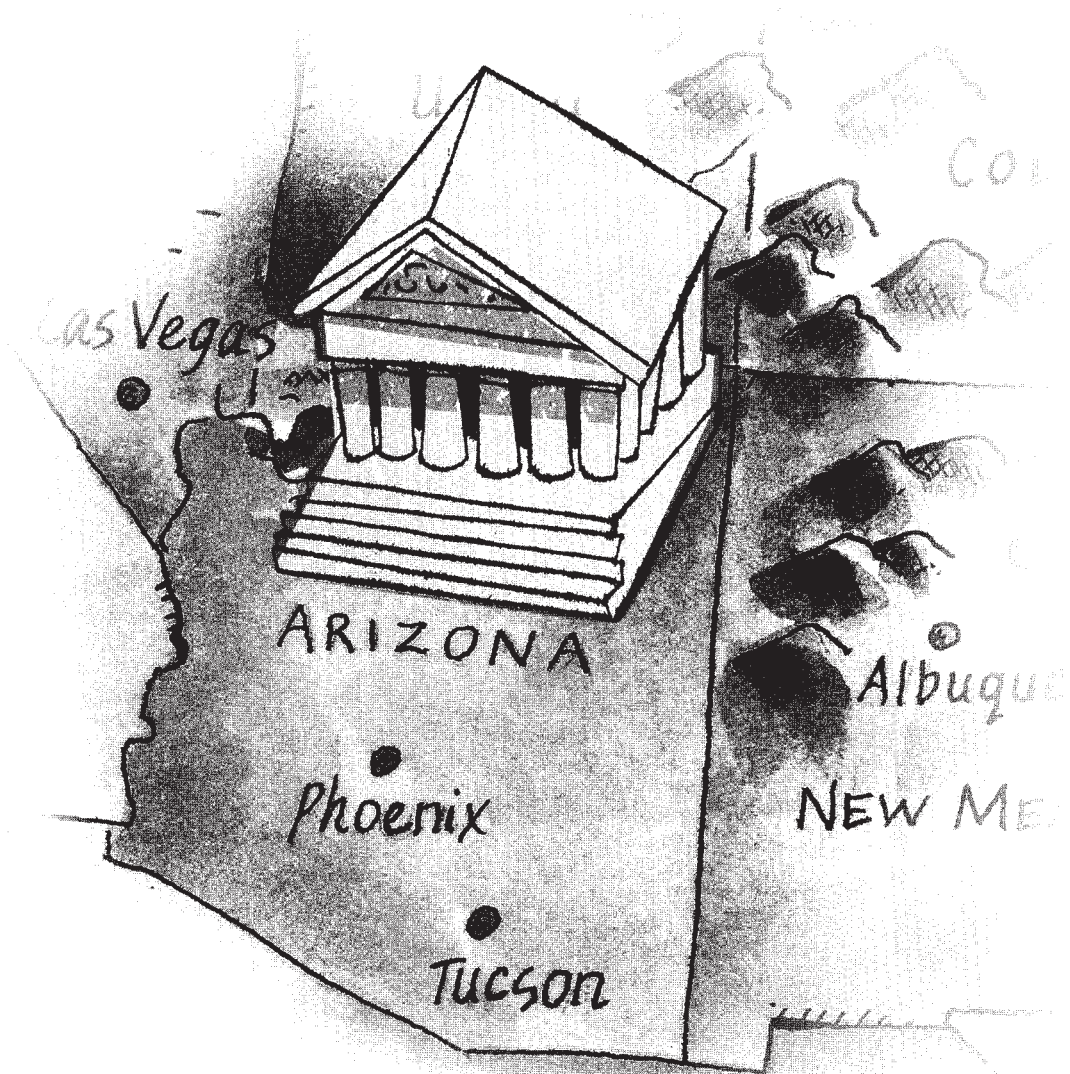


# Jury Reforms in Arizona



## The First Year

By G. Thomas Munsterman and Cary Silverman

On January 1, 2004, legislation based on the Jury Patriotism Act (JPA),<sup>1</sup> a model act developed by the American Legislative Exchange Council, went into effect in Arizona, a state long considered a leader in improving jury services. Both the Arizona legislation and the JPA seek to promote jury service by alleviating the inconvenience and financial burden on those called to serve while making it more difficult for people to escape from jury service without showing true hardship. Since passage of the legislation in Arizona, nine other states have also enacted legislation modeled on the JPA, most recently Alabama and New Mexico. The JPA also helped create momentum for enacting jury service improvement legislation in Maryland and Texas during 2005, and other state legislatures are considering similar measures in 2006.

