

# A REFRESHING JURY COLA:† FULFILLING THE DUTY TO COMPENSATE JURORS ADEQUATELY‡

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† Cost of Living Adjustment.

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INTRODUCTION: STATE INACTION TO INCREASE JURY COMPENSATION AND THE NEED TO IDENTIFY FORWARD-LOOKING STANDARDS

"I consider [the trial by jury] as the only anchor, ever yet imagined by man, by which a government can be held to the principles of it's [sic] constitution."<sup>1</sup>

—Thomas Jefferson, 1789

Jury service touches the lives of many Americans.<sup>2</sup> As a binding obligation to the government, jury participation is virtually unique. Aside from paying taxes or registering with the Selective Service, it is the only public service that is presently compulsory in American society.<sup>3</sup> Because Americans theoretically cannot refuse to participate

1. Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), in 15 THE PAPERS OF THOMAS JEFFERSON 269 (Julian P. Boyd ed., 1958).

2. According to varied studies, between sixteen and twenty-nine percent of Americans serve as jurors. Abraham Abramovsky & Jonathan I. Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN'S J. LEGAL COMMENT. 457, 474 (1999); see also John Cornyn, *Texas Courts: Deliberating Jury Reform*, TEX. LAW., June 3, 1996, at 26, LEXIS, Txlawr File (reviewing studies indicating that fifteen million Americans are summoned to appear for jury duty each year and partake in approximately 160,000 jury trials).

3. LYN CARSON & BRIAN MARTIN, *RANDOM SELECTION IN POLITICS* 67 (1999) ("Jury duty is one of a small number of things that the modern liberal state compels citizens to do.").

when summoned, jurors sacrifice both their time and their potential earnings during that time to the service of the justice system. While the average trial lasts only a week,<sup>4</sup> jurors potentially endure severe stresses that can stay with them for a lifetime, including trauma resulting from exposure to violence, guilt over sentencing decisions, or lost wages.<sup>5</sup> But for those who do serve on a jury, the experience is reportedly overwhelmingly positive.<sup>6</sup> While critics have argued that the jury should be revamped,<sup>7</sup> or even abolished altogether,<sup>8</sup> the Supreme

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4. See Patrick E. Longan, *The Case for Jury Fees in Federal Civil Litigation*, 74 OR. L. REV. 909, 936 (1995) (estimating five days); Joanna Sobol, Note, *Hardship Excuses and Occupational Exemptions: The Impairment of the "Fair Cross-Section of the Community"*, 69 S. CAL. L. REV. 155, 173 (1995) (observing, based on extensive interviews with court personnel, that "[a]n average jury trial lasts about a week, including deliberations").

5. See, e.g., Thomas L. Hafemeister & W. Larry Ventis, *Juror Stress: What Burden Have We Placed on Our Juries?*, 56 TEX. B.J. 586, 588 (1993) (describing incidences of psychological and physical harm resulting from jury service); Stanley M. Kaplan & Carolyn Winget, *The Occupational Hazards of Jury Duty*, 20 BULL. AM. ACAD. PSYCHIATRY & L. 325 (1992) (on file with the *New York University Journal of Legislation and Public Policy*) (reporting research results indicating health problems related to jurors' unpleasant experiences during criminal trials). One juror, who served during the trial of serial killer Jeffrey Dahmer, revealed how that trial influenced his life: "Somewhere down the road, this may hit me like a ton of bricks. I am beginning to think there is no such thing as normal after this." Hafemeister & Ventis, *supra*, at 588.

6. See, e.g., JANICE T. MUNSTERMAN ET AL., NAT'L CTR. FOR STATE COURTS, *THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE 5-11* (1991) (on file with the *New York University Journal of Legislation and Public Policy*) (reporting results of national study of multiple different courts, in which eighty-one percent of respondents rated their experiences positively and concluding that "[j]urors are very satisfied with their jury service and reported hardship is minimal"); Steven Cann & Michael Kaye, *Juror Satisfaction with the Kansas Court System 6* (1998) (unpublished report to the Honorable Kay McFarland, Chief Justice of the Kansas Supreme Court, on file with the *New York University Journal of Legislation and Public Policy*) (surveying 1478 respondents and finding that "[t]hree fourths of the sample (75%) rated the jury service experience as a positive one, (collapsing the excellent, good and adequate categories)"); Amy Geiszler-Jones, *The Verdict on More Pay for Jury Duty*, INSIDEWSU, Oct. 5, 2000, [http://www.wichita.edu/insidewsu/@10-5-2000/Jury\\_study.htm](http://www.wichita.edu/insidewsu/@10-5-2000/Jury_study.htm) (reporting that "76.6 percent of the respondents [in a recent study] believed the [\$10 per day] compensation they received for their jury service was less important than their civic duty") (on file with the *New York University Journal of Legislation and Public Policy*).

7. See, e.g., Christie Davies, *Trial by Jury Should Be Abolished*, reprinted in *THE JURY SYSTEM* 19, 21 (Mary E. Williams ed., 1997) ("[T]he jury must be replaced by a small team of experienced professional legal assessors.").

8. See, e.g., Leon Sarpy, *Civil Juries, Their Decline and Eventual Fall*, 11 LOY. L. REV. 243 (1962-63) (claiming that abolishing civil juries would help remedy problem of legal delays).

Court has defended the jury against such attacks.<sup>9</sup> Yet, despite the Supreme Court's endorsement, the jury system is far from trouble-free.

Across the nation, many commentators and observers have argued that the jury system is operating on the brink of disaster due to dwindling citizen participation. In fact, as few as forty percent of all summoned jurors<sup>10</sup>—twenty percent of jurors in bustling metropolitan regions<sup>11</sup>—respond to the court's summons. Headlines in local news publications tell of judges who have launched "jury round-ups," randomly compelling people on the street to serve within hours after notification by armed bailiffs.<sup>12</sup> Jury commissioners have similarly sued

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9. See, e.g., *Duncan v. Louisiana*, 391 U.S. 145, 157 (1968) (noting results of studies concluding that "juries do understand and come to sound conclusions in most of the cases presented to them").

10. Mark Curriden, *Jury Reform*, A.B.A. J., Nov. 1995, at 72, 73 (observing that "[n]ationwide, the [jury] no-show rate tops 60 percent").

11. David Williams, *Realistic Jury Service: One Small Step Towards Improving the Civil Justice System*, ARK. LAW., Summer 2000, at 16 (noting that ignorance of summons explains these results). This was precisely the case in Dallas County, Texas, when in 2000, "less than 20 percent" of citizens appeared because their summons, which "end[ed] up in desk drawers or planners or trash cans, [were] dismissed or simply forgotten." Allen Pusey & Mark Curriden, *Duty Calls, Few Answer*, DALLAS MORNING NEWS, Oct. 23, 2000, at 1A. These figures are optimistic when compared with data from Los Angeles, where only ten percent of jurors responded to the summons. Mark Curriden, *No Excuses*, DALLAS MORNING NEWS, Oct. 24, 2000, at 1A.

12. See John Sullivan, *The Case of the Missing Jurors Has Counties Scrambling*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 24, 2000, LEXIS, Nwsobv File (documenting round-up of fifty-five jurors at Wal-Mart in Cleveland County, North Carolina in February of 2000). In a number of these cases, citizens who simply appeared in public were "collared on the street, like common criminals." John Stevenson, *Surprised Jurors for Robbery Trial Accept Fate*, HERALD-SUN (Durham, N.C.), Aug. 11, 1995, LEXIS, Hldsun File. At the direction of Judge Orlando Hudson, who had been outraged at the summons non-response rate in his court, marshals ordered people to appear on one day's notice and refused to answer a single question from any of them. *Id.* When one single mother finally came before Judge Hudson, explaining that she had to pick up her child after school each day, the judge's response was refusal of her request to be excused, even under the extenuating circumstances of the roundup. *Id.* Perhaps these experiences in North Carolina were still more accommodating than another "juror nabbing" that occurred in Prince George's County, Maryland, in which citizens were forced to attend court the same day they were snatched and were further threatened with confinement if they refused—even citizens who were working at the time deputies approached them. Benjamin Weiser, *Deputies Sweep P.G. Streets to Round Up Jurors for Judge*, WASH. POST, May 22, 1980, at B1. Though we may not hear of these instances daily, judges have apparently relied upon the practice for quite some time. See *id.* (noting sheriff's observation that round-ups "used to happen with great regularity," to such pervasive degree that one moment you would be cashing check, and "the next thing you know you're a juror"). Courts have upheld the validity of this practice in light of allegations of prejudice. See, e.g., *State v. Wilson*, 330 S.E.2d 450, 457 (N.C. 1985) (recognizing need "to ensure orderly, uninterrupted and speedy trials").

their own mayors and municipal officials for failing to provide adequate juror selection lists.<sup>13</sup>

Several state legislatures have taken jury reforms to heart,<sup>14</sup> reasoning that showing jurors appreciation and helping to ease the burdens of their service will increase the public's willingness to comply with court orders.<sup>15</sup> A major step forward was Arizona's development of the *Juror's Bill of Rights*, which prompted other states to reconsider their own responsibilities.<sup>16</sup> Those states that have adopted jury reforms did not respond to a crisis of conscience merely because they cherished jurors' participation. They realized that the court systems were in danger of violating the constitutional requirement for jury panels to represent a cross-section of the community.<sup>17</sup> In any county

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13. See Dorris Sue Wong, *AG Says Boston Reneged on Compiling Voter List, Brings Suit*, BOSTON GLOBE, Aug. 10, 1993, at 68 (describing efforts of Massachusetts State Jury Commissioner Frank Davis to compel Mayor of Boston and Suffolk County Clerk to update jury selection lists).

14. For example, the one-day/one-trial program is an administrative measure many states have adopted to reduce juror inconvenience. The process permits summoned citizens to visit the court only one day and then return home if not selected for trial, instead of returning to the court day after day. See, e.g., *Court Reform Missing L.A.*, L.A. BUS. J., Nov. 29, 1999, 1999 WL 11382716 (noting that 1999 marked year in which "50 of the state's 56 court systems had fully complied" in transitioning to this system). For a general background, see JURY TRIAL INNOVATIONS § II-2 (G. Thomas Munsterman et al. eds., 1997) (compiling data on workings of jury system across nation).

15. One report noted that, as of 1995, "Courts and bar associations in 27 states ha[d] committees studying ways to improve the [jury] process." Curriden, *supra* note 10, at 73.

16. See generally COMM. ON MORE EFFECTIVE USE OF JURIES, ARIZ. SUPREME COURT, JURORS: THE POWER OF TWELVE (1994) (recommending various reforms to improve jury system in that state and including increased juror compensation as priority), <http://www.supreme.state.az.us/jury/Jury/jury.htm> (on file with the *New York University Journal of Legislation and Public Policy*).

17. Supreme Court cases have reconfirmed that the Sixth Amendment's demand for an "impartial jury," U.S. CONST. amend. VI, requires a panel somewhat representative of the community at large. See *Theil v. S. Pac. Co.*, 328 U.S. 217, 220 (1946) ("The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community."); *Smith v. Texas*, 311 U.S. 128, 130 (1940) ("It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."); see also 28 U.S.C. §§ 1861-1869 (1994) (codifying *Theil's* requirement in federal law). While this requirement contemplates the presence of cognizable groups that are not systematically excluded from serving, it does not mean that defendants are guaranteed a jury which is "a perfect mirror of the community or accurately reflect[s] the proportionate strength of every identifiable group." *Swain v. Alabama*, 380 U.S. 202, 208 (1964).

where jurors do not respond to summons, the threat of a non-representative jury panel looms, and the search for a solution continues.<sup>18</sup>

Oddly enough, a factor that has largely been ignored by legislators is the need to remedy wholly inadequate jury compensation. Jury fees exist separately from concerns about discomfort over trial proceedings. Largely, many jurors experiencing pay-related problems, let alone those potential jurors who are anticipating them, will never make it to the jury box. As Part II.A, *infra*, explains, the low pay offered by the great majority of states is perhaps the greatest impediment to the attainment of citizen participation on juries sufficient to reflect the initial quote by Jefferson. Jury compensation is a factor worthy of consideration above and beyond the more traditional concerns of courts pertaining to jurors' comforts after trials have begun.

#### A. *Jury Compensation and the Courts: A Neglected Issue*

While observers cite many ironies about juries in America,<sup>19</sup> the minimal amount of compensation jurors receive is among the most evident.<sup>20</sup> Although juries admittedly do much to safeguard justice

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18. See, e.g., ROBERT G. BOATRIGHT, AM. JUDICATURE SOC'Y, IMPROVING CITIZEN RESPONSE TO JURY SUMMONSES 4 (1998) (explaining that summons non-response is problematic because of its potential to result in discrimination and thus deprivation of defendants' constitutional rights). For a complete discussion of this threat, especially among minority communities that already suffer from strikingly low levels of minority representation, see generally HIROSHI FUKURAI ET AL., RACE AND THE JURY: RACIAL DISENFRANCHISEMENT AND THE SEARCH FOR JUSTICE (1993).

19. A number of scholars would agree that the jury "is an institution rife with paradox." KENNETH W. STARR, JURIES AND JUSTICE 9 (Nat'l Legal Ctr. for the Pub. Interest, The Gauer Distinguished Lecture in Law and Pub. Policy, Vol. 9, 2000). Most note that Americans cherish the idea of jury service until the moment they are called on. See STEVEN J. ADLER, THE JURY: DISORDER IN THE COURTS, at xiii (1994) (observing that American citizens "love the idea of the jury but hate the way it works"). Statistics indicate that most citizens believe jury service is a choice rather than a responsibility and distrust the reliability of jury verdicts. See Maura Dolan, *Jury System Is Held in Low Regard by Most*, L.A. TIMES, Sept. 27, 1994, at A1 (reporting that 57% of respondents "said they regard jury duty as a 'personal choice' that each citizen should make individually compared to 41% who viewed it as a civic responsibility"); *Faith in the Jury System*, WALL ST. J., May 8, 1995, at B3 (noting that nearly thirty percent of Americans surveyed were either "not very confident" or "not at all confident" that jury would acquit them if they were accused of crime they did not commit). Legal historians also point out the way the jury system ironically lost power upon the advent of increased participation. See Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. CHI. L. REV. 867, 868 (1994) ("[A]s the jury's composition became more democratic, its role in American civic life declined.").

20. See discussion *infra* Part II.D and Figure 4 (describing wholly inadequate jury compensation rates when compared to Americans' income and costs of living).

and fairness in society,<sup>21</sup> most states pay them mere pennies on the dollar compared to the wages they earn from employers.<sup>22</sup> Throughout the nation, legislators have set jurors' average *per diem* compensation at nearly half the minimum wage and well below the daily equivalent of the poverty threshold.<sup>23</sup> This is true even though these public figures often claim to be on crusades to ease jurors' burdens.<sup>24</sup> In fact, as Americans have found it harder to make ends meet in light of increased costs of living,<sup>25</sup> jury compensation has progressed at a snail's pace, with many states neglecting any type of raise for decades, and, in some cases, generations.<sup>26</sup> The financial difficulty faced by jurors is compounded because most states do not require employers to cover the difference between the pay jurors receive for their service and the salary they would have received from their ordinary employment.<sup>27</sup> In many cases, such a requirement would pose great financial burdens for employers.<sup>28</sup>

The chief irony of the generally low pay available to jurors is not that jurors are inadequately compensated for the difficult work that they do. Instead, it is the proclamation of most counties that the *per*

21. See *infra* Part I.C.2 and Figure 1 (describing many functions for which jury has been recognized in American society).

22. See *infra* Part II.A.2 and Figure 2 (exploring current compensation rates across the nation).

23. See *infra* Figures 6–7 (illustrating gaps between average state jury pay and these thresholds).

24. See Curriden, *supra* note 10, at 73–74 (explaining that some states have developed reforms to make jury service less burdensome); cf. Tom M. Dees, III, *Juries: On the Verge of Extinction? A Discussion of Jury Reform*, 54 SMU L. REV. 1755, 1758–59 (2001) (reviewing number of state reform efforts).

25. JAMES HEINTZ ET AL., *THE ULTIMATE FIELD GUIDE TO THE U.S. ECONOMY: A COMPACT AND IRREVERENT GUIDE TO ECONOMIC LIFE IN AMERICA* 34 (2000) (explaining how current “real wages remain well below their 1973 peak”).

26. See Appendix A (providing table of history of jury compensation).

27. See G. Thomas Munsterman, *A Brief History of State Jury Reform Efforts*, 79 JUDICATURE 216, 217 (1996) (noting small proportion of states that require employers to compensate jurors during their service).

28. Those who are most affected by this problem are small business owners. See, e.g., Chris Rauber, *Held Up in Court: Long Jury Duty Can Cost Employer Big*, S.F. BUS. TIMES, Oct. 25, 1996 (describing crisis faced by Exegy, small business, when “25 percent of its tiny staff [were] serving on juries at the same time”), <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/1996/10/28/focus1.html>. In other cases, the requirement would pose few problems, as many businesses already encourage employees to trade in their county pay for the equivalent of their full salary. See Allan Cooper, *Thinking Out of the Box*, RICHMOND TIMES-DISPATCH, Dec. 12, 2001, LEXIS, Rchtmf File (“Some employers don’t dock the pay of jurors and allow them to keep the [state *per diem*]. Others pay the difference between the employee’s salary and the jury stipend. But many companies consider the employee absent from work and make no allowance for the reason.”).

*diem* is “a token of appreciation,”<sup>29</sup> while, for many jurors who are losing money, the rate may seem more like an insult.<sup>30</sup> Although citizens may refuse payment for jury service as a matter of principle, contribute their pay to local charities,<sup>31</sup> or earn enough income from their employment for the *per diem* not to matter, pain stemming from low compensation is felt especially by self-employed individuals,<sup>32</sup> single parents without the means to obtain childcare,<sup>33</sup> and part or full-time workers who receive no compensation from their employers.<sup>34</sup>

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29. Lisa Sink, *Jurors Issue Ruling on Their Days in Court*, MILWAUKEE J. SENTINEL, Oct. 8, 2000, LEXIS, Miljnl File (citing Gail Richardson, court administrator charged to review jury fees). Ms. Richardson, however, like most who share this view, neglected to explain exactly what the “appreciation” is for when it fails to meet jurors’ most basic needs.

30. As Richard Gurfien, President of the New York State Trial Association, once commented, “it’s degrading to ask a citizen to leave their daily routine and put them into a novel to perform their civic duty.” William K. Rashbaum, *High Tide in Jury Pool*, DAILY NEWS (New York), Jan. 1, 1996, at 6.

31. See Munsterman, *supra* note 27, at 217 n.5 (“Fees are important to some jurors and not others. This is clear from the success in many courts of jury fee donation programs whereby jurors can donate their fees to charity . . .”). Munsterman notes that thirty percent of jurors in Dallas, Texas had donated to such a program, *id.*, while most Texas counties pay the minimum fee permissible—six dollars per day. See Heather Todd, *Justice Pays, But Not Enough*, COUNTY, Jan.–Feb. 2001, at 18, 18 (noting how “most counties” in Texas pay “the state-set minimum of \$6 a day” even though the legislature made it permissible for them to raise fees to fifty dollars in 1997).

32. According to Ric Cortez, a self-employed mechanic who skipped out on jury duty three times in a row: “If I don’t work, my family doesn’t eat . . . Doesn’t seem like much of a choice.” Mark Curriden & Allen Pusey, *A Poor Reflection: Number of Minority, Lower-Income Jurors Doesn’t Mirror County Population*, DALLAS MORNING NEWS, Oct. 22, 2000, at 1A. The problem hardly seems to be dissipating. In some Texas counties, for example, it is estimated that at least one in eight jurors will be self-employed. See Pusey & Curriden, *supra* note 11 (reporting statistic from survey results).

