotism Act, failure to appear for jury service would be punishable as a misdemeanor, 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."[58]

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57 *See* A.B. 1180, 2003-04 Leg., Reg. Sess. (Cal. 2003) (to be codified at CAL. CIV. PROC. CODE § 209) (taking a similar approach).

58 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 (quoting Pomona, California Supervising Judge), *available at* 2002 WL 5528920.

CONCLUSION

Virginians 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. Few of these individuals lack a sense of civil duty. Rather, they are discouraged from jury service by the hardship and headache imposed by a system that does not provide adequate financial compensation, leaves little or no flexibility, and may place a severe inconvenience on their life. Moreover, the current occupational exemptions and standard for an excuse from service provide many people with an easy means of escape from jury service.

The Jury Patriotism Act developed by the American Legislative Exchange Council would break down each of the barriers that frustrate jury service in Virginia. Jurors would spend less frustrating and boring time in a courthouse waiting room with a one-day/one-trial system, and would not have to suspend their lives waiting "on call" for days on end. They also would receive better compensation through a court-administered "lengthy trial fund" privately financed by private litigants. Through these reforms, Virginians, regardless of income or occupation, will be better able to fulfill their patriotic duty to serve on a jury.