The JPA has been endorsed by the Council of State Governments and is supported by a wide range of organizations, including the National Association of Manufacturers, the National Black Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the National Workrights Institute. Most of its provisions are not new. Rather, they represent a compendium of the best practices found in the jury practice arena throughout the fifty states. Indeed, the American Bar Association's Principles for Juries and Jury Trials, adopted in 2005, include several provisions that appear in the JPA, such as its elimination of automatic exemptions, one-time automatic postponement system, employment and leave time protection, and the one-day/one-trial term of service—recognized as the “gold standard” of jury service practices.<sup>2</sup> In addition, and perhaps a more revolutionary change, the JPA includes an entirely new provision for a lengthy trial fund (LTF) that seeks to address the lack of available compensation to those for whom jury service results in the

greatest financial sacrifice.<sup>3</sup> Arizona, Louisiana, Oklahoma, and Mississippi have enacted forms of the LTF, while Texas increased juror compensation from \$6 per day to \$40 after the first day of service through a similar mechanism in June 2005.

After a year of implementation, we discussed Arizona's legislation based on the JPA with court administrators in that state, paying particular attention to how the LTF has worked in practice. The assumptions that were used to estimate funding for the LTF can now be examined to provide guidance to other states considering the adoption of these types of jury reform. This subject and others related to the Arizona legislation comprise the bulk of this article and allow us to ascertain the initial success or failure of these jury initiatives.

### Increasing Juror Compensation

Inadequate juror compensation has been and remains a serious issue across the nation because it appears to have a direct effect on jury participation and low juror turnout. Faced with restrictive budgets, many states have not increased juror pay in decades. While it is true that most large employers pay their employees during jury service, many smaller businesses cannot afford to do so. Moreover, those who are self-employed and many hourly wage earners must serve without pay beyond the minimal state-paid rate. As a result, these citizens simply cannot afford to serve on juries for more than a few days. They are often excused from jury duty altogether, negatively affecting representation within the venire, or serve at considerable financial loss.

To address this problem, Arizona became the first state to implement fully the LTF, in July 2004.<sup>4</sup> We found in our conversations with Arizona court administrators that the response from judges and jurors to the additional compensation made available by the fund has been overwhelmingly positive.

Before this legislation, Arizona jurors received no more than \$12 per day plus reimbursement for miles traveled between the juror's residence and the courthouse to which they were summoned. As adopted, the LTF provides additional compensation to jurors when a trial lasts more than ten days. Upon the eleventh day of jury service, the LTF compensates unemployed jurors at a rate of at least \$40 per day from the fourth day to the completion of jury service. Of that \$40, \$12 is allocated from the usual per diem and \$28 comes from the LTF if a juror petitions the court for disbursement of those funds. The law provides that jurors who are unemployed are eligible to receive this \$40 per day payment even if they receive income in the form of spousal maintenance, pensions, retirement, unem-



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ployment compensation, disability benefits, or other similar income. Jurors not receiving their usual income during jury service are eligible to receive up to \$100 per day of reimbursement between the fourth and tenth days of service and up to \$300 per day thereafter. After a trial has continued past the tenth day, jurors are paid retroactively to the fourth day of jury service. Jurors who are employed but cannot demonstrate any loss from their jury service receive nothing from the LTF.

The new law, as implemented by the Arizona Supreme Court, finances the LTF by means of a \$15 fee on attorneys filing complaints, answers, and interventions in civil cases only at the general jurisdiction level of courts in Arizona.<sup>5</sup> Courts began collecting the new filing fee in January 2004, and jurors began receiving compensation from the LTF for trials that started on or after July 1, 2004.