33. Though practically all jury improvement commissions recommend providing childcare, the cost of meeting these demands are prohibitive. See, for example, BOATRIGHT, *supra* note 18, at 123, which explains why “[c]hild-care should be a priority of courts.” Courts are already experiencing great financial difficulty implementing measures as simple as the one-day/one-trial program. See *Court Reform Missing L.A.*, *supra* note 14 (explaining that, although great majority of courts in California had committed to implementing one-day/one-trial program, many courts could not afford to complete process, thereby missing out on its potential benefits).

34. As of 2001, eight states required employers to compensate jurors for at least some period of their service. See G. Thomas Munsterman, *What Should Jurors Be Paid?*, CT. MANAGER, Quarter 2001, at 16 n.9 (noting regulations in Alabama, Colorado, Connecticut, Louisiana, Massachusetts, Nebraska, New York, and Tennessee). However, in many of these cases, the requirements cover jurors for the first three to five days only. See *id.* (citing Louisiana, Colorado, Massachusetts, and Connecticut as adhering to various forms of this limitation). As it stands, many employers react to jurors with hostility and discourage their participation. See Curriden & Pusey, *supra* note 32 (presenting results of Dallas study finding that “people earning less than

While, historically, jurors were compensated at levels similar to the average wage, jury compensation is currently low because states lack a guideline indicating when to increase jury fees or by what amount.<sup>35</sup>

*B. The Problem with Jury Compensation: Lack of an Index  
Accounting for Inflation or the Cost of Living*

The compensation of jurors is determined by the jurisdiction in which they are called to serve.<sup>36</sup> Federal jurors receive forty dollars per day.<sup>37</sup> State jurors may receive anywhere between two and fifty dollars per day.<sup>38</sup> Two states even rely on the minimum wage and pay jurors the hours served rather than the days served.<sup>39</sup> In response to these varied jury compensation rates, both supporters and critics of the courts have reviewed extensively the current fee structure and have recommended changes. Some say that jurors should be paid more,<sup>40</sup> others urge that juror pay be held at its current level,<sup>41</sup> and a few

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\$35,000 a year are twice as likely as other people to say that their employer tries to discourage them in some way from serving," with forty percent of this group reporting "specifically that their employers cut their wages or refuse to pay them"); Paula McMahon, *Workers Say Jury Duty Cost Them Their Jobs: Two in Lengthy Trials Sue After Being Forced Out*, SUN-SENTINEL (Fort Lauderdale, Fla.), July 30, 2000, LEXIS, Sunsen File ("[J]urors who give the most by serving on the longest and most complicated cases are most at risk of reprisals [from their employers].").

35. *Cf. infra* Parts II.E–F (discussing difficulty of establishing sliding scales or uniform standards for compensation applicable to jurors across nation).

36. For a detailed listing see *infra* Figure 2 (depicting current state compensation rates).

37. See 28 U.S.C. § 1871 (1994) (permitting forty dollars per day and additional ten dollars per day for jurors "required to attend more than thirty days in hearing one case").

38. Compare S.C. CODE ANN. § 14-7-1370 (1977 & Supp. 2001) (indicating jurors in some South Carolina counties are paid as little as two dollars per day), with Act of Feb. 10, 1999, ch. 107, sec. 1, § 16-13-46, 1999 S.D. Laws 169, 169 (requiring jurors to be compensated fifty dollars per day of attendance).

39. See Act of Apr. 5, 1979, ch. 285, sec. 1, § 38-5-15, 1979 N.M. Laws 1120, 1120 (prescribing all jurors be compensated at highest prevailing state minimum wage); Act of Sept. 1, 1999, ch. 1085, § 4, 1999 Or. Laws 1085 (basing jury fees after first two days on minimum wage, subject to ceiling of fifty dollars per day).

40. WASH. STATE JURY COMM'N, REPORT TO THE BOARD FOR JUDICIAL ADMINISTRATION 23 (2000) ("The commission views a fee increase as its highest priority. Citizens required to perform jury service should be compensated fairly and appropriately."), <http://www.courts.wa.gov/jurycomm/report/report.pdf> (on file with the *New York University Journal of Legislation and Public Policy*). Chief justices of several state supreme courts have also echoed these sentiments. See, e.g., Chief Justice Thomas A. Zlaket, Remarks to the Arizona Legislature on the State of the Judiciary 6 (Jan. 29, 2001) (transcript on file with the *New York University Journal of Legislation and Public Policy*) (recommending fee increases in light of recent jury reforms).

41. See, e.g., CAL. LEGISLATIVE ANALYST'S OFFICE (LAO), ANALYSIS OF THE 2000–01 BUDGET BILL: JUDICIARY AND CRIMINAL JUSTICE D-88 to D-89 (2000) (recommending that California legislature not support jury compensation increase from

recommend far-reaching transformations in the way juror fees are collected and dispersed.<sup>42</sup> But, with the exception of New Mexico and Oregon, no state has calculated jury pay in relation to transforming societal standards like Americans' daily income.<sup>43</sup> Without a flexible method of reflecting the financial demands faced by state residents who serve as jurors, even those few states that currently pay jurors above the minimum wage lack the guidance necessary to meet jurors' future financial demands. They instead depend wholly on advocacy of the jurors' financial interests—advocacy that has been anything but constant in the fight for jury reform.<sup>44</sup> Essentially, the problem relates to collective action. Economically, because there are no full-time jurors, no one has sufficient interest in jury fees to spend the money or expend the effort necessary to develop uniform rates. To solve this problem of collective action, this Article turns to the state legislatures.

This Article adopts a new perspective on the obligation of states to compensate jurors on the basis of their financial needs. It combs the nation's history for answers to a variety of significant questions: Why do states compensate jurors? Have there ever been minimal levels of juror compensation among the states of the union? Have any legal challenges resulted in governments raising jury fees? Have states developed uniform standards for juror compensation in light of varied economic conditions? While, at times, the responses to these questions will be brief, answering them is crucial to understanding how jury fees can be set in accordance with both their purpose and their history. In order to set fees fairly, legislatures and courts should use the federal minimum wage as a guideline for determining the *minimum* compensation owed to jurors. This indexing process would increase the amount of jury compensation as the federal minimum wage increases. The index would remedy the lack of foresight that resulted

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five dollars to twelve dollars per day because compensation increase would fail to show jurors appreciation they deserve), [http://www.lao.ca.gov/analysis\\_2000/crim\\_justice/crimjust\\_an100.pdf](http://www.lao.ca.gov/analysis_2000/crim_justice/crimjust_an100.pdf) [hereinafter LAO REPORT] (on file with the *New York University Journal of Legislation and Public Policy*). California legislators settled for fifteen dollars per day, which by the LAO's estimation would still leave most jurors without money for lunch if they had to pay for parking. See *id.* at D-90; Act of July 8, 2000, ch. 127, sec. 1, § 215(a), 2000 Cal. Adv. Legis. Serv. 127 (Deering) (permitting only fifteen dollars per day after first day of service).

42. See generally Longan, *supra* note 4 (recommending that federal jury system compensate civil jurors solely on basis of fees charged to litigants).

43. See sources cited *supra* note 39 (providing citations for both states' system of payment).

44. See generally Munsterman, *supra* note 27 (noting extensive advocacy on behalf of broader jury reforms, but little or no advocacy for increasing fees substantially among majority of states); see also *infra* Parts I.A–B (discussing courts' failure to find legal violations in current jury compensation structures).

from the pattern set by the initial jury compensation statutes. Much like legislation enacting pension increases for disabled veterans of the Civil War,<sup>45</sup> jury payment provisions of the same time frame only cited then-current monetary values.<sup>46</sup> This jury Cost of Living Adjustment (COLA) immediately would increase the pay of most jurors and remedy the legislative neglect of this issue evident in recent years. It would also serve to keep states abreast of the necessity to increase their juror compensation in the future.

Part I of this Article inquires whether minimal jury compensation violates jurors' rights as articulated by the Fifth and Thirteenth Amendments of the Constitution and other statutory provisions. This Part examines how the many roles of the jury often create confusion with respect to the issue of whether and how much jurors should be compensated. On closer analysis, while it may appear that there are similarities between the tradition of requiring persons to provide uncompensated service to the public in some capacity and jury service, it is the case that jurors' financial sacrifices are unique and often more dramatic than those citizens called upon to serve in other capacities. This Part concludes by situating existing theories of jury compensation in two theoretical models, which play a significant role in determining whether states should pay jurors any meaningful amount.

Because the crucial issue is not whether to pay jurors but how much to pay them, Part II adopts a historical perspective to determine the bases for juror compensation other than the often confusing notions of the juror's many roles. It traces current compensation methods and rates back to their inception using the guidelines established by the Supreme Court in *Hurtado v. United States*,<sup>47</sup> a case that examined the question of whether federal witness compensation was so inadequate as to effect an unconstitutional taking under the Fifth Amendment. This Part distinguishes federal and state jury compensation histories and concludes that, until recent times, the same forces seemed to motivate both pay rates. Based on these similarities, this Part proposes a numerical jury compensation index that represents the historical relationship of the minimum wage and jury fees, providing a guideline for determining minimal jury compensation amounts in the

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45. See, e.g., Act of June 17, 1878, ch. 261, 20 Stat. 144 (1878) (repealed) (increasing injured veterans' pensions to "seventy two dollars per month" using "the same manner as pensions are now paid to such persons" rather than basing increases on economic indicators).

46. See sources cited *infra* note 262 (citing sources depicting federal fee increases); *infra* Appendix A (providing history of jury compensation in states and District of Columbia).

47. 410 U.S. 578 (1973).

future concurrent with changes in minimum wage rates. Such an equation would relieve state legislators of the burdensome task of guessing when jury fee increases are necessary in the absence of any definitive guidance.

Part III expands the inquiry by investigating the potential costs and benefits of adopting the proposed index. It uses the experience of counties that have raised fees to explain how higher fees would likely increase jury participation. This Part also applies theories of motivation to show that jurors would likely devote more time and attention to their duties if they were less concerned about financial pressures during their service. Part III also explains how survey research often mischaracterizes the impact of jurors' economic hardships by downplaying the financial sacrifices they must make in order to serve. It also addresses the potential undesired consequences that could stem from the adoption of a compensation index. For example, offering higher wages could create a corps of "professional jurors" motivated purely by financial gain, who might unduly prolong their service to maximize their wealth. Likewise, higher fees would insult those jurors who are motivated to serve by a sense of civic duty rather than by economic concerns, giving them incentive to ignore or trivialize their obligations. A final concern addressed in Part III is the inherent difficulty of proving to a mathematical certainty that higher fees will actually increase summons-response rates. In light of these many concerns, policymakers must accept the fact that the jury serves a number of functions at different times, an undeniable truth that mandates some sort of financial remuneration. Because states pay other public servants, like poll workers, enough to alleviate their financial burdens, there should not be a double standard that requires jurors to suffer an undue burden for their valuable service.

## I

### LEGAL ASPECTS OF JURY COMPENSATION

Courts have considered jury compensation in a number of contexts. Several commissions on jury reform have spoken of the need for a uniform standard of compensation and the risk that absent one, jurors will have little legal recourse to escape significant financial hardship during their service.<sup>48</sup> Courts have examined both statutory

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48. See, e.g., Richard W. Creswell, *Georgia Courts in the 21<sup>st</sup> Century: The Report of the Supreme Court of Georgia Blue Ribbon Commission on the Judiciary*, 53 MERCER L. REV. 1, 20 (discussing how increasing juror compensation diminishes need for hardship exemptions); Edwin J. Peterson, et al., *Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System*, 73 OR. L. REV. 823,

and constitutional grounds for increasing jury compensation with mixed results—sometimes finding that inadequate jury compensation creates a constitutional or statutory violation, but more often upholding low jury compensation.

### A. *Constitutional Implications*

In alleging violations of their constitutional rights, jurors might argue that their compelled service constitutes a government taking without just compensation as articulated in the Fifth Amendment<sup>49</sup> or involuntary servitude in violation of the Thirteenth Amendment.<sup>50</sup> In both instances, the courts have justified payment of low jury fees by invoking the concept that jury participation is expected of all citizens as a civic obligation. Often, courts have noted the similarity between those called to serve on a jury and conscripted soldiers or citizens compelled to conduct public roadwork. However, these comparisons are, in the end, inappropriate and fail to appreciate the essential differences between jury service and other forms of public duty.

#### 1. *Inadequate Pay as an Infringement on the Juror's Fifth Amendment Interest in Just Compensation*

When government regulations deprive owners of the fair value of their property, the government often must compensate the property owners for the losses that result from those regulations.<sup>51</sup> The takings doctrine similarly applies when “the monetary value of [an individual’s] private time and labor has been appropriated.”<sup>52</sup> While there

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901–02 (1994) (noting problems created by present Oregon system of jury compensation).

49. U.S. CONST. amend. V (stating, *inter alia*, “[N]or shall private property be taken for public use, without just compensation”). The Fifth Amendment only applies to takings by the federal government, but the Supreme Court has held that claims against state governments for takings may be raised through the Fourteenth Amendment. *See, e.g.,* *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968) (explaining that Due Process Clause of Fourteenth Amendment “now protects the right to compensation for property taken by the State” (citing *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226 (1897))).

50. U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

51. *See generally* ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* § 8.4.2.2 (1997) (discussing regulatory takings).

52. Daniel E. Witte, Comment, *Getting a Grip on National Service: Key Organizational Features and Strategic Characteristics of the National Service Corps (AmeriCorps)*, 1998 BYU L. REV. 741, 786 (1998). In part, this view of the Fifth Amendment evolved from the courts’ increasingly liberal treatment of rate regulation, whereby the owners of railroads successfully challenged rates imposed on the basis

are a number of ways to calculate the fair value of the property that has been appropriated, many formulae for doing so are tied to the economic market.<sup>53</sup> Consequently, jurors who prevail in challenging their compensation on the grounds that it constitutes a taking could theoretically force states to develop a uniform rate. Yet, the question remains whether jurors have, in fact, experienced such a prohibited taking. Prior court decisions at least appear to indicate that the hardships jurors face do not rise to the level of a prohibited taking.

In colonial times, the various colonies required all able-bodied men to work the roads without compensation.<sup>54</sup> When citizens later challenged such statutes on Fifth Amendment grounds, courts generally responded that although “[l]abor is also property . . . [g]ood public roads or streets [are] a sufficient compensation for the labor . . . .”<sup>55</sup> Other courts altogether refused to view roadwork requirements in terms of the Fifth Amendment.<sup>56</sup> In 1916, the Supreme Court settled the issue in *Butler v. Perry*, holding, “[A] State has inherent power to require every able-bodied man within its jurisdiction to labor for a reasonable time on public roads near his residence without direct compensation. This is a part of the duty which he owes to the public.”<sup>57</sup>

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that “for[cing] an owner to run a business with less return than he would receive without the regulation . . . seemed to amount to a forced dedication of his business to the public.” Molly S. McUsic, *The Ghost of Lochner: Modern Takings Doctrine and Its Impact on Economic Legislation*, 76 B.U. L. REV. 605, 616 (1996). In the years that followed, even attorneys were among those who used the Fifth Amendment to challenge *pro bono* requirements as government takings. See, e.g., *State ex rel. Scott v. Roper*, 688 S.W.2d 757, 762–63 (Mo. 1985) (en banc) (citing cases that “expressly or impliedly suggest that at some time this growing burden [on lawyers to take on *pro bono* cases] may constitute a taking of property”). But see *United States v. Dillon*, 346 F.2d 633 (9th Cir. 1965) (rejecting this application of Fifth Amendment due to lawyer’s unique responsibilities to serve public).

53. See, e.g., Roberta Rosenthal Kwall, *Governmental Use of Copyrighted Property: The Sovereign’s Prerogative*, 67 TEX. L. REV. 685, 719–20 (1989) (discussing property valuation methods and unique circumstances applying to less traditional types of property appropriated by government).

54. See *Butler v. Perry*, 240 U.S. 328, 331 (1916) (explaining, “From Colonial days to the present time conscripted labor has been much relied on for the construction and maintenance of roads”). For an example from one state’s laws, see Act of Mar. 4, 1881, ch. 34, sec. 1, § 34, 1881 Kan. Sess. Laws 62, 68, which establishes city road districts and requires twenty-one to forty-five year-olds to “perform two days’ labor of ten hours each on the streets, alleys or avenues of said city, or in lieu thereof pay the street commissioner the sum of three dollars.”

55. *State ex rel. Curtis v. City of Topeka*, 12 P. 310, 315 (Kan. 1886).

56. See, e.g., *Short v. State*, 31 A. 322 (Md. App. 1895) (refusing to apply protections of Fifth Amendment to state’s power over its own citizens).

57. 240 U.S. 328, 330 (1916).

In *Hurtado v. United States*,<sup>58</sup> the Court mirrored *Butler*'s analysis in its treatment of jailed witnesses. After receiving only one dollar per day as a witness in the 1970s, Felipe Hurtado, who had been incarcerated to ensure his testimony in a criminal case, advanced a Fifth Amendment argument that one's "business, occupation, profession, or calling is his property and is protected by the Constitution."<sup>59</sup> This claim hinged on Justice Douglas's theory, expressed in his concurrence in *Peters v. Hobby*, that "one of man's most precious liberties is his right to work."<sup>60</sup> This right had been denied to Hurtado during the months he awaited trial in his cell, while being compensated only one dollar per day. However, the Court rejected Hurtado's arguments, explaining that "the Fifth Amendment does not require that the Government pay for the performance of a public duty it is already owed."<sup>61</sup> While *Hurtado* narrowly addressed the "detention of a material witness," where "the level of his compensation . . . does not, as such, present a constitutional question,"<sup>62</sup> the Court's conclusion had a broader scope.

A witness, observed the Court, is only entitled to the amount of compensation prescribed by statute, even if the low pay requires the witness to make a "personal sacrifice."<sup>63</sup> As long as these sacrifices contributed to the "welfare of the public," the Court asserted that there would be no violation of the Fifth Amendment.<sup>64</sup> Similar arguments may hold true with respect to the service provided by jurors. While they surely sacrifice time, energy, and money by serving the government, jurors in criminal trials, for example, are responsible for removing dangerous criminals from the streets. Arguably, these jurors preserve the public welfare by performing this task. Therefore, no violation of the Fifth Amendment occurs under the Court's analysis in *Hurtado* if such jurors are grossly underpaid. Yet, the constitutional inquiry does not end with the Fifth Amendment. If jurors' financial sacrifices are so extreme that they are paid below a subsistence level, jurors may then have Thirteenth Amendment claims that the government essentially has enslaved them.

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58. 410 U.S. 578 (1973).

59. Brief for Petitioners at 28, *Hurtado v. United States*, 410 U.S. 578 (1973) (No. 71-6742).

60. 349 U.S. 331, 352 (1955) (Douglas, J., concurring).

61. *Hurtado*, 410 U.S. at 588.

62. *Id.* at 589.

63. *Id.* (quoting *Blair v. United States*, 250 U.S. 273, 281 (1919)).

64. *Id.*

## 2. *Inadequate Pay as a Violation of the Thirteenth Amendment's Prohibition of Involuntary Servitude*

Recently, a commentator suggested, “[F]orcing individuals to appear for jury duty against their will flies in the face of the spirit of . . . the prohibition on involuntary servitude.”<sup>65</sup> Courts have been reluctant to accept this argument, because a number of traditional ideas about involuntary servitude effectively have created exceptions to the Thirteenth Amendment.<sup>66</sup> Cases such as *United States v. Kozminski*<sup>67</sup> suggest that the question has been resolved with respect to jurors. Just like members of the military and citizens required to work the public roads, jurors must repay the state for the many rights they enjoy by providing service.<sup>68</sup> *Kozminski*'s recognition that the government may demand the performance of civic duties without violating the Thirteenth Amendment is supported by a number of earlier opinions.<sup>69</sup> The bulk of these hold that a host of compelled activities are hardly “that kind of ‘involuntary servitude’ which is akin to slavery, as the interdicted involuntary servitude mentioned in the state and federal constitutions is.”<sup>70</sup> Based on analogies to other services, such as pub-

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65. Dominick Armentano, *Use Market to Select Jurors*, DAILY COMMENTARY (Cato Inst.), Nov. 11, 1999, at <http://www.cato.org/dailys/11-11-99.html> (on file with the *New York University Journal of Legislation and Public Policy*).

66. See Lauren Kares, Note, *The Unlucky Thirteenth: A Constitutional Amendment in Search of a Doctrine*, 80 CORNELL L. REV. 372, 392–93 (1995) (pointing out, *inter alia*, exceptions based on “public need” which serve to “[p]lace entire categories of conduct beyond” Thirteenth Amendment’s reach).

67. 487 U.S. 931 (1988) (addressing whether farmers’ abuse of mentally disabled individuals violated Thirteenth Amendment).

68. See *id.* at 943–44 (citing cases supporting proposition that “the Court has recognized that the prohibition against involuntary servitude does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties”).

69. See, e.g., *Butler v. Perry*, 240 U.S. 328, 333 (1916) (observing that Thirteenth Amendment “introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury, etc.”); *Leedy v. Incorporated Town of Bourbon*, 40 N.E. 640, 641 (Ind. App. 1895) (“The work required to be done on the highways is more in the nature of military or jury service than that of a poll tax.”); *State ex rel. Curtis v. City of Topeka*, 12 P. 310, 315 (Kan. 1886) (noting that compelled roadwork “is like service or ‘involuntary servitude’ on juries, or in the militia, or in the army, or in removing snow or ice from sidewalks, gutters, etc.”); *State v. Sharp*, 34 S.E. 264, 265 (N.C. 1899) (stating that road work is “not a tax, but a duty, like service upon a jury, grand jury, special venire, military service, or as witness which duties formerly were and, to some extent are still, required to be rendered to the state without compensation”).

70. *State ex rel. Curtis v. City of Topeka*, 12 P. 310, 315 (Kan. 1886). However, the Second Circuit’s holding in *Immediato v. Rye Neck School District*, 73 F.3d 454 (2d Cir. 1996), may provide an alternative method for analyzing Thirteenth Amendment claims. In its “contextual” test for evaluating whether compelled participation in

lic roadwork, it is arguable that historically-based exceptions to the Thirteenth Amendment permit states to compel jury service without any compensation whatsoever. A large part of this view relies on the characterization of the juror as something other than an employee deserving of a wage. However, a number of state supreme courts consider jurors to be public officials entitled to workers' compensation if they are injured on the job.<sup>71</sup> These contrary interpretations of jury service as an employment relationship undermine the view that jurors are mere slaves of the state who can be required to serve without significant state support.

### B. Statutory Implications

#### 1. *The Fair Labor Standards Act and the Internal Revenue Code*

Few statutes other than those directly relating to jurors distinguish jury duty from more general employment circumstances. In 1998, the Eleventh Circuit decided *Brouwer v. Metropolitan Dade County*,<sup>72</sup> the first case in which a juror sued a county on the grounds that jurors were subject to the federal minimum wage under the Fair Labor Standards Act (FLSA).<sup>73</sup> Ms. Brouwer had been summoned, spent two days waiting, and left the courthouse unpaid as a result of her not being selected to serve on a trial jury.<sup>74</sup>

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a high school community service program violated the Thirteenth Amendment, the *Immediato* court inquired whether the "nature" or "amount" of the work demanded, the purpose for which the work was required, and the therapeutic value associated with the program were "so ruthless" and "devoid of [benefit to the students]" as to violate the Thirteenth Amendment. *Id.* at 459 (citing *Jobson v. Henne*, 355 F.2d 129, 132 (2d Cir. 1966)). While the court did not deem the community service requirement to be a violation of the Thirteenth Amendment because of (among other factors) the measurable opportunity students had to switch schools, *id.* at 460, jurors might satisfy the test's criteria. Courts in the Third and Fourth Circuits, however, have used the more traditional *Kozminski* approach in denying students' claims that mandatory service programs violate the Thirteenth Amendment. *See Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989, 999 (3d Cir. 1993) ("Governments may require individuals to perform certain well-established 'civic duties,' such as military service and jury duty, and impose legal sanctions for the failure to perform."); *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 899 F. Supp. 1443, 1447 (M.D.N.C. 1995) (citing *Butler* as proof of limited definition of "involuntary servitude").

71. *See infra* Part I.B.3 (discussing workers' compensation decisions by various state supreme courts).

72. 139 F.3d 817 (11th Cir. 1998).

73. *See* 29 U.S.C. § 201-219 (1994 & Supp. V 2000) (articulating minimum wage rates).

74. Plaintiff-Appellant's Initial Brief at 9, *Brouwer* (No. 97-4802) (on file with the *New York University Journal of Legislation and Public Policy*) ("Elena Brouwer was summoned to jury duty and appeared for jury duty for the period May 7-8, 1996. Ms. Brouwer was paid nothing for her service.").

On its face, the FLSA seemed the perfect means through which to guarantee jurors the federal minimum wage.<sup>75</sup> First, the Act applied to all but certain enumerated employment relationships, and jurors had not explicitly been excluded from its coverage.<sup>76</sup> Second, the Act provided a broad definition of employment and work.<sup>77</sup> Third, Congress's goals in enacting the provision seemed to address the same concerns that pertain to inadequately compensated jurors—providing a “fair day’s pay for a fair day’s work.”<sup>78</sup> Despite the persuasiveness of a number of Brouwer’s arguments, the court held that jury service did not constitute employment under the FLSA.<sup>79</sup>

The *Brouwer* court’s analysis focused on a number of distinctions in denying the plaintiff’s claim for relief. First, the court turned to federal compensation provisions that already covered jurors. Because Congress had already specified a federal jury fee, the court assumed that the federal minimum wage was inapplicable to jurors.<sup>80</sup> Second, the circuit court used the district court’s language to explain

75. At the time of the case, in 1997, parties interested in the results of the case potentially could have included all of the states then paying jurors less than the federal minimum wage.

76. See 29 U.S.C. § 213(a) (1994 & Supp. V 2000) (exempting eleven categories of working relationships, but not exempting jurors).

77. See *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3 (1945) (explaining that “employee” as used in FLSA context “had been given ‘the broadest definition that has ever been included in any one act’”) (citing 81 CONG. REC. 7,657 (1937)).

78. *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (quoting President Franklin Roosevelt, Message to Congress (May 24, 1934)). Brouwer championed this cause in the conclusion of her brief: “This suit is designed to eliminate such working conditions for the unemployed and underemployed workers who are the potential plaintiffs of this suit and to secure a fair day’s pay for a fair day’s work.” Plaintiff-Appellant’s Initial Brief at 39, *Brouwer* (No. 97-4802); see also 29 U.S.C. § 202(a) (1994) (explaining that Act’s intent was to eliminate “labor conditions detrimental to the maintenance of the minimum standard necessary for health, efficiency, and general well-being of workers”).

79. See *infra* text accompanying notes 80–82 (discussing court’s decision).

80. *Brouwer v. Metro. Dade County*, 139 F.3d 817, 819 n.1 (11th Cir. 1998). The court went on to explore the question of congressional intent further:

Congress’s intent seems to be that jurors would not be considered employees under the FLSA. Like state employees, federal employees are protected by the FLSA. But a separate statute, 28 U.S.C. § 1871(b)(1), provides for the compensation of federal jurors; and, more important, the compensation for federal jurors is less than minimum wage.

*Id.* The court chose not to entertain the lengthy inquiry that stems naturally the distinction, which was suggested by Dade County in its brief, of probing the similarity between the federal minimum wage and juror fees as compared with disparate state rates. See Brief of Appellee at 19–20 n.5, *Brouwer* (No. 97-4802) (on file with the *New York University Journal of Legislation and Public Policy*) (“The wide variance in juror fees among the fifty states demonstrates that the FLSA has never been interpreted to impose a uniform standard for juror compensation.”).

why Ms. Brouwer could not prove the existence of an employment relationship:

Jurors do not apply for employment, but are randomly selected from voter registration lists. Jurors are not interviewed to determine who is better qualified for a position; the State summons all available persons who meet the basic requirements. . . . Jurors do not voluntarily tender their labor to the State, but are compelled to serve. Jurors are not paid a salary, rather they receive a statutorily mandated sum regardless of the number of hours worked. Jurors are not eligible for employment benefits, do not accrue vacation time, annual or sick leave and do not qualify for health or life insurance. The state does not have the power to fire jurors for their performance, but must accept their verdict.<sup>81</sup>

The court determined that “[n]o employment relationship existed” and denied Ms. Brouwer the federal minimum wage.<sup>82</sup> *Brouwer* was consistent with the Eighth Circuit’s decision three years earlier in *Evers v. Tart*, in which that court found poll workers ineligible for FLSA coverage for many of the same reasons that the Eleventh Circuit cited for refusing to cover jurors under the FLSA.<sup>83</sup> However, these cases failed to acknowledge a contrary line of precedent, which appears vividly in interpretations of jurors’ activities under the Internal Revenue Code and the provisions of many state workers’ compensation statutes.

## 2. *The Intermediate Stance of the Internal Revenue Code*

The issue of jury participation as a form of employment has also been addressed in regulations promulgated by the Internal Revenue Service, which characterize employment relationships as involving the “right to control and direct the individual,” extending to “not only what shall be done but how it shall be done.”<sup>84</sup> To clarify how the provisions apply to jurors, another section of the regulations explains, “Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.”<sup>85</sup> Unlike *Evers* or *Brouwer*, which dismissed the notion that jurors are employed in any sense of

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81. *Brouwer*, 139 F.3d at 819 (quoting District Court Order at 7–8).

82. *Id.*

83. 48 F.3d 319, 321 (8th Cir. 1995) (“Poll workers do not apply for their jobs, nor do they receive vacation or sick leave benefits, or other benefits normally given to county employees.”).

84. 26 C.F.R. § 31.3121(d)-1(c)(2) (2001).

85. *Id.* § 31.3401(a)-2(b)(2).

the word, the Internal Revenue regulations explicitly liken the fees paid for jury service to those paid to employed public officials. In 1999, the Chief Counsel of the Internal Revenue Service expanded on this view in a detailed memorandum.<sup>86</sup> The memorandum explained that jurors are treated as employees under the Internal Revenue Code even though they may not be “fee-based public officials” and even though there is a distinction in the common law between “master and servant” and a citizen “chosen according to law and sworn to make determinations of fact in a particular case.”<sup>87</sup> The view adopted by the Internal Revenue Service reflects a different interpretation of the juror’s role than that used by courts in handling FLSA cases. This interpretation has been espoused and rejected by state supreme courts confronting the question of whether jurors are covered by state workers’ compensation statutes.

### 3. *Jury Pay and State Workers’ Compensation Statutes*

Whether a juror is worthy of workers’ compensation coverage is a separate issue from whether jurors should be paid. However, both issues involve the same fundamental determination—whether a juror is an employee or not. As one court commented, “[T]he sum of the whole matter is that . . . the relation of master and servant, or employer and employee, or some appointment, must exist, and this is the initial fact to be established [in order to determine whether workers’ compensation applies].”<sup>88</sup> This determination of whether an employment relationship actually existed is essentially no different from the one required by the courts in *Evers* and *Brouwer*.

A number of claims for workers’ compensation have arisen out of injuries sustained by jurors while they were serving. Jurors’ injuries may arise from being trampled by a crowd exiting a courthouse elevator,<sup>89</sup> cascading down courthouse stairwells,<sup>90</sup> or slipping and falling on the marble tile of the courthouse floor while exiting the jury box.<sup>91</sup> Several injured jurors have filed claims under state workers’ compensation statutes. The various court determinations suggest that

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86. I.R.S. Chief Counsel Advice No. 199932004 (Mar. 11, 1999), <http://www.unclefed.com/ForTaxProfs/irs-wd/1999/9932004.pdf> (on file with *New York University Journal of Legislation and Public Policy*).

87. *Id.* at 3 n.1, 4.

88. *Hicks v. Guilford County*, 148 S.E.2d 240, 243 (N.C. 1966) (quoting *Hollowell v. North Carolina Dep’t of Conservation & Dev.*, 173 S.E. 603, 605 (N.C. 1934)).

89. *See Metro. Dade County v. Glassman*, 341 So. 2d 995 (Fla. 1977).

90. *See Indus. Comm’n of Ohio v. Rogers*, 171 N.E. 35 (Ohio 1930).

91. *See Waggener v. County of Los Angeles*, 46 Cal. Rptr. 2d 141 (Cal. Ct. App. 1995).

*Brouwer* did not consider all of the relevant arguments on the topic of jury service as employment, and they provide a fuller understanding of the question of whether jurors can properly be considered “employees.”

a) *Cases Finding that Jurors Are Not Similar to Employees*

The prevailing view among state supreme courts is that jurors are not entitled to workers’ compensation benefits.<sup>92</sup> While some of the courts constituting this majority have been criticized for their lack of analysis or application of the law to the facts,<sup>93</sup> those with more lengthy opinions have focused on many of the same factors considered by the federal courts with respect to constitutional claims of inadequate compensation and the FLSA’s applicability to jurors. First, the majority of state supreme courts that find jurors are not employees for purposes of workers’ compensation turn to the state’s apparent lack of control over the juror, reasoning that jurors are not directed to decide cases in a certain way by the state.<sup>94</sup> Second, courts denying jurors’ claims that they are employees note the absence of any contractual employment relationship between the county and the juror.<sup>95</sup> Finally,

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92. See *Yount v. Boundary County*, 796 P.2d 516, 516–17 (Idaho 1990) (observing nine-to-one “numerical weight” of authority denying jurors workers’ compensation benefits).

93. See *id.* at 517–18 (noting that many courts “follow[ed] the aged adage that there is strength and safety in numbers,” and that “after the first case denying coverage was followed by a second such holding, there was a readily observable propensity toward becoming ‘aligned with the great weight of authority’”).

94. See, e.g., *O’Malley’s Case*, 281 N.E.2d 277, 279 (Mass. 1972) (“The county merely provides the facilities and other personnel for the court and the jurors. It exercises no control over the juror’s work. Any control and direction exercised over the juror is by order of the court. The juror cannot refuse service nor can the county terminate the service.”); *Hicks v. Guilford County*, 148 S.E.2d 240, 243 (N.C. 1966).

[A] juror is not subject to direction and control of county officials as to the manner in which the juror discharges his duties . . . [E]ven the trial judge is expressly forbidden to convey to the jury in any manner at any stage of the trial his opinion as to how the jury should determine a question of fact.

*Id.*

95. The court in *O’Malley’s Case* exemplified this reasoning when it stated, “There is no contract of employment, expressed or implied, between the county and the juror.” *O’Malley’s Case*, 281 N.E.2d at 279. Another court used different language to express much the same view:

A juror is not appointed by the county commissioners or by any county official. His name is drawn from the box without regard to the relative qualifications of those whose names are rightly in the box. . . . His services, if he is accepted and empaneled to try the issues in an action, are not obtained or defined by a contract of hire between him and the county . . . express or implied, for those services. He is not a public officer, an independent contractor or an employee. He is a juror.

and most vehemently, the courts' claim that the duty of citizens to serve as jurors when summoned makes the existence of a traditional employment relationship impossible.<sup>96</sup> In the words of one court, it is "[b]y majesty of the law, therefore, not by contract, [that the citizen] becomes a juror."<sup>97</sup> These cases are surprising not because they were decided along the same lines as decisions addressing the arguments for increased compensation under the Constitution or the FLSA, but because a growing number of state courts have attacked the grounds upon which the decisions were based. The following section investigates their bases for rejecting the majority view and presents reasons why the juror's relationship with the county can be reevaluated to expand the state's duty to compensate jurors on the basis of their financial needs.

*b) Cases Finding that Jurors Are Similar to Employees*

Before 1990, only Ohio considered jury duty to be a form of employment for the purposes of workers' compensation.<sup>98</sup> In that year, the number of cases supporting the minority perspective tripled. The supreme courts of North Dakota,<sup>99</sup> Idaho,<sup>100</sup> and Washington<sup>101</sup> challenged the prevailing view and created a force of opposition with which at least one more state appellate court has aligned.<sup>102</sup> The underlying bases for these decisions have varied. In *Holmgren v. North Dakota Workers Compensation Bureau*, the North Dakota Supreme Court focused on the fact that a juror serves the county as long as required to reach a verdict; thus, jury service resembles the continuity of an official appointment.<sup>103</sup> In *Industrial Commission of Ohio v.*

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Hicks v. Guilford County, 148 S.E.2d 240, 244 (N.C. 1966).

96. See, e.g., Jochen v. County of Saginaw, 110 N.W.2d 780, 782 (Mich. 1961) (Carr, J., concurring):

The status of the juror is analogous in certain respects to that of one who is drafted under law into the military service of government. . . . One who is summoned for such duty has no option other than to comply with the mandate served on him. His duties are prescribed by the law of the State, and he is not subject to direction by the county.

*Id.*

97. Bd. of Comm'rs of Eagle County v. Evans, 60 P.2d 225, 226 (Colo. 1936).

98. See, e.g., Indus. Comm'n of Ohio v. Rogers, 171 N.E. 35 (Ohio 1930).

99. See *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200 (N.D. 1990).

100. See *Yount v. Boundary County*, 796 P.2d 516 (Idaho 1999).

101. See *Bolin v. Kitsap County*, 785 P.2d 805 (Wash. 1990).

102. See *Waggenger v. County of Los Angeles*, 46 Cal. Rptr. 2d 141 (Cal. Ct. App. 1995).

103. 455 N.W.2d at 203. The court elaborated on this point, saying:

By virtue of the constitutional guarantee of trial by jury, the position of juror can be said to be continuous although the service of an individual juror may be short-term. . . . By law, an individual juror's service is re-

*Rogers*, the Ohio Supreme Court focused on the similarity in the source of fees provided to jurors and other types of public officials who were unquestionably employees of the state.<sup>104</sup> And, in *Yount v. Boundary County*, one Idaho Supreme Court Justice focused on the importance of the duties performed by the juror as indistinguishable from that of any other full-time court employee.<sup>105</sup> Regardless of the differences in the courts' reasoning, each case provides a reason to view jury service as an official appointment worthy of the traditional benefits accorded to part-time or temporary employees. Moreover, these cases collectively indicate that jurors fulfill multiple roles simultaneously, making the question of whether they are employees under statutes a more difficult one to answer. Aside from the juror's similarities to an employee deserving of a fair wage, the many functions served by the jury are often cited as a basis for providing compensation to those who work as jurors.

### C. *Justifications for Jury Compensation*

While many commentators have argued that setting a fair jury fee applicable in all states' courts is difficult or impossible,<sup>106</sup> neither the federal government nor any state legislature has entirely eliminated the juror's *per diem*. To the contrary, every state and the federal government have affirmed the fee's importance by incrementally increas-

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quired until the case in which she serves is completed. Thus, the continuous nature of a juror's duties is akin to the tenure and permanence of duties associated with the public office.

*Id.*

104. 171 N.E. 35, 36 (Ohio 1930) ("We are unable to draw a distinction between the *selection* of such juror by the jury commission and the *appointment* of such juror by the jury commission . . ."). As the lower court's ruling in *Rogers* explained:

A juror is engaged in the service of the state and of the county. . . . His selection and service are provided for by the Legislature, and the service is paid for out of the county funds by the county wherein the service is rendered. That service is not for contract of hire, but by appointment.