Judges have commented that jurors who would otherwise be excused for financial hardship can now take part in jury service on lengthy trials. According to an Arizona Supreme Court Administrative Office of the Courts (AOC) report to the legislature, "Anecdotal evidence indicates the LTF is a welcome reform that has allowed a number of citizens to serve on juries who would not have been financially able to serve without the extra pay offered by the LTF."<sup>6</sup>

Data from the AOC indicate that during its first full year in operation—from July 2004 to June 2005—the LTF provided approximately \$130,000 in additional compensation to 172 jurors on forty lengthy trials.<sup>7</sup> While these lengthy trials represent about 2 percent of the annual total jury trials in Arizona, the availability of supplemental compensation can make a significant difference for those who are selected to serve on these trials. From an individual juror's perspective, receiving supplemental compensation averaging \$750 over the course of a

trial can mean the difference between not being able to serve and completing jury service without enduring severe financial hardship.

Approximately one out of three jurors on trials lasting more than ten days requested supplemental compensation from the LTF. Jurors benefiting from LTF compensation served on twenty-five civil cases, fourteen criminal cases, and one juvenile case. Reimbursement to jurors on criminal cases accounted for 58 percent of the total expenditures (\$75,172), and civil cases accounted for 42 percent (\$54,281). One logical explanation for this is that, on average, the length of criminal trials exceeded the length of civil trials. After reviewing this data, Arizona court administrators believed that the \$300 limit on maximum payouts was justified and was set at an appropriate level. Administrative expense reimbursement to the trial courts, set by the AOC at \$18 for each claim processed, totaled \$3,126.<sup>8</sup>

The filing fee has provided more than sufficient revenue for additional juror compensation and to finance the administrative cost of operating the LTF. In calendar year 2004, the Arizona judiciary collected \$613,571 in filing fees to support the LTF. This fee has generated a similar revenue

stream in 2005 and provides the Arizona judiciary with the option of reducing the fee. Alternatively, the legislature could expand eligibility for payment from the LTF to place more money in the hands of jurors. This could be accomplished by lowering the number of days of service before a juror is eligible to receive compensation from the LTF or by eliminating the \$100 limit applicable from the fourth through the tenth days of service. This \$100 limit affected sixteen jurors, and the \$300 per day maximum did not affect any jurors requesting additional compensation. In January 2006, a bipartisan group of Arizona legislators introduced a bill that would expand the LTF to make jurors eligible for supplemental compensation of up to \$300 after three days of service, and eliminate the \$100 limit.<sup>9</sup> As of the publication deadline, the legislation had passed both state houses, and Governor Janet Napolitano signed the bill into law April 21, 2006.

The AOC developed a form to streamline the process of applying for compensation from the LTF by jurors. In most cases, to determine a person's usual income, tax returns and/or pay stubs must be provided to the court. When a person files jointly with a spouse, administrators look at the

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## Online Resources

The following sites contain further information about the Jury Patriotism Act, the current state of jury reform generally, and various forms and information gleaned from Arizona's experience in reforming jury practice in the past year.

- Jury Patriotism Act: [www.alec.org/meSWFiles/pdf/0309.pdf](http://www.alec.org/meSWFiles/pdf/0309.pdf)
  - ABA Principles for Juries and Jury Trials: [www.abanet.org/juryprojectstandards/principles.pdf](http://www.abanet.org/juryprojectstandards/principles.pdf)
  - Arizona Supreme Court order implementing the LTF: [www.supreme.state.az.us/orders/admorder/Orders03/2003-100.pdf](http://www.supreme.state.az.us/orders/admorder/Orders03/2003-100.pdf)
  - Arizona LTF statute: [www.azleg.state.az.us/ars/21/00222.htm](http://www.azleg.state.az.us/ars/21/00222.htm)
  - Arizona LTF claim form: [www.supreme.state.az.us/jury/JurorClaimForm.pdf](http://www.supreme.state.az.us/jury/JurorClaimForm.pdf)
  - Arizona LTF court reimbursement request: [www.supreme.state.az.us/jury/ReimbReqForm.pdf](http://www.supreme.state.az.us/jury/ReimbReqForm.pdf)
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individual's IRS Form 1040 or multiple pay stubs to determine the income attributed to the juror. In some cases, an appropriate compensation rate was arranged by having the jury administrator interview a juror seeking payment. This was especially true when the juror was an independent contractor or self-employed, or worked on commission—that is, in situations where income varied from day to day. Thus far, no juror has challenged the compensation level set by the administrator. Should a disagreement arise, the presiding judge could intervene.