*Indus. Comm'n of Ohio v. Rogers*, 170 N.E. 600, 600 (Ohio Ct. App. 1929); *cf. Yount*, 796 P.2d at 522 ("Because of the unique circumstances that a citizen is thrust into when called upon to serve as a juror, we deem it improvident to overzealously adhere to the technical rules . . .").

105. 796 P.2d at 527 (Towles, J., concurring) ("The tremendous responsibility thrust upon jurors as a result of such public service qualifies them as public officials in the highest order and no less important to the success of the judicial system than the judges, clerks, bailiffs, court reporters, and other full-time employees of the state or county.").

106. *See infra* notes 308–313 (discussing difficulties in setting uniform fee pointed to by American Bar Association).

ing it over the years.<sup>107</sup> Two theories explain why jurors are owed any modicum of compensation by the government. First, ensuring the participation of all economic classes in the justice system was an aim of the Framers of the constitutional amendments addressing jury trials. The premium placed on class representation likely promoted provisions for reasonable fees and has become amplified by recent requirements for cross-sectionality.<sup>108</sup> Second, jury fees signify the value of the jurors' contributions to the justice system and to society at large.

### 1. *Compensating Jurors to Ensure Class Representation*

It is important to distinguish between the functions of jurors and the function of their compensation. Because the two are not synonymous, ascertaining the role of jury compensation may help to explain why jurors are paid at all for performing their various duties.<sup>109</sup> Historians trace jury compensation to the time of Pericles.<sup>110</sup> They note that the early compensation for jurors existed as a welfare benefit to subsidize the income of elderly citizens who were no longer eligible for traditional types of employment but who could continue to serve as jurors.<sup>111</sup> Although not all governments recognized the same role of jury compensation as did the Athenians, it appears as though the same type of system prevailed throughout parts of Europe until the era of Henry V. In the fifteenth century, the Crown strictly limited jury participation to landowners with substantial savings because the existing system created great turmoil. The objective was to reduce the incidence of jurors who would serve for payment alone rather than for the

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107. See *infra* Figures 5–8 (depicting fee increases among states and federal government since 1870); sources cited *infra* note 262 (providing federal jury fees since 1791); Appendix A (providing statutory citations of history of jury pay for each state in union, including District of Columbia).

108. The Court expressed this desire clearly in *Theil v. Southern Pacific Co.*, 328 U.S. 217 (1946), when it stated that “[t]he American tradition of trial by jury . . . necessarily contemplates an impartial jury drawn from a cross-section of the community.” *Id.* at 220. Subsequently, the cross-sectionality doctrine has been expanded to forbid discrimination based on gender in jury selection in *Taylor v. Louisiana*, 419 U.S. 522 (1975), and racially motivated preemptory challenges in *Batson v. Kentucky*, 476 U.S. 79 (1986).

109. See *infra* Part I.C.2 (exploring numerous jury roles); Figure 1 (outlining the many functions of the American jury).

110. See MAXIMUS A. LESSER, THE HISTORICAL DEVELOPMENT OF THE JURY SYSTEM 24 (photo. reprint 1992) (1894) (“Pericles introduced the custom of paying each [juror] for his attendance.”).

111. See *id.* at 22-23 (observing that “[t]he establishment of [paid jurors] . . . helped to furnish a maintenance for old citizens, past the age of military service”); *id.* at 24-25 (explaining that fees were increased to provide citizens means of “livelihood”).

fulfillment of their duties.<sup>112</sup> For those who wish to challenge the appeals of present-day commentators to raise jury fees, references to these historical limitations on compensation, or to jurors who served in the past without any compensation, could very well eliminate the need to set rates anywhere near levels that would compensate jurors for lost income.<sup>113</sup> These observations, however, fail to recognize the

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112. See Act for the Sufficiency of Jurors, 2 Hen. 5, c. 3 (1414) (Eng.) (restricting eligibility to freeholders due to “great mischiefs . . . which daily happen through all the realm of *England* . . . which be common jurors, and other that have but little to live upon but by such inquest, and which have nothing to lose because of their false oaths, whereby they offend their consciences the more largely”). Scholars have placed this royal edict in its proper context by highlighting the impoverished conditions of most jurors in that era who were unable to bribe their way out of service and who were so poor that they served for the pay and cared not for the facts of the case. See 2 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, at 631 (2d ed. 1899) (describing burdens of “poorer freeholders” serving on juries of time period); SELECT CASES BEFORE THE KING’S COUNCIL 1243–1482, at 10 (photo. reprint 1996) (I.S. Leadam & J.F. Baldwin eds., 1918) (*Citizens of London v. The Bishop of Bath* (1295)) (describing how poor jurors who served often “los[ed] their work and [became] wholly impoverished” due to their inability to attain exemptions from service); James C. Oldham, *The Origins of the Special Jury*, 50 U. CHI. L. REV. 137, 147 (1983) (explaining how jury panels were “overloaded with poorer freeholders” who may not have been able to “buy[ ] their way off the panel”). For general commentary on the reasoning behind such requirements, see generally *id.* at 145, which explains, in pertinent part, “According to medieval thinking, the likelihood of corruption varied in inverse proportion to wealth, and so the root cause of perjury in jurors was considered to be the impanelling of men of insufficient substance.” (quoting 2 THE REPORTS OF SIR JOHN SPELLMAN 107 (J. H. Baker ed., 1978)).

113. In a classic article, Justice Riddell, a Canadian judge, attempted to justify his admonitions of those attorneys who thanked jurors after trials by saying, “The jurors are not to be thanked, they have done their duty and nothing more; I shall not permit that unseemly practice to enter our Courts.” William Renwick Riddell, *Thanking the Jury—and the Reverse*, 14 A.B.A. J. 289, 289 (1928). After citing a number of isolated instances in England where the courts refused jurors the allowance of food and often fined them for verdicts favoring suspected criminals, the judge concluded, “Enough has been said to show that neither of old nor now can it be fairly said that the Juror’s lot is a happy one.” *Id.* at 291. Today, critics of jury fees may use similar reasoning to justify not paying jurors. See, e.g., Nancy J. King, *Juror Delinquency in Criminal Trials in America, 1796–1996*, 94 MICH. L. REV. 2673, 2688–90 (1996) (providing similar citations of judicial abuse of juries that seemingly support Justice Riddell’s observations); Michael J. Crowley, Comment, *Jury Coercion in Capital Cases: How Much Risk Are We Willing to Take?* 57 U. CIN. L. REV. 1073, 1087 n.105 (1989) (citing a number of egregious cases of jury abuse ranging from 1853 to 1959). However, observers must be careful to take these comments in context. Note the following observation regarding the lack of historical data about juries and the importance of preserving these accounts for future decisions:

[R]esearch into American jury history has been far from adequate, systematic, or synthetic. Scholars who have attended to juries, by and large, have done so incidentally as they pursued other themes. The result is that any attempt to survey jury history, especially in brief form . . . is necessarily impressionistic, discursive, and tentative.

historical development of the jury system in the United States. In America, jurors began to be compensated shortly after the nation claimed its independence. The first federal jury fee was practically the equivalent of laborers' daily wages, an amount that surely limited financial burdens faced by the less wealthy jurors called to service.<sup>114</sup> To a large degree, this initial rate may have been the result of an ongoing debate between the Federalists, who disfavored a constitutional amendment requiring jury trials because state practices with respect to jury trials varied substantially, and the Antifederalists, who advocated the benefits of representing all classes of society during a trial.<sup>115</sup> Not only did the initial provision recognize the fact that jurors had economic needs deserving of adequate compensation, but it may also have represented an effort to empower the common man when he was seated next to a wealthy aristocrat in the jury box.<sup>116</sup> While these class-based arguments are important to an understanding of jury compensation, equally important is an understanding of the varied ways in which jurors prove themselves worthy of compensation through their direct contributions to society.

## 2. *Compensating Jurors to Recognize Their Many Societal Contributions*

In addition to the potential to remedy class imbalances on the jury, jury fees also exist in order to recognize the jury's many contributions to society. The jury benefits the nation in so many ways that it would be insulting to the state or the federal government—not only to the juror—to provide jurors with *no* financial recognition whatsoever. While many scholars are content to recite a “quick list”<sup>117</sup> of four to

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Harold M. Hyman & Catherine M. Tarrant, *Aspects of American Trial Jury History*, in *THE JURY SYSTEM IN AMERICA* 23, 24 (Rita James Simon ed., 1975). No scholar claims to have compiled enough information to rectify this circumstance, and mistreatment of the jury negates neither the existence of compensatory provisions nor the standards governing them.

114. See Act of Mar. 3, 1791, ch. 22, § 1, 1 Stat. 216, 217 (prescribing fifty cents jury fee for nation); *infra* Figure 3 (depicting federal jury compensation in relation to laborers' daily earnings during colonial era).

115. See Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 *MINN. L. REV.* 639, 672–707 (1973) (discussing debates over ratification of Seventh Amendment).

116. See E-mail from Stephan Landsman, Professor of Law, DePaul University, to Evan Seamone (May 21, 2001) (on file with the *New York University Journal of Legislation and Public Policy*) (noting how Seventh Amendment “began to be treated more and more as a compromise between warring factions” and speculating that “the ‘care and feeding’ of jurors became part of the political compromise deal”).

117. STARR, *supra* note 19, at 15.

nine functions of the jury,<sup>118</sup> legislatures, courts, and scholars have acknowledged at least two dozen.<sup>119</sup> The number of possible functions is, in fact, nearly infinite.<sup>120</sup> Figure 1, below, presents the most prominent functions of the jury set forth in three broadly defined categories.

a) *Routine Jury Functions*

The first group of jury functions is routine in nature. Early on, a distinguished scholar defined this category as involving “more or less definite administrative functions.”<sup>121</sup> Among the most prominent functions within this grouping is fact-finding in the civil context, which roughly equates to “determining the guilt or innocence of a criminal defendant.”<sup>122</sup> There is little dispute that the jury’s essential role involves “truth-determining” in either the civil or criminal courtroom.<sup>123</sup> The praise scholars and courts have given to this role may

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118. See, e.g., *id.* at 15–17 (observing six functions); Mark P. Gergen, *The Jury’s Role in Deciding Normative Issues in the American Common Law*, 68 *FORDHAM L. REV.* 407, 435–37 (1999) (pointing out nine functions of civil juries); Reid Hastie & W. Kip Viscusi, *What Juries Can’t Do Well: The Jury’s Performance as a Risk Manager*, 40 *ARIZ. L. REV.* 901, 901 (1998) (noting four functions); Christopher E. Smith, *Imagery, Politics, and Jury Reform*, 28 *AKRON L. REV.* 77, 80 (1994) (citing five functions presented in AM. BAR ASS’N & BROOKINGS INST., *CHARTING A FUTURE FOR THE CIVIL JURY SYSTEM* 8–11 (1992) (presenting five functions)); Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 *ALA. L. REV.* 441, 470–89 (1997) [hereinafter Smith, *Aspects*] (defining seven functions).

119. See *infra* text accompanying notes 121–158. While there are obvious differences between civil and criminal juries, many functions overlap. See, e.g., Colleen P. Murphy, *Integrating the Constitutional Authority of Civil and Criminal Juries*, 61 *GEO. WASH. L. REV.* 723, 729 (1993) (observing that “the history, text, and structure of relevant constitutional provisions suggest that the authority of the civil and criminal juries is more shared than divergent”).

Absent from this analysis, however, is a discussion of the functions served by the grand jury. For a summary of these roles, see Beth Hornbuckle Fleming, Comment, *First Amendment Right of Access to Pretrial Proceedings in Criminal Cases*, 32 *EMORY L.J.* 619, 660 (1983), which comments on the grand jury’s investigative and screening functions.

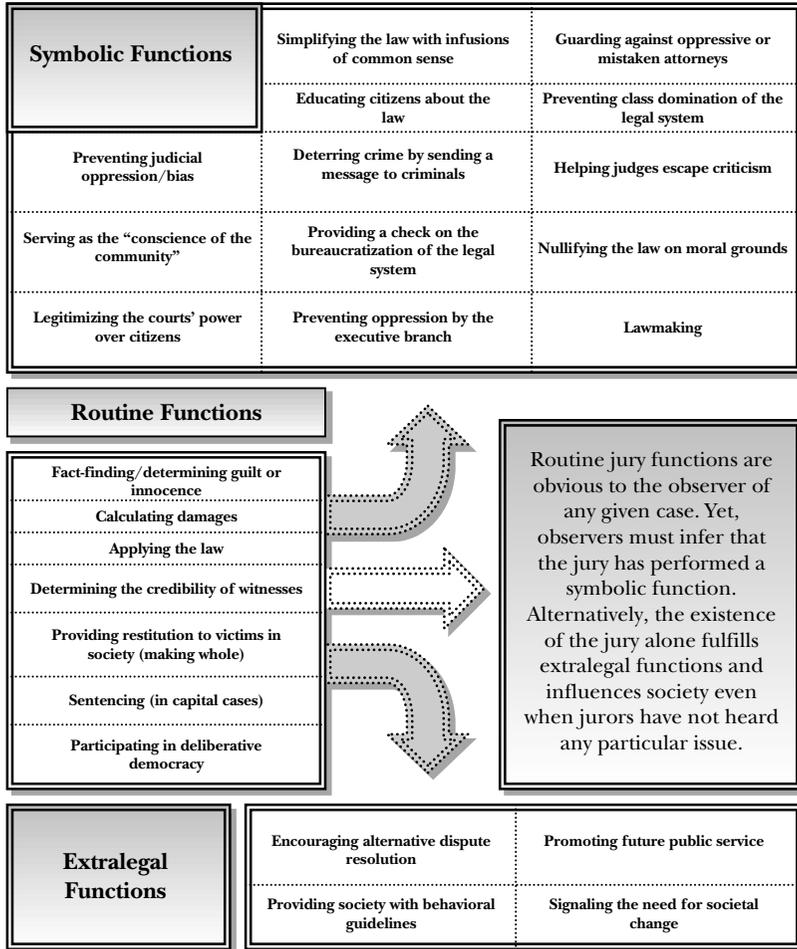
120. Professor Robert Schopp has illustrated how any single jury function might be splintered into several more. For example, serving as the “conscience of the community” may mean “exercising personal values” as a juror. Robert F. Schopp, *Reconciling “Irreconcilable” Capital Punishment Doctrine as Comparative and Noncomparative Justice*, 53 *FLA. L. REV.* 475, 509 (2001). Likewise, the same term may mean that the juror is “expected to be aware of and apply the standards of [an] informal consensus.” *Id.* Yet, the term may also mean that the juror applies “moral standards the citizens of a society have collectively adopted by institutionalizing them in the law of the community.” *Id.*

121. Dale W. Broeder, *The Functions of the Jury: Facts or Fictions?*, 21 *U. CHI. L. REV.* 386, 386 (1954).

122. *Lockhart v. McCree*, 476 U.S. 162, 183 (1986).

123. *Brown v. Louisiana*, 447 U.S. 323, 334 (1980).

FIGURE 1  
THE MANY FUNCTIONS OF THE AMERICAN JURY



relate to the remarkable staying power of the jury’s factual determinations on appeal, allowing juries to provide a source of finality in adjudication.<sup>124</sup>

Just one glance at a set of uniform jury instructions alerts observers that jurors also apply the law to the facts.<sup>125</sup> While distinct rules

124. See Mark Findlay, *The Role of the Jury in a Fair Trial*, in *THE JURY UNDER ATTACK* 161, 165–67 (Mark Findlay & Peter Duff eds., 1988) (noting this strength particularly during appellate review).

125. See, e.g., Mark S. Brodin, *Accuracy, Efficiency, and Accountability in the Litigation Process—The Case for the Fact Verdict*, 59 U. CIN. L. REV. 15, 35 (1990) (describing how “[u]sing the jury and not the judge as law applier has had momentous implications for the administration of our civil litigation system”).

provide jurors with guidelines for performing this task, jurors have much more freedom to rely on their collective and individual instincts in weighing the credibility of witnesses presented by opposing litigants. To this end, credibility assessment, or lie detecting,<sup>126</sup> has been cited consistently as “one of the principal functions of the jury.”<sup>127</sup>

Another seminal, but often overlooked, routine function of the jury is calculating damages in civil litigation. Throughout the centuries in which jurors have performed this duty,<sup>128</sup> they have been thought to provide restitution to victims and society, which often involves more than merely arriving at an appropriate number for damages determinations. Instead, as a group of twelve accountants, the jury provides the aggrieved with enough remuneration to “make the injured party whole again,” at least in theory.<sup>129</sup> In the criminal courts, while jurors may not determine monetary damages, they enable judges to sentence the guilty. Sentencing in capital cases essentially creates options paralleling the refusal to award monetary damages in a civil case. For instance, jurors in a capital case, “[n]ot only can . . . decline to impose the death sentence, [they] can decline to convict or choose to convict of a lesser offence.”<sup>130</sup> Jurors’ duties are more rigid in capital cases, however, because they are defendants’ only avenue for “maintain[ing] a link between contemporary community values and the penal system.”<sup>131</sup>

The final routine function—that of participating in a deliberative democracy—is supported by the longstanding view that the jury is a “political institution” that represents the “sovereignty of the people.”<sup>132</sup> The manner in which this function operates explains why all

126. SAUL M. KASSIN & LAWRENCE S. WRIGHTSMAN, *THE AMERICAN JURY ON TRIAL: PSYCHOLOGICAL PERSPECTIVES* 65 (1988).

127. 2 DAVID W. LOISELL & CHRISTOPHER B. MUELLER, *FEDERAL EVIDENCE* § 126 (rev. vol. 1985).

128. *See, e.g.*, *Barry v. Edmunds*, 116 U.S. 550, 565 (1886) (“[W]here no precise rule of law fixes the recoverable damages, it is the peculiar function of the jury to determine the amount by their verdict.”); Paul B. Weiss, Comment, *Reforming Tort Reform: Is There Substance to the Seventh Amendment?*, 38 *CATH. U. L. REV.* 737, 746 (1989) (“Assessment of the quantum of damages as a function of the jury in actions at law was deeply entrenched in the common law of England at the time the [S]eventh [A]mendment was adopted.”).

129. Hastie & Viscusi, *supra* note 118, at 901. This role is evident in the many cases in which juries reject compensating the plaintiffs monetarily but nevertheless find the defendant liable for the injury.

130. *McCleskey v. Kemp*, 481 U.S. 279, 311 (1987).

131. *Witherspoon v. Illinois*, 391 U.S. 510, 519 n.15 (1968).

132. 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 291 (Henry Reeve, trans., Francis Bowen et al. eds., Alfred A. Knopf 1945) (1840); *see also* Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 *YALE L.J.* 1131, 1187–89 (1991) (expressing view that jury is exercise of popular sovereignty).

routine functions are similar. In the case of this final example, whenever members of the jury deliberate to some degree before the foreman returns a verdict, they participate in a deliberative democracy.<sup>133</sup> Because all jurors participate in certain activities throughout the course of every case they decide, it is difficult to deny the existence of the routine jury functions. Although these routine functions are critically important if for no other reason than their appearance in almost every case, other functions of the jury are equally significant to understanding why and to what degree jury members should be compensated.

*b) Symbolic Jury Functions*

The second group of functions performed by the jury is harder to detect on a case-by-case basis, because they are symbolic in nature. The majority of these functions protect the lay public from overbearing legal professionals and make the law fairer by expanding the responsibility for its enforcement to all citizens. We know these symbolic functions exist as a result of cases in the aggregate rather than their clear presence in any specific case.<sup>134</sup>

Legal scholars have identified several important symbolic roles that the jury may play. The first of these roles is protecting the public from oppressive judges. Commentators dating back to the eighteenth century have noted that the jury protects litigants and society from “the violence and partiality of judges appointed by the Crown.”<sup>135</sup> This role may relate to the number of jurors who serve, which would allow the group to ignore any individual member whose motivation to vote is based on a detectable bias. A broader, yet related, function of the jury is its ability to speak as the conscience of the community.<sup>136</sup> Just as groups of individuals can root out biased persons in their midst, they can broadcast common sentiments among multiple diverse viewpoints with unanimous verdicts.