Some critics of the LTF initially questioned whether it would be fair to provide differing amounts of compensation to jurors serving on the same lengthy trials. Court administrators in Arizona, based on their experience, tend not to support this view and regard the LTF as helping to remedy the already unequal situation in which some jurors are paid by their employers during jury service while others are not. Arizona judges and court administrators carefully explain the purpose of the LTF to jurors serving on lengthy trials to correct any misconceptions.

### Service Flexibility Provisions

Other less novel provisions of the JPA were implemented, for the most part, without much ado in Arizona. For example, Arizona law formerly permitted a term of jury service as long as 120 days. The new law implemented a variation of the one-day/one-trial term of service statewide. Under the new law, a citizen's jury service is over when he or she completes one of the following provisions:

1. serves on one trial;
2. appears in court but is not assigned to trial by the end of one day;
3. is assigned on one day to a trial division for jury selection and serves through the completion of jury selection or is excused;

4. complies with a request to telephone a court or check a court's Web site to determine whether to report on a particular day, for four days within a thirty-day period; or
5. provides the court with a telephone number and stands ready to serve that day, for two days.<sup>10</sup>

Previously, some larger counties had adopted these practices, but counties with small or dispersed populations had seemingly been hesitant to adopt a shorter term of service. All Arizona jurors now benefit from the new practice. The AOC report noted that the one-day/one-trial term of service was implemented statewide as of December 1, 2004.<sup>11</sup>

Arizona's new law also limits the frequency of jury service for people impaneled as sworn jurors to no more than once every two years<sup>12</sup> and prohibits employers from requiring employees to use leave time during their service.<sup>13</sup>

In addition, as enacted in 2003, Arizona's new jury service law provided all jurors with the opportunity to twice postpone their jury service within three months of the date of the summons. Court administrators found that the three-month period did not provide sufficient time for students, teachers, seasonal employees, or those who may have been traveling on business to reschedule their service. The JPA suggests a six-month window to reschedule service. Last year, the Arizona legislature amended the new jury legislation to eliminate the maximum period for a postponement, providing court administrators and jurors with more flexibility in rescheduling service.<sup>14</sup>

### Delay and Avoidance of Service

Before the new legislation, Arizona citizens who failed to respond to a summons faced a maximum fine of \$100. The new provisions significantly increased the potential fine for no-

shows, allowing judges to impose a penalty of up to \$500.<sup>15</sup> This increase, combined with a new procedure for following up with those who fail to appear in Maricopa County, has doubled the number of jurors complying with their summonses. According to court administrators, these reforms have allowed the court to send out 50,000 fewer jury summonses, a benefit for jurors and a cost saving for the courts.<sup>16</sup>

The Arizona legislation based on the JPA also eliminated the catchall provision that had allowed courts to excuse any juror for "undue hardship," a term previously undefined in the statute. This comports with the sentiments of the drafters of the model JPA, who felt that such broad language, which appears in the statutes of many states, could allow people to avoid jury service for reasons other than true hardship. Arizona's new law addressed this issue by enumerating four instances of "undue or extreme physical or financial hardship":

1. where jury service would require abandoning a person under the juror's care and it is not possible to find a substitute caregiver;
2. where the juror would incur costs that would have a substantial adverse impact on daily living expenses for the juror or his or her family or employees;
3. where jury service would result in illness or disease; or
4. where the juror cannot understand the English language.<sup>17</sup>

The new law also required persons requesting excusal from service to submit documentation supporting the request. For those requesting a health-related excuse, a letter from a licensed physician is required. The confidentiality of these materials is protected under the legislation.<sup>18</sup>

The new hardship provision caused some problems during implementation.