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133. See sources cited *supra* note 132 (exploring this routine function).

134. Smith, *Aspects*, *supra* note 118, at 473.

135. 4 WILLIAM BLACKSTONE, COMMENTARIES \*349; see also *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968) (praising jury’s role as “an inestimable safeguard against . . . the compliant, biased, or eccentric judge”).

136. This function is described in the literature under a variety of different names. See Schopp, *supra* note 120, at 508 (“Discussions of community standards sometimes employ a variety of similar but different phrases including ‘conscience of the community,’ ‘community values,’ ‘social values,’ ‘societal values,’ ‘public attitudes,’ ‘societal acceptance,’ or ‘standards of our citizens.’” (footnotes omitted)). Any of these names denote the jury’s ability to “recogn[ize] values which fall outside the official rules” but which are still prevalent in societal norms. HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 495 (1966).

A testament to the fact that the symbolic power of the jury exists in its numbers is the reach of the jury beyond mere factual matters to the law itself. In this respect, another noted symbolic function of the jury is its ability to infuse common sense into the law and aid in its simplification. Many would agree with Professor Michael Saks, who has suggested that “[t]he mere existence of the jury keeps the law comprehensible to the people.”<sup>137</sup> Another commentator has argued that the collective decisions of the jury become “rational” because juries bring “the common sense, experiences, and training of several individuals to the fact-finding enterprise.”<sup>138</sup>

As a representative assembly, the jury likewise justifies the existence of both the court and its related powers over citizens.<sup>139</sup> Because of its representative nature, citizens who perceive that juries provide a valid method of dispute resolution “will bring their disputes to the legal system rather than settle them in the streets,” which also legitimizes the state’s “monopoly over physical violence.”<sup>140</sup> This function of legitimizing the legal system may also be enhanced by the jury system’s related role of educating citizens about the law and allowing them to feel empowered by their experiences as jurors.<sup>141</sup>

Yet another symbolic role that commentators see as served by the jury is its ability to deter crime by sending a message to criminals that their conduct is unacceptable in the eyes of members of the community. This function permits prosecutors to encourage juries to use their verdicts to convey their dissatisfaction with certain behavior as a means of preventing other individuals from engaging in it.<sup>142</sup> Similarly, the jury functions as a democratic institution and, to a large de-

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137. Michael J. Saks, *Blaming the Jury*, 75 GEO. L.J. 693, 703 (1986) (book review).

138. Murphy, *supra* note 119, at 734.

139. In *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), the Supreme Court noted that jury participation is “critical to [maintaining] public confidence in the fairness of the criminal justice system.” See also *KALVEN & ZEISEL*, *supra* note 136, at 7–8 (explaining how jury enhances legitimacy of court decisions).

140. J. Alexander Tanford, *The Limits of a Scientific Jurisprudence: The Supreme Court and Psychology*, 66 IND. L.J. 137, 165 (1990).

141. For more on this role, see, for example, John R. Runyan, *Are Some Civil Trials Too Complex to Be Heard and Decided By a Jury? No!*, FED. LAW., Aug. 1998, at 42, 43 for a discussion of de Toqueville’s view that juries “instill some of the habits of the judicial mind into every citizen and that these habits best prepare people to be free.”

142. See, e.g., *United States v. Solivan*, 937 F.2d 1146, 1151 (6th Cir. 1991) (“Unless calculated to incite the passions and prejudices of the jurors, appeals to the jury to act as the community conscience are not per se impermissible.”); *United States v. Alloway*, 397 F.2d 105, 113 (6th Cir. 1968) (refusing to find that argument calling upon jurors “to be the world conscience of the community” “exceeded permissible bounds of advocacy”). But see *Solivan*, 937 F.2d at 1155 (finding misconduct when prosecutor asked jury to send message to “all of the drug dealers like [defendant]” that “we don’t want that stuff [illegal narcotics] in Northern Kentucky”).

gree, provides a check on the bureaucratization of the legal system, bureaucratic government in general, and the power of the Executive Branch.<sup>143</sup> By preventing such overreaching, the jury additionally protects the legal system from undue and inappropriate influence by a privileged social and economic class.<sup>144</sup>

Of course, there are other, more controversial, symbolic jury functions. First, one early commentator noted the jury's ability to decrease judges' burdens and place them in a better light, as "a means by which judges can avoid deciding complex questions and thus avoid the criticism which always follows from being forced to decide between two equally plausible alternatives."<sup>145</sup> A second controversial symbolic function, that of nullifying the law on moral grounds, has been championed by certain commentators and popular interest groups like the Fully Informed Jury Association.<sup>146</sup> Those who support jury nullification assert that jurors should render verdicts according to their personal inclinations rather than the dictates of the law.<sup>147</sup> A function related to nullification of the law is the jury's ability to go beyond applying the already existing, thereby creating new law. Commentators have differed as to both the importance and legitimacy of this function. Some suggest that juries are making law every time they are "called upon to decide whether on the facts found to exist a party was

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143. See, e.g., *United States v. Powell*, 469 U.S. 57, 65 (1984) (noting "the jury's historic function, in criminal trials, as a check against arbitrary or oppressive exercises of power by the Executive Branch"). Another description of this role is "act[ing] as a buffer between the government and the defendant." Lisa E. Alexander, Note, *Vicinage, Venue, and Community Cross-Section: Obstacles to a State Defendant's Right to a Trial by a Representative Jury*, 19 HASTINGS CONST. L.Q. 261, 261 (1991).

144. See, e.g., Wolfram, *supra* note 115, at 696 (noting role of jury to "hold the class instincts of the judge in check").

145. Broeder, *supra* note 121, at 421. However, whether judges would receive the same criticism for deciding complex cases in the civil realm were juries abolished is questionable.

146. See, e.g., Elizabeth I. Haynes, Comment, *United States v. Thomas: Pulling the Jury Apart*, 30 CONN. L. REV. 731, 742 (1998) (explaining why "nullification on moral grounds is a proper function of the jury"); *Facts About the Fully Informed Jury Association*, FULLY INFORMED JURY ASSOCIATION, at <http://www.fija.org/fijafact.htm> (last visited Feb. 20, 2002) ("The power of the jury to judge not only the evidence, but also the merits of the law itself is central to its proper functioning as a judicial and political institution.") (on file with the *New York University Journal of Legislation and Public Policy*).

147. For a more complete understanding of the history surrounding the debate over jury nullification, compare *Georgia v. Brailsford*, 3 U.S. (3 Dall.) 1 (1794), which permits jury disobedience of the law, with *Sparf & Hansen v. United States*, 156 U.S. 51 (1895), which holds that juries must observe the judge's instructions.

negligent.”<sup>148</sup> Others believe this role is invalid unless judges turn to jury decisions as precedent for their own decisions.<sup>149</sup>

On balance, commentators praise jurors for fulfilling the above symbolic functions, even though they may be difficult to identify in individual cases.<sup>150</sup> Case in point, while the jury is acclaimed for preventing oppression of the people by judges,<sup>151</sup> advocates are hard-pressed to identify a single case where a jury definitively safeguarded the public from a biased judge. Even absent such proof, it is generally accepted that juries do, in fact, make it more difficult for judges to commandeer a trial to meet their own objectives.<sup>152</sup>

### c) *Extralegal Jury Functions*

In addition to its routine and symbolic functions, the jury plays many roles outside of the court.<sup>153</sup> One of the extralegal functions of the jury is encouraging forms of dispute resolution alternative to litigation.<sup>154</sup> Ironically, when the jury as an institution performs this function effectively, no jury actually hears the case in question. A second extralegal function of juries includes providing regulatory guidelines for societal behavior, especially among corporations dealing with the pressures of multiple, and sometimes conflicting, mandates. Jurors in this respect are “risk manager[s] responsible for promoting an efficient and socially acceptable level of risk-taking behavior.”<sup>155</sup> A third extralegal function performed by the jury is that of

148. George C. Christie, *An Essay on Discretion*, 1986 DUKE L.J. 747, 773 (1986).

149. Cf. Broeder, *supra* note 121 at 402 (discussing Holmes’s reliance on jury verdict in *Commonwealth v. Sullivan*, 15 N.E. 491 (Mass. 1888), before he assumed responsibilities as U.S. Supreme Court Justice).

150. Cf. Gerard N. Magliocca, *The Philosopher’s Stone: Dualist Democracy and the Jury*, 69 U. COLO. L. REV. 175, 175 (1998) (“Of all our civic institutions, none is as charged with symbolism as the petit jury.”).

151. See, e.g., *Glasser v. United States*, 315 U.S. 60, 84 (1942) (describing jury as “a prized shield against oppression”).

152. See *id.*; see also text accompanying *supra* note 151 (exploring this function).

153. See Broeder, *supra* note 121, at 386 (noting that “extra-legal functions are occasionally urged as the jury’s chief justification”).

154. Disputants trying to settle a case clearly “expect that the prospect of a jury trial can induce parties to resolve disputes or bargain charges and sentences rather than going to trial.” Hastie & Viscusi, *supra* note 118, at 901–02. Consequently, the jury has been a “preventer of litigation and the facilitator of compromise.” Broeder, *supra* note 121, at 423.

155. Hastie & Viscusi, *supra* note 118, at 902. For a more detailed explanation of this view, see H.R. REP. NO. 100-421, at 19-20 (1987), which notes the role of the jury in Sherman Antitrust cases to distinguish between legitimate and illegitimate business practices. See also A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 HARV. L. REV. 870 (1998) (discussing how punitive damage awards reflect this function).

changing citizens' attitudes about the justice system and promoting other forms of civic participation in society. Commentators assert the importance of this role, noting that service on a jury "provides an important civic experience for the citizen."<sup>156</sup> A related extralegal function of the jury involves its ability to signal attitudinal changes about the acceptability of laws or behaviors in society, which can aid courts and legislatures in changing the law.<sup>157</sup> While these carryover or "incidental"<sup>158</sup> functions may originate from the jury box, they operate in realms outside of the courtroom. The growth of mediation and arbitration firms in the private sector and the federal government's nearly unanimous acceptance of these methods of dispute resolution highlight the impact of the jury outside of the courtroom and the undeniable influence of the extralegal jury functions.

Ultimately, if jurors simultaneously serve functions in all three categories—routine, symbolic, and extralegal—and these functions justify the very existence of the state's legal authority, it is particularly unfair that the state should deny jurors compensation for the financial losses they experience while serving. The following section explains how courts and legislators have come to permit such neglect in light of the crucial roles that jurors play in the American legal system.

*D. The Weight of American Custom and the Inadequacy of the "Civic Duty" Justification for Compelling Jury Service that Creates Hardship*

As it stands, the reasons for compensating jurors clash sharply with the courts' justification for compelling jury service in spite of inadequate levels of compensation. Alone, the bare notion of a public duty hardly outweighs the importance of jurors' many functions. What is a public duty? Are there variations of duties that the courts should treat differently, at least with respect to compensation? Although *Butler* and its progeny advise that jury duty may be viewed similarly to military service or public roadwork, none have explained why this is the case. The sections below expose the weaknesses of these analogies—that jury duty, recognized as such, demands more of

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156. KALVEN & ZEISEL, *supra* note 136, at 7. Another commentator has theorized that "weighing impartially the interests of others . . . might result in the jurors' reshaping their own behavior toward their fellow citizens to be more just outside the courtroom." Smith, *Aspects*, *supra* note 118, at 480.

157. See Saks, *supra* note 137, at 704 (reasoning that juries "allow[ ] the law to track change in society with an efficiency that cannot be achieved by asking legislatures to rewrite laws every few months, or even by judges, who are inclined to give more deference to the legislature than perhaps they always should").

158. Broeder, *supra* note 121, at 424.

the citizen than the other duties that courts have allowed without compensation, and that courts should distinguish jury duty as a unique type of service worthy of at least subsistence compensation.

Professor David Shapiro once noted the courts' reliance on history in supporting lawyers' duties to represent indigents: "Although frequently urged as [being] rooted in the firmest of traditions, the 'duty to serve' in fact has a history shrouded in obscurity, ambiguity, and qualification."<sup>159</sup> For courts addressing jurors' obligations, the problem relates to the "duty" portion of the term "jury duty"—the idea that the government needs citizens who are willing to participate of their own will in shared civic responsibilities. This dependence on public-spiritedness has existed since the founding of the nation, when citizens pooled their resources in times of need to meet common demands.<sup>160</sup> Early American duties included joining forces to brave the natural elements on the frontier,<sup>161</sup> putting up travelers in one's home,<sup>162</sup> participating in public works for one's neighborhood,<sup>163</sup> or serving in the militia or volunteer night patrol to protect the township.<sup>164</sup> Yet, it does not follow from the existence of these duties that citizens were compelled to fulfill them without any financial or other consideration for the burdens they endured. Close examination reveals limitations on the scope of each of these obligations.

### *1. Civic Duty, Militias, and the Nation's Armed Services*

When courts compare jury participation to early service in militia, they are at least partially accurate. From the establishment of the colonies through the mid-1700s, militiamen, like most jurymen, were not paid and probably served without demanding compensation; instead, they were motivated by patriotism and loyalty to one another.<sup>165</sup>

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159. David L. Shapiro, *The Enigma of the Lawyer's Duty to Serve*, 55 N.Y.U. L. REV. 735, 738 (1980).

160. See CURTIS P. NETTELS, *THE ROOTS OF AMERICAN CIVILIZATION: A HISTORY OF AMERICAN COLONIAL LIFE* 460 (1940) (relating statement by traveler of United States in 1794: "Every first settler in a new country labors less for the present than for the future; less for himself than for posterity; and it is this honorable consciousness that invigorates his toil, cheers his solitude, and alleviates his privations").

161. See SUSAN J. ELLIS & KATHERINE H. NOYES, *BY THE PEOPLE: A HISTORY OF AMERICANS AS VOLUNTEERS* 19 (rev. ed. 1990) (describing how Americans assisted each other in building houses).

162. See *id.* at 30 (explaining how hosts would lodge travelers with hospitality rather than profit motive as chief concern).

163. See *infra* Part I.D.2.

164. See *infra* Parts I.D.1, 3.

165. See CHARLES C. MOSKOS, *A CALL TO CIVIC SERVICE: NATIONAL SERVICE FOR COUNTRY AND COMMUNITY* 14 (1988) (noting that for early colonists, "The militia

Just as jury participation served to legitimize the courts' and the states' exercise of police power, participation in the armed forces served to protect the physical security of the colonies. However, military historians note how these concepts of volunteerism quickly vanished in the wake of the Revolutionary War as Americans began to recognize their financial needs.<sup>166</sup> President Washington recognized not only the importance of providing pensions to soldiers,<sup>167</sup> but also the value of such economic incentives as a means to lessen military officers' "apprehension of personal distress [at] the termination of the war, from having thrown themselves [out] of professions and employments they might not have it in [their] power to resume."<sup>168</sup>

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was not a voluntary force; every able-bodied man was obliged to possess arms and train periodically, and he was subject to call-up when military needs dictated").

166. *See id.* ("Toward the middle of the eighteenth century, the militia system began to erode, only to be reinvigorated at the start of the War of Independence."). Service had embraced a totally different version of economic reality by the end of the Revolutionary War. Soldiers had economic needs, which the government could not ignore. For example, the Continental Congress, "in addition to earlier gifts of land and clothing, voted a two hundred dollar bounty to those who would enlist or reenlist for the duration" of the Revolutionary War. EUGENE CONVERSE MURDOCK, *PATRIOTISM LIMITED 1862–1865: THE CIVIL WAR DRAFT AND THE BOUNTY SYSTEM* 16 (1967). After the Revolution, from the 1770s on, several states, including Massachusetts, New Hampshire, and New Jersey, offered bounties to militiamen ranging from sixty-six dollars to "seven hundred and fifty dollars, an annual suit of clothes, and one hundred acres of land." *Id.* at 16–17. The federal government's relatively more modest bounties, which ranged from \$16 in 1811 to \$124 in 1814, in addition to various amounts of land, in fact, caused many federal soldiers to desert and enlist in state militias to earn higher fees. *Id.*

167. In 1776, George Washington offered soldiers a bounty of "twenty dollars and a suit of clothes" and "all the plunder they shall take from the enemy, to be equally divided among the officers and men, according to their pay." *THE RECORD OF CONNECTICUT MEN IN THE MILITARY AND NAVAL SERVICE DURING THE WAR OF THE REVOLUTION 1775–1783*, at 126 (Henry P. Johnston ed., 1889). *See also* George Washington, *Circular to the States*, June 8, 1783, *reprinted in* 26 *THE WRITINGS OF GEORGE WASHINGTON* 492 (John Fitzpatrick ed., 1938) (explaining to Congress that promise of lifetime pension to recruits "was the price of their blood and of your Independency"). In accord with these sentiments, in 1778, Congress had promised officers half of their pay "for the term of seven years if they live so long." 4 *JOURNALS OF CONG.* 288 (1778–79). Federal legislators later modified the provision to include "half pay for life to all officers serving until the war's end." STANLEY LEBERGOTT, *THE AMERICANS: AN ECONOMIC RECORD* 50 (1984). The Congress had also issued a number of certificates following the Revolutionary War to provide certain funds. *See* 8 *JOURNALS OF CONG.* 121 (1782–83) (offering five years pay or securities earning six percent to officers then in service).

168. Letter from George Washington to a Committee of Congress (Jan. 28, 1778), *in* 6 *THE WRITINGS OF GEORGE WASHINGTON* 300, 303–04 (Worthington Chauncey Ford ed., 1890).

By the mid-1800s, the adequacy of government compensation in some measure determined whether Americans would join the armed forces. As one scholar observed:

By the time of the Mexican War in 1846, most of the country's fighting forces consisted of volunteers attracted by cash bounties, the chance for adventure, and promises of land. From the early days of our history, then, supporters of a professional army have acknowledged the role of material incentives in garnering recruits. Those favoring a citizen army were more inclined to emphasize civic responsibilities. By the middle of the nineteenth century, the citizen school had clearly been eclipsed by the professional one.<sup>169</sup>

During the Civil War, so few citizens wished to participate in the militia that persons could charge large sums of money to offer themselves as substitutes, often demanding payment in excess of \$1,000 for their services<sup>170</sup> which spawned a new profession of "Volunteer Brokers."<sup>171</sup> States also allowed wealthy citizens to avoid military service in exchange for substantial monetary payments. Even when Congress implemented a national draft in 1863, the law permitted draftees to avoid serving by providing a qualified substitute or by paying \$300 to the federal government.<sup>172</sup> Opponents of the commutation fees sometimes rioted in discontent.<sup>173</sup>

Service in the militia or in the federal forces, at least between 1776 and 1864,<sup>174</sup> was not of the purely patriotic sort that courts have suggested when drawing parallels between military service and jury compensation. While cognizant of patriotic motivations of those serving the nation, state and federal policymakers were hardly ignorant of the financial needs of military conscripts and volunteers. They continuously paid soldiers more than their basic living expenses, as they did with jurors in the early days of the Republic. Perhaps in part due to these inconsistencies, courts have pointed to other nonmilitary civic service requirements as supporting minimal jury compensation.

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169. MOSKOS, *supra* note 165, at 16–17.