*continued on page 44*

## Jury Reforms in Arizona

continued from page 21

Seniors, long accustomed to being excused from jury service upon request, were surprised to find that they now needed medical documentation.<sup>19</sup> In addition, because of a technical oversight, the law permitted medical documentation only from a licensed physician; it did not allow materials from other health care professionals. Court administrators also had difficulty finding a basis to excuse jurors based on their lack of transportation when they lived a great distance from the courthouse or were out of town for an extended period and rescheduling of service was not a viable option. Arizona therefore enacted provisions in April 2005 that made minor modifications to the excuse statute to address each of these state-specific issues.<sup>20</sup> Now, jurors who are seventy-five years of age or older can request to be excused from their summons, or from all future summoning by an Arizona court.<sup>21</sup> Likewise, excuses can be granted for a lack of transportation and for those who are temporarily outside of the jurisdiction of the court.<sup>22</sup>

### Final Thoughts

Arizona's experience with implementing the Jury Patriotism Act has been encouraging in many ways. While its initial operation was not entirely seamless, the problems encountered certainly were not beyond normal expectations when a system moves from a theoretical construct to actual practice. The filing fee used to support the LTF has provided more than sufficient revenue to substantially increase juror compensation on trials longer than ten days. When asked whether the time and effort necessary to collect the filing fee,

determine individual compensation levels, and pay the supplemental compensation is worth it, we need only consider the perspective of those jurors who would otherwise have sacrificed hundreds or thousands of dollars to fulfill their civic duty to arrive at a resounding yes. Overall, the new law has reduced the inconvenience of jury service; expanded the opportunity for people to participate, particularly on lengthy trials; and increased juror turnout rates. As additional states consider adopting legislation based on the model act, legislators should work closely with court administrators to develop a proposal tailored to the needs of their state's jurors and court system.

### Endnotes

1. H.B. 2520, 46th Leg., 1st Reg. Sess. (Ariz. 2003), as amended by H.B. 2305, 47th Leg., 1st Reg. Sess. (Ariz. 2005).
2. See AMERICAN BAR ASS'N, PRINCIPLES FOR JURIES AND JURY TRIALS, Principles 10(C)(1), 10(C)(3), 2(C), & 2(F) (2005).
3. This fund provides one means of fulfilling the American Bar Association's goal of encouraging courts "to increase the amount of the fee for persons serving on lengthy trials." See *id.*, Principle 2(F)(1).
4. See ARIZ. REV. STAT. § 21-222.
5. Arizona's legislation did not set an amount for the filing fee that supports the LTF. Rather, the legislature authorized the court to establish an additional fee on each filing, appearance, and answer for the purpose of funding it. See ARIZ. REV. STAT. § 12-115; In the matter of Implementation of Lengthy Trial Fund, Admin. Order No. 2003-100 (Ariz. Sup. Ct., Nov. 12, 2003) (establishing LTF and filing fee).
6. ARIZ. SUP. CT., ADMIN. OFFICE OF THE CTS., CT. SERVS. DIV., 2004 ARIZONA LENGTHY TRIAL FUND REPORT 4 (Feb. 2005).
7. These amounts reflect claims received and paid by the AOC through June 30, 2005. Additional claims have since been received for jurors serving on trials that ended before July 1, 2005.
8. Arizona's legislation provides that the judiciary may use up to 3 percent of LTF resources to reimburse courts for expenses relating to the administration of the fund, such as the cost of processing individual juror claims for supplemental compensation. See ARIZ. REV. STAT. § 21-222(B).
9. See H.B. 2133, 47th Leg., 2d Reg. Sess. (Ariz. 2006).
10. ARIZ. REV. STAT. § 21-336.01(A).
11. ARIZONA LENGTHY TRIAL FUND REPORT,

*supra* note 6, at 1.

12. ARIZ. REV. STAT. § 21-335(A).
13. ARIZ. REV. STAT. § 21-236(A).
14. H.B. 2305, 47th Leg., 1st Reg. Sess. (Ariz. 2005) (codified at ARIZ. REV. STAT. § 21-336).
15. ARIZ. REV. STAT. § 21-334.
16. See Bob James, *Jury System Changes May Impact Trials*, MARICOPA LAW., Sept. 2004, at 1.
17. H.B. 2520, § 2, 46th Leg., 1st Reg. Sess. (Ariz. 2003) (codified as amended at ARIZ. REV. STAT. § 21-202(B)(4)).
18. See *id.*
19. See, e.g., Joel Landau, *Seniors Rail at Jury Crackdown*, NAT'L L.J., Aug. 23, 2004, at 4.
20. See H.B. 2305, 47th Leg., 1st Reg. Sess. (Ariz. 2005).
21. ARIZ. REV. STAT. § 21-202(C).
22. ARIZ. REV. STAT. § 21-202(B)(6).

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