170. See GUIDO CALABRESI & PHILIP BOBBITT, TRAGIC CHOICES 160 (1978) (noting rate of \$1500 in many areas).

171. See MURDOCK, *supra* note 166, at 107–31 (exploring brokers' history).

172. Act of Mar. 3, 1863, ch. 75, § 13, 12 Stat. 731, 733.

173. See MURDOCK, *supra* note 166, at 70 (describing New York draft riot).

174. Among states, it is said that "the militia system, indeed, any concept of the citizen soldier, atrophied" upon the conclusion of the Civil War, and this problem continued through the late 1880s. MOSKOS, *supra* note 165, at 18.

## 2. *Civic Duty and Public Roadwork Requirements*

One obligation that might be used to support low pay for jurors is that of under-compensated public service, such as work on the roads and streets of a locality. In the case of public roadwork, courts unanimously upheld statutes requiring such labor on the grounds that citizens had an obligation to the states.<sup>175</sup> Even though the service was not deemed to be an impermissible form of involuntary servitude, public opinion compelled legislators to lessen the requirements to the point that most of the statutes were abolished. Comments in cases such as *State v. Sharp*, which was decided in 1899, evidence how the tide of confidence had turned away from roadwork:

Because of its inefficiency, and possibly from a growing conviction of the essential injustice of the system, and the increasing inequality under present conditions of the burdens laid by working the roads under that system, there has been a steady growth of legislation . . . away from the old system, and in the direction of having [the roads] worked by taxation.<sup>176</sup>

Even with the Court's guarantee in *Butler* that roadwork requirements without compensation would be limited to work occurring "for a reasonable time on public roads near [a citizen's] residence,"<sup>177</sup> American lifestyles had changed dramatically since the advent of the Industrial Revolution. Americans could no longer set aside an entire weekend to perform uncompensated menial labor. This guarantee in *Butler* points to two factors that made roadwork requirements permissible where they might otherwise not have been: (1) temporality—the minimal duration of the duty; and (2) social vicinage—very close proximity to the citizen's residence and social sphere.

While military service might have required an inductee to spend months or years abroad, a road worker was available to return home if his family needed him. He could easily leave duty to attend to personal matters. Likewise, the road worker could return to his workplace easily, as his absence was predictable to employers who would plan in advance to use a temporary replacement for the brief time that he was absent. For these reasons, one can assume that the road worker had an opportunity to obtain minimal living expenses in other ways while serving the public. This sits in sharp contrast to jury service, which frequently requires an individual to sacrifice a greater amount of time, and often takes the juror farther away from her social and

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175. See *supra* note 57 and accompanying text (describing *Butler v. Perry* and its progeny).

176. *State v. Sharp*, 34 S.E. 264, 265 (N.C. 1899).

177. *Butler v. Perry*, 240 U.S. 328, 330 (1916).

employment commitments. These dissimilarities indicate that courts should not be so quick to cite prior decisions upholding roadwork requirements as support for minimal jury compensation.

### 3. *Civic Duty and the Night Patrol*

Another historical situation that could be cited as analogous to jury duty is that of the colonial institution of the municipal night patrol. These patrols attempted to ensure that no crime took place in a municipal area.<sup>178</sup> Local communities eliminated volunteer night patrols in favor of paid constables for much the same reasons they abolished mandatory roadwork requirements. Yet, the poor quality of citizens' participation also played a significant role in the transition.

In the early colonial era, "police protection was a community responsibility shared by all able bodied men."<sup>179</sup> Until 1751, in Philadelphia, "all householders were required to serve in the night watch."<sup>180</sup> Similar to military and road service, wealthy homeowners could buy their freedom from their obligation for a sum of six shillings per year.<sup>181</sup> After 1751, the situation had drastically changed. Philadelphia established a paid constabulary to handle the duties that had formerly been shared by all citizens of the community.<sup>182</sup>

At the helm of this transformation was Benjamin Franklin, who had established the first volunteer fire company in America during that same era.<sup>183</sup> In Franklin's memoirs, he provided reasons for the government's decreased reliance on civic obligation:

[T]he constable, for a little drink, often got such ragamuffins about him as a watch, that respectable housekeepers did not choose to mix with. Walking the rounds, too, was often neglected, and most

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178. See Benjamin Franklin, *Autobiography III*, in BENJAMIN FRANKLIN'S AUTOBIOGRAPHICAL WRITINGS 701, 710 (Carl Van Doren ed., 1945) (discussing function of night patrol).

179. NETTELS, *supra* note 160, at 457.

180. *Id.* Similar "night watch" practices were evident in other communities, especially in New England. *Id.*

181. Benjamin Franklin discussed Philadelphia's city watch program in his autobiography, stating:

The city watch was one of the first things that I conceiv'd to want regulation. It was managed by the constables . . . [who] warned a number of housekeepers to attend for the night. Those who chose never to attend, paid him six shillings a year to be excus'd, which was suppos'd to be for hiring substitutes, but was, in reality, much more than what was necessary for the purpose and made the constableness a place of profit.

Franklin, *supra* note 178, at 710.

182. See NETTELS, *supra* note 160, at 458.

183. See Franklin, *supra* note 178, at 710-11 (discussing establishment of Union Fire Company and of paid night watch).

of the nights spent in tipling. . . . On the whole, I proposed as a more effectual watch, the hiring of proper men to serve constantly in that business; and as a more equitable way of supporting the charge, the levying a tax should be proportion'd to the property.<sup>184</sup>

Based on the night patrol's failure to serve effectively as enforcers of the law, it is clear that important civic duties—ones that require attention to detail—cannot depend on civic virtue alone.

Communities could have continued to use the night patrol as a primary law enforcement mechanism in the spirit of volunteerism. However, Franklin and others quickly realized that governments desirous of quality services needed to provide adequate funding to the individuals who would perform such duties; otherwise, the duties would not be performed adequately. America's experience with the night patrol similarly implies that compelling jurors to serve at a financial loss will result in a lower caliber of service from those who are selected to serve.

### *E. Crisis-Response and the Courts*

Because the courts often rely on history to inform their views of jury service and its societal importance, it is difficult to believe that judges would knowingly ignore crucial aspects of America's past that support compensating jurors for their economic losses. Perhaps the courts' high demand for jurors to serve in light of exploding summons non-response rates<sup>185</sup> has caused judges to overlook such lessons. In this regard, the nature of all duties—including jury service—can be seen in two respects. Drawing distinctions between the two views should be helpful to those who have adopted only one.

#### *1. The Civic Virtue and Economic Models of Jury Service*

The term "jury duty" is susceptible to at least two divergent interpretations. While the phrase clearly indicates that citizens have an obligation to participate when called to serve on a jury, it fails to distinguish precisely whose "duty" is characterized. One scholar has noted a similar ambiguity in the term "community service":

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184. *Id.* at 710.

185. *See, e.g.*, David Doege, *County Prosecuting Jury Service No-Shows*, MILWAUKEE J. SENTINEL, Oct. 31, 2000, LEXIS, Miljnl File (describing how no-shows have increased from twenty percent to thirty percent in Milwaukee County, Wisconsin); "The Dog Ate My Summons," CHI. SUN-TIMES, Aug. 12, 2001, LEXIS, Chisun File (describing various measures taken by jurisdictions in effort to decrease no-show rates).

Service needs a context which begins to appear in a sentence like “I serve you,” or “We serve them,” or whatever. This asks for clarification of the status of the “doer” as well as of the “done-to” and of the relationship between them. When “community” modifies “service” further thought is needed about how that changes the service to be done.<sup>186</sup>

With respect to the term “jury duty,” it is unclear whether the state owes a duty to jurors to ensure that they can serve, whether jurors owe a similar duty to the state to provide their service, or whether both entities owe obligations to one another.

According to one view of jury duty, a selected citizen has an obligation to participate and deliberate unquestioningly for the duration of the trial, however long it may last. After all, jurors receive court orders compelling their attendance. Another view of jury duty places substantial requirements on the administrators of the courts, such as ensuring that jurors are selected from a representative cross-section of the community. However, the “duty” of serving on a jury cannot rest solely on either the citizens summoned to participate or the courts that summon them. Society has been very Solomon-like and has reached a compromise. The responsibility is a shared one—between the courts and citizens called to serve.

Just as jury duty can be seen as the responsibility of two completely different entities, so can jury compensation. Under one view of jury compensation, the “civic virtue” perspective, service on a jury does not require compensation, as jury service is a responsibility required of all citizens in exchange for the rights that the state guarantees to them. An alternative perspective would be an economic one, which would dictate that the state has a responsibility to the jurors to ensure that they are not harmed financially as a result of their service.

While states can fulfill their obligations under the economic perspective with a *per diem* sufficient to meet jurors’ financial needs, they might also undertake reforms other than those relating directly to the provision of funds by the government in an effort to eliminate the economic losses jurors experience. For instance, courts could implement a weekend or evening trial schedule that would allow the jurors to work for their expected wage and still fulfill their legal obligations.<sup>187</sup> Tax credits or vouchers for the necessities of life could also

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186. HOWARD B. RADEST, *COMMUNITY SERVICE: ENCOUNTER WITH STRANGERS* 2 (1993).

187. See Stephen A. Saltzburg, *Improving the Quality of Jury Decisionmaking*, in *VERDICT: ASSESSING THE CIVIL JURY SYSTEM* 341, 346 (Robert E. Litan ed., 1993) (explaining how, “Finding ways to shorten trials and minimize some of the burdens of

play a crucial role. But none of these implementations would exist without significant restructuring of the courts' administrative infrastructure, which could pose exactly the same problem as the one-day/one-trial did in Los Angeles—prohibitive costs.<sup>188</sup>

A very distant alternative that still squares with the economic perspective of jury compensation would be the recommendation of financial analyst Marvin Oge, who developed a formula that would provide jurors with enough money each year to cover a two-week trial.<sup>189</sup> However, in such a system, jurors would be required to provide for their own fees. Much like unemployment compensation, a jury duty insurance system of the sort proposed by Oge would deduct roughly 1.3% of everyone's monthly income and deposit it into a fund. Coupled with the requirement that no juror could serve more than once in three years, a measurable amount of money would accrue over this period, guaranteeing that most jurors would be able to support themselves with the help of the fees paid to them for the duration of a trial. However, under this system, the county would bear no responsibility for guaranteeing funds for jury pay, and jurors could not look to the county for support. Even if this system would not require the creation of an entirely new bureaucracy to administer it, it abandons the state's responsibility to compensate jurors for their effort and service.

While many alternatives exist for compensating jurors adequately under the economic model, states seemingly have adopted the civic virtue model of juror compensation, as evident in pay rates amounting to mere pennies on each dollar demanded by the cost of living.<sup>190</sup> Testaments to the model also appear in official statements recognizing the juror's *per diem* as no more than a token of appreciation, and the statements of judges and legislators that jury payment should never

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service should enable potential jurors to serve and broaden the spectrum of representation at the practical as well as the theoretical level"). He recommends, *inter alia*, trials that "begin [ ] at 4:00 p.m. and continue[ ] until 8:00 p.m. for as long as the trial takes if this will increase the representativeness of the jury pool," or a "hybrid schedule that allows a case to be tried for a week or two (the presumptive time for jury service) and finished on [an] evening ['flex-time'] schedule . . ." *Id.* at 351. Likewise, videotaping evidence and sending it to the members of the jury would allow them the opportunity to review materials at their own convenience. *Id.*

188. See *supra* note 33 (describing difficulties in implementing new trial formats).

189. See Marvin Oge, Editorial, *Reader's Verdict: Current Juror Pay No Incentive to Serve*, DAILY NEWS OF L.A., Oct. 23, 1999, LEXIS, Lad File, for a more detailed explanation by Oge of his system.

190. See *infra* Figure 6 (comparing average daily state jury compensation to daily amount mandated by federal poverty threshold).

equate to the wages provided by employers.<sup>191</sup> The civic virtue perspective of jury compensation encourages wooden statements dismissing inadequate pay on the basis that jury duty is a “civic duty,” a “moral obligation,” a “community service,” or even a “right.” Yet, these terms cannot legitimize the inadequacy of jury fees without further reasons supporting the analogies. The use of such terms requires definitions of words like “duty,” and—due to the rich history of jury participation in America—it requires an examination of how these words and concepts have changed over the years, and whether they have retained their original meanings.

## 2. *The Civic Virtue Model Invites Historical Ambiguity*

State legislatures and courts subscribing to the civic virtue model of jury compensation benefit from portrayals of declining jury participation as a public epidemic.<sup>192</sup> These portrayals permit the government to place extraordinary demands on citizens without being held accountable for justifying its orders on an individual basis.<sup>193</sup> On this view, calling on Americans to participate in aspects of local governance, such as jury duty, is akin to mobilizing citizens to combat an enemy in the face of great danger:

As a response to crisis, community service is distorted, its promise overblown, and its complexities hidden by anxiety and faddism. Not the least of the consequences of a “crisis mentality” is the suppression of ambiguity and the simplification of reality into exclusive choices. The dangers of manipulation already present in the relationship of doer and done-to increase as crisis calls forth a psychology of “crusades” and “wars.” We must have our enemies. We find them in those who do not agree that our crisis is everyone’s crisis. . . . We are convinced that the needs of sociability and citizenship are not being met as, it is believed, they once upon a time were. Our presumed failure transforms an ordinary discussion into high drama. We are, if the prevalent rhetoric is to be believed, living in a country that has lost its way morally, socially, economically and politically. Community service, then, finds its place in

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191. See *infra* note 281 and accompanying text (discussing various views of proper amount of jury compensation).

192. See sources cited *supra* note 185 (providing portrayals of epidemic nature of decline in jury participation).

193. See RADEST, *supra* note 186, at 3 (“By interpreting community service as a response to crisis, we are able to justify the expenditure of extra-usual energies.”).

our consciousness, our language and our policies as a response to crisis and in context of nostalgia for lost connections.<sup>194</sup>

The operation of the crisis response model with respect to jurors is clearest in the case of the jury round-ups described in the Introduction to this Article. Recall the courts in North Carolina and Maryland, where judges had become so frustrated with jury-dodging that they sent bailiffs into the streets to compel random citizens to serve with little or no notice. The judges, without fail, justify such orders on the basis of a crisis in the courts. Citizens who request extra time to arrange their schedules on short notice are consequently denied the opportunity on the basis of the courts' emergency.<sup>195</sup>

Even if states do not engage in juror round-ups, the crisis response model benefits courts by justifying their inattention, and often rude and abrupt behavior, towards jurors.<sup>196</sup> While the process of juror round-ups may, at least temporarily, ease administrative burdens, it does not come without costs. The process ironically may encourage further noncompliance with summonses,<sup>197</sup> and obscures historical lessons relating to both jury participation and the limits of civic duty. In other words, to promote an absolute duty to serve on juries, courts attempt to return us to a nostalgic time when citizens were expected to make significant sacrifices, even though the present imposes more severe financial burdens on the juror.<sup>198</sup> Because the civic virtue perspective of jury service blinds courts to its economic counterpart, which is often more critical to the success of the legal system, the civic virtue perspective obscures the duty to compensate jurors adequately. An examination of current and historical practices reveals that the state and federal governments traditionally have relied upon the economic perspective of jury compensation.

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194. *Id.* at 4. In a number of decisions, courts have justified selfless jury service in terms of an "us against them" rationale, with various nostalgic references. See *supra* note 12 (describing jury round-ups).

195. See *supra* note 12 and accompanying text (describing juror round-ups).

196. Cf. RADEST, *supra* note 186, at 3 ("By interpreting community service as a response to crisis . . . [w]e are able to use the language of mobilization.").

197. For example, the courts might actually increase jury dodging by providing such thinly-supported justifications. If citizens cannot explain why they are engaging in an activity except for the fact that it is required, they will be more likely to weigh and balance these obligations against other life commitments that they are similarly "required" to fulfill. See *infra* text accompanying note 351 (describing "Rachel's dilemma").

198. Cf. RADEST, *supra* note 186, at 57–77 (discussing historical foundations supporting community service programs).

## II

HISTORICAL STANDARDS THAT INFLUENCED JURY COMPENSATION  
AND THEIR RELEVANCE IN SETTING FEES IN MODERN TIMESA. *A Snapshot of Current Jury Compensation Methods  
and Amounts*

In the fifty states and the District of Columbia, jury compensation systems exist in three forms. Some prescribe fixed rates throughout the state, others empower counties to set their own rates within certain ranges, and a number increase the pay jurors receive after they have served for a fixed number of days. Figure 2, below, depicts current national jury compensation systems and includes types of payment systems, pay amounts and ranges, and the years of the latest fee modifications.

**FIGURE 2**  
**2001 DAILY JUROR COMPENSATION IN STATE AND FEDERAL JURISDICTIONS<sup>199</sup>**

Fixed Payment <sup>200</sup>						Payment Varied by County, etc. <sup>201</sup>				Time-Sensitive Payment <sup>202</sup>							
<i>n</i> = 25						<i>n</i> = 13				<i>n</i> = 13							
State	Fee	Updated	State	Fee	Updated	State	Fees	Updated	State	Pre-Shift Rate	Days	Post-Shift Rate	Overall Midpoint	Updated			
						<i>Ranges</i>		<i>Midpoint</i>									
						FED <sup>212</sup>											
AL	\$10	1975	HI	\$30	1986	MO <sup>205</sup>	Min. (\$6)	1999	CA	\$0	1	\$15	\$7.5	2000			
ID	\$10	1969	DC	\$30	1987	SC <sup>206</sup>	\$2-12.5 (\$7.25)	2000	PA	\$9	3	\$25	\$17	1980			
IA	\$10	1974	MN	\$30	1993	IL <sup>207</sup>	\$4-15.5 (\$9.75)	1999	NC	\$12	5	\$30	\$21	1983			
KS	\$10	1971	VA	\$30	1996	TN <sup>208</sup>	Min. (\$10)	1973	FL <sup>213</sup>	\$15	3	\$30	\$22.5	1992			
ME	\$10	1991	VT	\$30	1977	MI	Min. (\$15)	1982	NJ	\$5	3	\$40	\$22.5	2001			
AZ	\$12	1970	NM <sup>204</sup>	\$34	1993	LA <sup>209</sup>	\$12,12-25 (\$15.25)	1984/79	NV	\$15	5	\$30	\$22.5	1981			
KY	\$12.5	1978	AR	\$35	1999	WI	Min. (\$16)	1977	OR	\$10	2	\$50	\$30	1999			
MD	\$15	2001	NE	\$35	1994	WA	\$10-25 (\$17.5)	1979	OH <sup>214</sup>	\$0-40	10	\$15-80	\$33.75	1998			
RI	\$15	1967	IN	\$40	1997	GA	\$5-50 (\$27.5)	1999	UT	\$18.5	1	\$49	\$33.8	1998			
NH	\$20	1991	NY	\$40	1998	WV	\$15-40 (\$27.5)	1986	CO	\$0-50	3	\$50	\$37.5	1989			
DE <sup>203</sup>	\$20	1993	SD	\$50	1999	TX <sup>210</sup>	\$6-50 (\$28)	1997	MA <sup>215</sup>	\$0-50	3	\$50	\$37.5	1982			
OK	\$20	1996				MS	\$25-40 (\$32.5)	1996	ND	\$25	1	\$50	\$37.5	2001			
AK	\$25	1981				WY <sup>211</sup>	\$30-50 (\$40)	1984	CT	\$20-50	5	\$50	\$42.5	1991			
MT	\$25	1981															
$\bar{X}$ = \$23.94			1986			$\bar{X}$ = \$19.40			1989			$\bar{X}$ = \$16.50			3.46 Days \$39.73 \$29.56 1992		

199. Daily compensation in this Figure includes all fees paid to petit jurors who serve full days. Excluded from this analysis are grand jurors, municipal jurors, coroner's jurors, jurors attending a "view," talespersons, or individuals not selected but called to serve. The term "updated" in this table indicates the most recent year the state altered its jury fees.

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200. The term “fixed payment” denotes those states that pay a single jury fee regardless of the county or jurisdiction in which a juror serves and regardless of the length of the juror’s service.
201. Data listed under the heading “Payment Varied by County, etc.” depicts those states that require counties to pay a minimum fee, different fees for types of trials (civil and criminal), or different fixed amounts based on county classifications or population density. In the case of a minimum fee, that fee is used as the amount analyzed. In the case of varied county rates, the highest and lowest rates were averaged to derive a numeric midpoint.
202. “Time-Sensitive Payment” describes states that compensate jurors’ additional fees after a certain period of time has passed. The “Pre-Shift Rate” indicates the initial amount of compensation. “Days” indicates the number of days the juror must wait to become eligible for the higher fee. “Post-Shift Rate” indicates the higher fee for which the juror is eligible after those days have passed.
203. In Delaware, jurors are not paid for the first day of service in which they attend court as part of the one-day/one-trial system of selection. DEL. CODE ANN. tit. 10, § 4514(b) (1999).
204. New Mexico has compensated jurors by the hour according to the state minimum wage since 1979. *See* Act of Apr. 5, 1979, ch. 285, sec. 1, § 38-3-15, 1979 N.M. Laws 1120, 1120. Currently, the minimum wage is \$4.25 per hour. *See* Act of Apr. 5, 1993, ch. 217, sec. 1, § 50-4-22(A), 1993 N.M. Laws 2144, 2144 (making New Mexico one of four states that mandate state minimum wage below federal minimum, \$5.15 per hour). *See* Carol Wright, *Wage Worries*, BROWARD DAILY BUS. REV., Jan. 8, 2002, at 1, 2002 WL, Browarddb (noting four states).
205. While Missouri pays jurors a minimum of \$6.00 per day, the state provides an incentive to counties to pay \$12.00 per day, after which point the state will contribute an additional \$6.00 to the juror for a total of \$18.00 per day. *See* MO. REV. STAT. § 488.040 (2000) (detailing incentive).
206. South Carolina statutes still indicate that jurors may be compensated as little as \$2.00 per day. S.C. CODE ANN. § 14-7-1370(1) (Law. Co-op. 1976 & Supp. 2001) (listing thirteen counties in which \$2.00 remains the *per diem*). However, numerous telephone calls to courts in these counties indicated that common practice is to pay \$12.00 per day or more. The \$2.00 fee is still used in this analysis because it is presumably the intention of the state to leave the lower fee as stated in the statute.
207. Until 1999, Illinois had limited the jury *per diem* to \$15.50 if counties wanted to pay jurors more than the three-tiered system recommended (\$4.00, \$5.00, and \$10.00). As of 1999, the state removed the cap, but did not do away with the recommendation to pay jurors the three amounts indicated. *See* 55 ILL. COMP. STAT. ANN. 5/4-11001 (West Supp. 2001).
208. Although the State of Tennessee has also made mention of an \$11.00 fee in lieu of a \$10.00 minimum fee, the \$10.00 minimum is used in this analysis to avoid confusion. *See* TENN. CODE ANN. § 22-4-101 (1994).
209. In Louisiana, civil jurors are paid a different amount than criminal jurors. To achieve a single rate for computation, the mean of the range of pay for one rate was averaged with the other fixed rate.
210. Although Texas has included a maximum of \$50.00 for jury compensation in its statute, most counties in the state pay closer to the minimum \$6.00 figure. *See* Todd, *supra* note 31, at 18 (discussing Texas’s minimal jury fees in most counties).

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211. Wyoming has left it in the court's discretion to pay an additional \$20.00 above the \$30.00 that is required if a juror serves more than five days. WYO. STAT. ANN. § 1-11-303 (Lexis 2001). It is assumed that some, but not all Wyoming jurors receive this extra compensation.
212. The federal jury compensation rate is provided as a standard for comparison based on the discussion *infra* text accompanying notes 235–237, which describes the historical factors that emphasize importance of federal jury fee.
213. It is noteworthy that Florida is the only state in the Time-Sensitive Payment category that has earmarked a specific amount for its unemployed jurors who serve the first three days. Other states in this category provide ranges of payment, usually up to the full amount allotted.
214. While Ohio theoretically offers the potential to compensate jurors who serve ten days or more with eighty per day, the assumption underlying the theory requires a county to pay jurors the highest allotment possible. Numerous phone calls to courts in Ohio indicate that this is not the case. The amount is included in this analysis because of the legislature's interest in providing an equation that envisions the highest amount.
215. In Massachusetts, the main statute pertains to Middlesex County. In 1982, that statute was broadened to allow all counties to partake in the system, which compensates jurors \$50.00 per day for service in excess of three days. Those counties that have not accepted the invitation are presumably setting fees in accordance with the amounts described in MASS. GEN. LAWS ANN. ch. 262, § 25 (West 1992) (bifurcating compensation based on whether service is in first degree murder trial and whether juror is held over). It is presumed that most counties have opted for the Middlesex County system for purposes of this computation.

The data examined above derive from multiple sources.<sup>216</sup> Unlike existing compilations of fees, the Figure presents approximate mid-points of each state's level of jury compensation to enable comparisons among fixed rates and rates varying by either the county in which the juror is called to serve or the length of the trial in which the juror is called to serve.<sup>217</sup>

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216. Act of Oct. 10, 1975, No. 1205, § 16-154, 1975 Ala. Acts 2384, 2507-2508; ALASKA CT. R. ADMIN. 14 (1980), *amended by* Alaska Sup. Ct. Order No. 479 (1981); Act of May 1, 1970, ch. 124, § 5, 1970 Ariz. Sess. Laws 383, 385; Act of Mar. 16, 1999, No. 629, § 1, 1999 Ark. Acts 2280, 2280-81; Act of July 8, 2000, ch. 127, sec. 1, § 215(a), 2000 Cal. Adv. Legis. Serv. 127 (Deering); Colorado Uniform Jury Selection and Service Act, ch. 136, sec. 1, § 13-71-126, 13-71-129, 1989 Colo. Sess. Laws 765, 770, 771; Act effective Sept. 1, 1991, No. 91-160, § 1(b)(1), 1(b)(3), 1991 Conn. Acts 280, 280-81 (Reg. Sess.); Act of July 8, 1994, ch. 331, § 1, 69 Del. Laws 781; Juror Fees Act of 1987, D.C. Act 7-116, sec. 2, § 15-718(a), 34 D.C. Reg. 8115, 8115; Act of July 2, 1992, § 2, 1992 Fla. Laws ch. 92-297; Act of Apr. 28, 1999, No. 405, § 1, 1999 Ga. Laws 836, 837; Act of May 29, 1986, No. 251, § 1, 1986 Haw. Sess. Laws 456, 456; Act of Mar. 14, 1969, ch. 147, § 1, 1969 Idaho Sess. Laws 472, 472-73; Act of July 29, 1999, No. 91-321, § 5, 1999 Ill. Laws 321; Act of May 13, 1997, No. 204, § 1, 1997 Ind. Acts 2918, 2918-19; Act of May 27, 1974, ch. 1261, § 1, 1974 Iowa Acts 967, 967; Act of Apr. 14, 1971, ch. 176, § 20, 1971 Kan. Sess. Laws 368, 374; Act of Dec. 22, 1976, ch. 22, § 28, 1976 Ky. Acts 202, 208; Act of July 6, 1984, No. 441, § 1, 1984 La. Acts 1085, 1085-86; Act of July 18, 1979, No. 632, sec. 1, § 3049(B), 1979 La. Acts 1685, 1685-86; Act effective July 17, 1991, ch. 591, § E-13, 1991 Me. Laws 919, 1030; Act of May 18, 2000, ch. 652, § 1, 2000 Md. Laws 3344, 3345-46; MASS. GEN. LAWS ANN. ch. 234A, § 51 (2000); Act of Sept. 16, 1982, No. 226, § 1, 1982 Mich. Pub. Acts 685, 686; Act of May 14, 1993, ch. 192, § 104, 1993 Minn. Laws 711, 781-82; Act of Mar. 8, 1996, ch. 312, § 1, 1996 Miss. Laws 35, 36; Act of July 13, 1999, S.B. 1, § 494.455, 1999 Mo. Laws 827, 860-61; Act of Mar. 31, 1981, ch. 200, § 1, 1981 Mont. Laws 278, 278-79; Act of Feb. 25, 1991, No. 147, § 1, 1991 Neb. Laws 262, 262; Act of May 1, 1981, ch. 159, § 2, 1981 Nev. Stat. 326, 326-27; Act of July 2, 1991, ch. 355, § 96, 1991 N.H. Laws 577, 599; Act of May 18, 1949, ch. 127, sec. 1, § 22:1-1, 1949 N.J. Laws 496, 496; Act of Apr. 5, 1993, ch. 217, sec. 1, § 50-4-22(A), 1993 N.M. Laws 2144, 2144 (setting state minimum wage); Act of June 28, 1995, ch. 85, § 4, 1995 N.Y. Laws 2591, 2592; Act of July 20, 1983, ch. 881, § 2, 1983 N.C. Sess. Laws 1080, 1081; N.D. CENT. CODE § 27-09.1-14 (Supp. 2001); Act of Jan. 15, 1998, S. B. No. 69, sec. 1, § 2313.34(B), 1998 Ohio Laws 7172, 7174; Act of June 12, 1996, ch. 339, § 7, 1996 Okla. Sess. Laws 1571, 1581-82; Act of Sept. 1, 1999, ch. 1085, § 3, 1999 Or. Laws 2909, 2909; Act of June 26, 1980, No. 1980-78, sec. 3, § 4561, 1980 Pa. Laws 266, 273; Act of May 24, 1967, ch. 150, § 1, 1967 R.I. Pub. Laws 496, 496; S.C. CODE ANN. § 14-7-1370 (1976 & Supp. 2001); Act of Feb. 26, 1999, ch. 107, 1999 S.D. Laws 169; Act of Apr. 23, 1973, ch. 138, § 1, 1973 Tenn. Pub. Acts 376, 377; Act of June 17, 1997, ch. 758, § 1, 1997 Tex. Gen. Laws 2469, 2469; Act of Mar. 14, 1998, ch. 74, § 1, 1998 Utah Laws 278, 278; Act of Apr. 12, 1978, No. 222, § 22, 1977 Vt. Acts & Resolves 331, 345; Act of Mar. 22, 1996, sec. 1, § 14.1-195.1, 1996 Va. Acts ch. 332; Act of May 7, 1979, ch. 135, § 7, 1979 Wash. Laws 1411, 1414-15; Act of Mar. 7, 1986, ch. 94, § 52-1-173, 1986 W. Va. Acts 684, 698-99; Act of May 18, 1978, ch. 318, § 30, 1977 Wis. Laws 1306, 1312; Act of Mar. 7, 1983, ch. 138, sec. 2, § 1-11-303, 1983 Wyo. Sess. Laws 402, 405.

217. A researcher with unlimited funding and resources would consider a number of factors. Data regarding the length of trials and exact levels of compensation for each

### 1. Compensation System Type<sup>218</sup>

As illustrated in Figure 2, legislatures in twenty-five (49%) of the states have set jury compensation at a flat rate. Their average jury *per diem* is approximately \$23.94 per day (or \$2.99 per hour), with a low of \$10.00 per day in Alabama, Idaho, Iowa, Kansas, and Maine, and a high of \$50.00 per day in South Dakota. Alternatively, thirteen states (25.5% of the nation) compensate jurors based on fees set by local county boards, typically within a range set by the state legislature. Somewhat lower than jurisdictions with flat rates (56¢ cents less per hour on average), these county-based fees range from as low as \$2.00 per day in some South Carolina communities to as high as \$50.00 per day in certain Georgia, Texas, and Wyoming locales. Finally, another thirteen states (25.5% of the country) use a time-sensitive method, increasing the fees available to jurors after they serve a set number of days. The normal waiting period for increased fees is three days, with a low of one day in California and a high of ten days in Ohio. It is particularly noteworthy that every state except California, which requires that jurors serve their first day without any reimbursement for expenses, in some way provides for the compensation of those selected to serve as jurors.<sup>219</sup>

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county in a state would be essential. Other steps might include factoring the cost of living or average income of the juror into the analysis, weighting the fee by the population of each county, and discounting for counties that are either unaware of or intentionally disregard statutory increases. These concerns also exist in the case of each state's history of jury compensation.

However, my conversations with a number of court administrators revealed the difficulty and expense of compiling such data. Many states have not documented the jury fees paid by each county, and a number of counties are not aware of recent statutory modifications. See Telephone Interview with John Lupton, Director, Lincoln Legal Papers Project (May 13, 2001) (observing questionable existence and accuracy of courthouse record-keeping systems dating back more than few years). Due to various research constraints, this study settles for the average of the high and low amounts that jurors receive in states. While the final result may not represent the true average level of compensation that the average juror is paid, these approximations should suffice for identifying national trends and comparing fees across systems.

218. It is noteworthy that a number of states have implemented payment to cover jury service lasting less than a full day. For analysis of these compensation systems, see Munsterman, *supra* note 34, at 12, which explains jury compensation rates in various compensation systems as of July 26, 2001. Also absent from this analysis are jury rates provided to jurors serving in the tribal court systems, some of which have been rumored to exceed \$200 per day. *Id.* at 13.

219. In Arizona and Delaware, jurors who are called but not selected for service are not compensated the *per diem* rate. See Act of May 1, 1970, ch. 124, sec. 1, § 21-221(B), 1970 Ariz. Sess. Laws 383, 385; Act of July 8, 1994, ch. 331, § 1, 69 Del. Laws 781, 781.

Nationally, roughly half of the states in each of the nation's four regions<sup>220</sup> have retained the fixed jury fee,<sup>221</sup> making it the preeminent system for compensating jurors. In the Northeast, for example, five states (56% of the region) have retained the fixed fee. These fixed fees demonstrate that a number of legislators with constituents from diverse labor markets in both urban and rural settings could, and have, agreed on a single monetary cutoff for paying jurors throughout the state.

Most other states have implemented mixed systems of payment that either allow local county boards to set fees or that provide for increased compensation after jurors have served for a set amount of time. Approximately 33% of the Midwest (four states), and 41% of the South (seven states), rely on county boards to set rates. In contrast, only two states in those regions utilize time-sensitive methods of determining appropriate juror compensation. In the West, 39% (five states) use such time-sensitive methods, and 44% of the Northeast (four states) do so as well. Comparatively speaking, the northeastern region has the greatest proportion of states using fixed rates and time-sensitive compensation methods to pay its jurors, while the southern region has the greatest proportion of states using rates set by local county boards.

## 2. *Payment Amount*

Based on Appendix A's estimates of statewide jury compensation, the average American juror is currently paid \$23.85 per day for her service.<sup>222</sup> While we can say a number of things about this fee, most notably, it falls short of the 2000 poverty threshold by \$10.61 per day.<sup>223</sup> This statistic means that current jury compensation does not

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220. I have adopted the U.S. Census's method of dividing states in four regions. *See generally* U.S. CENSUS REGIONS AND DIVISIONS, at [http://www.eia.doe.gov/emeu/reps/maps/us\\_census.html](http://www.eia.doe.gov/emeu/reps/maps/us_census.html) (last modified on Apr. 17, 2001) (considering the West to include Alaska, Hawaii, Washington, Oregon, Idaho, California, Wyoming, Montana, Nevada, Utah, Arizona, Colorado, and New Mexico; the Midwest to include North Dakota, South Dakota, Nebraska, Kansas, Iowa, Minnesota, Wisconsin, Illinois, Missouri, Indiana, Ohio, and Michigan; the South to include Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Alabama, Mississippi, Kentucky, Florida, Georgia, North Carolina, South Carolina, West Virginia, Virginia, Maryland, Delaware, and the District of Columbia; and the Northeast to include Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine).

221. In the West, six states (46%) use fixed fees, as do six states in the Midwest (50%) and eight states in the South (47%).

222. This compensation figure does not, however, take into account the population densities of the various states.

223. Currently, the poverty threshold amounts to \$34.46 per day or \$8959 per year for a single wage earner. UNITED STATES CENSUS BUREAU, POVERTY 2000, at <http://>

equate to the minimal income of \$33.46 per day deemed necessary for basic subsistence in the United States.<sup>224</sup> When compared with the current federal minimum wage (\$41.20 per day), the gap increases to \$17.35. But perhaps the most relevant statistic for comparison is American per capita income. Assuming that the average American earned the annual income indicated on the 2000 Census (\$114.14 per day),<sup>225</sup> the average juror loses \$90.29 per day if not compensated by an employer.<sup>226</sup> Considering that approximately 70% of Americans live from paycheck to paycheck and have not established sufficient financial reserves to cover lost wages, an average trial, lasting a week, could pose significant risks depending on a juror's existing financial obligations.<sup>227</sup> Even the highest jury *per diem* (assumedly South Dakota's \$50.00 rate), leaves jurors with less than half of their normal earnings. Although the average federal juror fares a bit better than her state counterpart, with a compensation rate of \$40.00 per day, she nonetheless will face similar challenges as the amount would still leave her \$71.14 below the average daily income for each day she serves.

Among the three methods of paying jurors, the time-sensitive approach typically provides jurors with the most compensation. After the waiting period has elapsed, no time-sensitive state pays less than \$15.00 per day. Seven states and four county board states with fixed compensation schemes (31% of the category) and five county board

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[www.census.gov/hhes/poverty/threshld/thresh00.html](http://www.census.gov/hhes/poverty/threshld/thresh00.html) (last revisited Sept. 25, 2001) (presenting 2000 threshold) (on file with the *New York University Journal of Legislation and Public Policy*). To compute the difference:  $\$8,959/260 = \$34.46 - \$23.85 = \$10.61$ . See *infra* note 288 (explaining calculation of 260 days per year).

224. These figures assume that Americans will pay certain amounts for food and other living essentials. For a discussion of the federal standards for calculating the poverty threshold and related figures, see for example, Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children From the Home for Poverty Alone*, 70 TEMP. L. REV. 447, 460–61 (1997).

225. Average income is generally much higher than per capita income. Although I was unable to locate sources indicating average income for the present, even the decreased per capita rates highlight an enormous disparity between jury pay and Americans' occupational earnings.

226. See U.S. BUREAU OF ECON. ANALYSIS, U.S. DEP'T OF COMMERCE, PER CAPITA PERSONAL INCOME, PERSONAL INCOME, AND POPULATION BY STATE AND REGION 1999 AND 2000 (Apr. 24, 2001) (reporting 2000 national per capita personal income as \$29,676.00), <http://www.ku.edu/pri/ksdata/ksah/income/9inc10.pdf> (on file with the *New York University Journal of Legislation and Public Policy*). Daily compensation based on this amount is equivalent to  $\$114.14$  ( $\$29,676 / 260 = \$114.14$ ). See *infra* note 288 (explaining use of 260 days figure). To calculate the differential, subtract the average jury compensation from daily compensation.  $\$114.14 - 23.85 = \$90.29$ .

227. See Andrea Neal, *Time Spent Agonizing Over Money*, SATURDAY EVENING POST, Jan.–Feb. 1998, at 16 (“A study in the *Wall Street Journal* found that 70 percent of the public lives from paycheck to paycheck.”).

states (39% of the category) offer a *per diem* rate amounting to less than this low amount. Moreover, time-sensitive systems are more likely than any other to pay \$49.00 or more per day after the waiting period, which is true in six states (46%) that have implemented such a system. Only one state (4% of the category) using the fixed-fee system and one state in the county-board system (8% of the category, accounting for Wyoming's upper limit) offer \$49.00 or more a day in compensation. From a regional perspective, southern and western states typically pay their jurors in the range of \$21.00 through \$30.00 per day, while midwestern states typically pay their jurors \$10.00 or less per day. Northeastern states, however, are equally likely to compensate jurors with \$11.00 through \$20.00 per day as they are to offer them compensation between \$31.00 and \$40.00 per day.<sup>228</sup>

### B. *History as an Interpretive Tool*

In isolation, current jury compensation rates explain little about the purposes of the fees. Only through the examination of the historical record can we explain current rates in their functional context. Analyses of prior fees likewise suggest the standards underlying fee modifications. In sociologist Charles Tilly's noted work *Big Structures Large Processes Huge Comparisons* he explains that "remain[ing] clear and consistent" about the "criteria for identifying real populations" is "[t]he trick" to conducting reliable analyses of societal change.<sup>229</sup> Identifying whether state juror fees are too low, too high, or just about right requires a full understanding of federal and state payment histories. The comparison is relevant even though higher pay in one system or another could be distinguished on a number of grounds, such as the likelihood that jurors serving in federal courts would have to travel further distances, explaining their higher levels of compensation.

The interrelation of jury compensation rates at both state and federal levels sheds light on the development of both systems. In 1838, the State of Mississippi urged Congress to raise federal jurors' fees to amounts at least equivalent to its own rate.<sup>230</sup> Today, the tables have

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228. Regarding the most recent updates to jury compensation, the western region has allowed an average of seventeen years to pass before updating its fees (1985 was the average year of the latest update in this region), while the Northeast has followed closely with a sixteen year time lapse (1986). Contrarily, both the southern and midwestern regions average out to roughly 1990 since their last fee increases.

229. CHARLES TILLY, *BIG STRUCTURES LARGE PROCESSES HUGE COMPARISONS* 80 (1984).

230. See MEMORIAL OF THE LEGISLATURE OF MISSISSIPPI, S. REP. NO. 25-252, at 1 (1838) (memorial submitted to United States Congress on behalf of Mississippi Legis-

turned, as those who advocate fair compensation urge states to raise compensation levels to the federal jury compensation rate.<sup>231</sup> Interestingly, if considered a state, the federal government would rank as the forty-ninth highest fee, with its payment placing just above Wyoming's approximate midpoint and below South Dakota's fixed fee.<sup>232</sup> Yet, the only jurisdiction other than the federal courts in which the federal rates have served as definitive guidance has been the District of Columbia, where legislators have intermittently relied upon the federal rate as a basis for setting jury compensation.<sup>233</sup> In 1987, however, D.C. finally charted its own path and currently pays jurors in its courts \$30.00 per day—\$10.00 a day less than the federal rate.<sup>234</sup>

For three reasons, this historical inquiry begins at the federal level. First, the federal government has been dictating compensation amounts in the United States courts consistently since 1791, when the first Congress set the first jury pay rate at fifty cents per day.<sup>235</sup> This rich history enables us to examine how external societal forces have had an impact on the jury compensation system. For instance, how legislators set jury fees in response to the Panic of 1873 and the Great Depression of the 1930s may serve to explain the influence of downshifts in the American economy on jury compensation rates and may provide guidance on indexing fees to market-based standards.

Second, the standards that Congress and other organs of the federal government have developed to deal with income and wealth distribution in the United States, particularly the federal minimum wage and poverty threshold, provide insight into the goal of ensuring adequate compensation for jurors. These national indexes are ideal for this purpose because of the pressure that exists on the federal government to remain consistent in setting standards—a type of consistency

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lature, signed by John W. King, Speaker of Mississippi House of Representatives, and A. L. Bingaman, President of Mississippi Senate, asking that Congress raise fees to at least \$2.00 per day). At the time, the federal government was paying jurors only \$1.25 per day. See Act of Feb. 28, 1799, ch. 19, § 6, 1 Stat. 624, 626. Mississippi was already paying its jurors \$2.00 per day. See Act of May 13, 1837, § 1, 1837 Miss. Laws 315, 315.

231. See Dees, *supra* note 24, at 1761 (“[A]s states consider jury reform, many are considering raising the fee paid to jurors in juror compensation statutes to equal the federal rate.”).

232. See *supra* Figure 2 (depicting current jury compensation amounts). This statement uses the midpoint of forty-five for federal jury compensation. See *infra* note 286 (explaining midpoint calculation and rationale).

233. See *infra* Appendix A (depicting that D.C. relied upon federal jury compensation statute from 1965 to 1987 in setting its pay rate).

234. See Juror Fees Act of 1987, D.C. Act 7-116, sec. 2, § 15-718(a), 34 D.C. Reg. 8115, 8115.

235. Act of Mar. 3, 1791, ch. 22, § 1, 1 Stat. 216, 217.

that state legislators appear to be searching for to guide them in reforming jury compensation.

Third, Congress has set jury fees at least partly in response to matters affecting the entire nation. Because the pay rate set by the federal government applies to all jurors in all federal courts, legislators wished to avoid purely regional methods of setting fees that would limit the effectiveness of the uniform fee. The fact that Congress has been able to find a national standard should aid state legislators who are trying to find the appropriate standard for their jury pay.

Given the Supreme Court's growing reliance on originalist methods of constitutional interpretation,<sup>236</sup> and what some would argue is the Court's powerful commitment to interpreting the Constitution in accord with American legislative tradition,<sup>237</sup> the history of jury compensation in the United States should be particularly relevant to the determination of the current proper standard. The lack of either analysis of current jury compensation or historical jury compensation in legislative debates and committee reports results from a confusion in statutory interpretation where two popular interpretive canons clash. On the one hand, the principle of *in pari materia* would require interpreters of a statute to "harmonize" differences over time.<sup>238</sup> On the other hand, the conflicting Rule of Mischief<sup>239</sup> and the so-called "Golden" Rule,<sup>240</sup> would inquire about the purpose of a provision, re-

236. See, e.g., Randy E. Barnett, *An Originalism for Nonoriginalists*, 45 LOY. L. REV. 611, 613 (1997) ("Originalism is now the prevailing approach to constitutional interpretation.").

237. See Rebecca L. Brown, *Tradition and Insight*, 103 YALE L.J. 177, 184–85 (1993) ("The Supreme Court has interpreted evidence that the first Congress either took, approved, or acquiesced in some action as a virtually irrefutable indication of the constitutional validity of that action.").

238. WILLIAM P. STATSKY, *LEGISLATIVE ANALYSIS AND DRAFTING* 93 (2d ed. 1984). While there may be differences between the statutes [passed at different times], courts will attempt to interpret them as consistent with each other. . . . [This is] based on the common sense assumption that when the legislature enacted statutes on the same topic, it most likely intended that they be consistent with each other even though the statutes contain no reference to each other.

*Id.* at 93–94.

239. As Karl Llewellyn once remarked: "If a statute is to make sense, it must be read in light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense." Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 400 (1950). The rule refers to the word "mischief" because it requires that one "identify the evil or mischief [the statute] was trying to remedy" as the basis of upholding that same purpose when challenged by subsequent conflicting statutes. STATSKY, *supra* note 238, at 78.

240. The Golden Rule follows from the Mischief Rule by rejecting statutory requirements that would "produce[ ] absurd results" if taken literally. STATSKY, *supra* note

jecting interpretations that seem to defy the purposes underlying the statute. The *in pari materia* doctrine would require federal legislative acceptance of jury compensation rates falling below the poverty line as the standard states have chosen. The Golden or Mischief Rules would reject low fees if their initial purpose had been to reduce jurors' burdens while serving to provide them with an amount to meet their most basic expenses.<sup>241</sup>

The Supreme Court's decision in *Hurtado v. United States* is the best indication that the Court would reject statutory modifications substantially decreasing jury fees. The case involved a foreign national who sued the government for incarcerating him in anticipation of his testimony in federal court and paid him only one dollar per day for the three months he was held.<sup>242</sup> The government provided this meager allowance in accord with a federal statute that prescribed a significantly higher amount to nonincarcerated witnesses.<sup>243</sup> *Hurtado* supported his claims of constitutional rights violations with an analysis of the way federal witness fees had changed since their inception.

Drawing on congressional enactments from the "earliest days of the Nation's history,"<sup>244</sup> *Hurtado* observed that "[t]he first statute to distinguish between incarcerated and non-incarcerated witnesses, passed in 1853, provided full and adequate compensation for incarcerated witnesses . . . ."<sup>245</sup> Specifically, he pointed to the fact that later increases in witness compensation by the legislature served to "modernize the rates of compensation in order that the statute would properly accomplish its essential purpose to compensate witnesses and provide against financial loss as a result of performing this service."<sup>246</sup> *Hurtado* also pointed out the irony that would exist if the Court concluded that the legislature intended to provide "mere token compensa-

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238, at 81 (citing *Dist. of Columbia Nat'l Bank v. Dist. of Columbia*, 348 F.2d 808, 810 (D.C. Cir. 1965)).

241. See *infra* text accompanying notes 287–288.

242. *Hurtado v. United States*, 410 U.S. 578 (1973).

243. The "dollar-a-day" compensation paid to incarcerated witnesses in 1973 was an amount that had not been increased since 1853. See Act of Feb. 26, 1853, ch. 80, § 3, 10 Stat. 161, 167 (1853) ("When a witness is detained in prison for want of security for his appearance, he shall be entitled to compensation of one dollar per day over and above his subsistence."). Simultaneously, for non-incarcerated witnesses, the payment had steadily increased from \$1.50 per day in 1853 to \$20.00 per day in 1973. See Jury Selection and Service Act of 1968, Pub. L. No. 90-274, § 102(b), 82 Stat. 53, 62 (prescribing \$20.00 *per diem*).

244. Petitioners' Brief at 7, *Hurtado* (No. 71-6742).

245. *Id.*; see also *id.* at 18 (discussing value of dollar-a-day provision in 1853).

246. *Id.* at 18.

tion,” when history revealed its “careful and deliberate effort to protect against pecuniary losses to witnesses.”<sup>247</sup>

Hurtado attempted to rely on the canons of statutory interpretation, in particular, the Golden Rule and the Rule of Mischief,<sup>248</sup> to show the patent injustice of the one dollar *per diem*. In total, Hurtado presented five arguments to the Court in order to persuade it to interpret the statute in a way that would increase compensation. The first reason was that “[w]hen a statute is subject to more than one construction it should not be given a construction which will prove deeply harsh and unjust in its consequences, both as it respects public and individual rights and interests.”<sup>249</sup> Second, Hurtado argued that “[i]t cannot be presumed that the legislature will do acts that inflict hardship and injustice.”<sup>250</sup> Third, Hurtado noted the following:

[T]he fact that at one time in history the “dollar-a-day” provision was intended to provide for the entire compensation to be given to incarcerated witnesses does not require a different result, insofar as statutes should not be narrowly construed to permit evasion of their purpose because of changes in circumstances resulting from the passage of time.<sup>251</sup>

Fourth, Hurtado urged the Court to “not be guided by a single sentence or portion of a sentence, but . . . look to the provisions of the whole law and to its object and policy.”<sup>252</sup> Finally, Hurtado argued that it would be impermissible for the Court to interpret a statute in a way that would “produce a consequence directly opposite to the whole spirit of the statute . . . .”<sup>253</sup>

*Hurtado’s* most significant contribution to the analysis of jury fees is the Court’s position that the manner in which fees progressed over time is relevant to determining the adequacy of the current rate.<sup>254</sup> In its historical overview, the Court identified statutory rates

247. *Id.* at 19.

248. *See supra* notes 239–240 (reviewing essential elements of both rules).

249. Petitioners’ Brief at 20, *Hurtado* (No. 71-6742).

250. *Id.*

251. *Id.* at 22 (citing *Fortnightly Corp. v. United Artists Television, Inc.*, 391 U.S. 390 (1968)).

252. *Id.* (citing *Richards v. United States*, 369 U.S. 1 (1962)).

253. *Id.* (citing *Postmaster Gen. v. Early*, 25 U.S. 136 (1827)).

254. Much less important was the Court’s conclusion regarding the actual sufficiency of the fees provided for incarcerated witnesses. First, *Hurtado* addressed a statutory provision that had not developed consistently over the years. The major concern had been Congress’s somewhat surprising act of inserting the “dollar-a-day” provision back into recent legislation after it had remained curiously absent in prior acts on the same topic. *See Hurtado*, 410 U.S. at 586 n.11 (questioning why provision, after its repeal in 1926, would appear again in 1949 “with the explanation by the House Committee on the Judiciary that it had been ‘inadvertently omitted’” (quoting

before considering legislative hearings and other documents, highlighting past federal rates as being among the most reliable indications of legislative intent. The Court's deference to the statutes suggest that the Court was concerned about congressional committee testimony and other statements which might have reflected interests biased against raising compensation.<sup>255</sup> By basing the determination of whether the current fee was adequate primarily on past fees, the Court

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H.R. REP. NO. 81-352, at 16 (1949)). The Court's resistance to Hurtado's argument stemmed from an unclear statutory history. *See id.* ("The legislative history of the compensation provision is unenlightening. Though Congress early provided compensation of witnesses attending in the Courts of the United States, no specific provision was made for incarcerated witnesses."). Because jury compensation has been in effect consistently since the incorporation of almost every state, courts would be compelled to expand on *Hurtado's* methodology and conduct a more detailed analysis, the likes of which is presented in this Part.

Second, the case may have resulted in increasing compensation if the adequacy of jury fees had been at issue. Hurtado exhibited cultural undertones not normally present in the jury box—the plaintiffs were deportable Mexican citizens who could not post bail and had been incarcerated pending their testimony against the person who smuggled them across the border. My conversations with the attorney who represented Mr. Hurtado and a review of the dissenting Justices' reactions to the majority indicate that the status of the litigants in the case influenced the Court. *See Hurtado*, 410 U.S. at 604 (Douglas, J., dissenting) ("We cannot allow the Government's insistent reference to these Mexican citizens as 'deportable aliens' to obscure the fact that they come before us as innocent persons who have not been charged with a crime or incarcerated in anticipation of a criminal prosecution."); Telephone Interview with Albert Armendarez, Sr., Retired Judge, Texas Court of Appeals (June 12, 2001) (exploring probability of favorable verdict had petitioners been of European descent). Reflective of this influence, the Government's brief cited various policy arguments relating to the problem of illegal immigration as a reason for upholding the low fees. *See Respondent's Brief* at 31–33, *Hurtado* (No. 71-6742) (explaining that \$20.00 fee might encourage more illegal immigration because approximately 77% of Mexican families earned less than \$80.00 per month and could use "windfall").

255. For example, a number of corporations distrusted jurors and consistently lobbied against jury participation by members of the working classes on the grounds that these citizens were biased against corporate America and would surely seek retribution for their station in life. *See, e.g., EDWIN YOUNG, THE JURY IN MODERN CORPORATE LIFE* 5 (1884) ("[A] verdict of no cause of action in favor of a corporation and against an individual, is not only rare, but almost unknown . . ."); T.D. Crothers, *A Psychological Study of Jurors*, 60 ALB. L.J. 341, 341 (1899).

In a recent noted trial, out of a panel of one hundred jurors, twelve men were finally selected after a long, searching inquiry. Five of them were farmers . . . who were unaccustomed to think or reason, except in a narrow way along their surroundings and line of work. . . . They were muscle workers with but little mental exercise . . . . Every one of this jury was accustomed to be in the open air . . . . Not one of these men would have been chosen to take charge of any trust, or to decide on any matter outside his every-day life—simply because on general principles and from common-sense observation, he would have been clearly incompetent.

*Id.*

also presented a recipe for analyzing statutes aimed at juror compensation. The following sections will investigate the key aspects of the Court's inquiry into fee-tracking in *Hurtado* and will apply these methods to federal and state jury compensation statutes.

### C. *Hurtado's Fee-Tracking Methodology*

In analyzing *Hurtado's* historical claims, the Court carefully searched for "hint[s] in any of the reports on the various changes in compensation level which could justify the conclusion that Congress intended to provide more than \$1 a day to detained witnesses for the period of their pretrial confinement."<sup>256</sup> The Court balanced this goal with the goal of applying rather than making law.<sup>257</sup> After establishing these guidelines, the Court adopted a four-step analytical approach for determining when fees are set at an appropriate level.

First, the Justices analyzed the development of compensation for incarcerated witnesses after Congress had initially instituted the rates in 1791.<sup>258</sup> The Court's second step was measuring the frequency of subsequent increases in the rates prescribed from the founding period to the present day.<sup>259</sup> The third task was searching out legislative measures that repealed the acts or implemented measures contrary to Congress's professed objectives.<sup>260</sup> Finally, Justice Brennan expanded on the majority's approach by explaining the importance of finding specific limitations that Congress had imposed on fees over the years.<sup>261</sup>

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256. *Hurtado*, 410 U.S. at 587 n.7.

257. *See id.* at 591 ("[N]o matter how unwise or unsatisfactory the present rates might be, the Constitution provides no license to impose the levels of compensation we might think fair and just. That task belongs to the Congress, not to us.')

258. *See id.* at 586 n.7 ("Though Congress early provided compensation of witnesses attending in the Courts of the United States, no specific provision was made for incarcerated witnesses.'). The fact that the Court would mention these initial enactments, even when it did not address incarcerated witnesses reveals the importance of this first methodological step. *See id.* (citing Act of May 8, 1792, ch. 36, § 3, 1 Stat. 275, 277; Act of June 1, 1796, ch. 48, § 2, 1 Stat. 492, 492; Act of Feb. 28, 1799, ch. 19, § 6, 1 Stat. 624, 626).

259. *See Hurtado*, 410 U.S. at 587 n.8 ("While the per diem fee, the subsistence, and the travel allowance have all been increased, the \$1 a day for incarcerated witnesses has remained constant.')

260. *See id.* at 587 n.7 (discussing lack of presence of evidence "which would justify the conclusion that Congress intended to provide more than \$1 a day to detained witnesses").

261. To Justice Brennan, the Court could not act to impose a ceiling on jury fees if the legislature had not explicitly set one. He observed the following:

If the statutory scheme is to be upheld, it can only be on the theory that Congress has made a rational attempt to impose some limits on the amount which will be paid out to any given witness under the scheme. I can assume that the imposition of such a ceiling on expenditures is, in

Because states have various ways of paying jurors and are often influenced by regional factors, *Hurtado's* guidance is imperfect in determining whether compensation is sufficient. Yet, *Hurtado's* methodology, as applied to jurors, underscores the importance of using history to determine whether governments have a duty to keep jury pay at least somewhat in accord with the cost of living and suggests circumstances when they would. The federal jury fee demonstrates that, at least in some respects, the federal government has recognized this important concern.

Federal jury fee modifications,<sup>262</sup> which began with the first Congress, offer insight into the purpose of jury compensation and the standards influencing it. Federal modifications are also significant because often there have been multiple jury fee increases instituted particularly close together in time, which suggests that at least some legislators were committed to raising jury compensation in relation to Americans' cost of living.

Living conditions in the United States during the era of the founding also provide insight into the jury fee. In 1790, a year before the institution of the first federal jury fee, the United States conducted its first federal census, which showed that only 4.5 persons occupied each square mile of land.<sup>263</sup> Although they were widely dispersed, Americans rarely traveled out of their local communities, as even a

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itself, a permissible goal. And since witness fees could, in some instances, reach staggering amounts, I can assume that Congress has the power to impose an across-the-board cutoff—*e.g.*, \$1,000 per witness—on the fees allowable under the Act. But these assumptions do not relieve us of the obligation to determine whether the particular approach Congress has used in imposing a cutoff is sufficiently rational to withstand constitutional attack. I conclude that it is not.

*Id.* at 597–98 (Brennan, J., concurring in part and dissenting in part) (citations omitted).

262. The Figures depict the following statutory fee progression: Act of Mar. 3, 1791, ch. 22, § 1, 1 Stat. 216, 217; Act of June 1, 1796, ch. 48, § 2, 1 Stat. 492, 492; Act of Feb. 28, 1799, ch. 19, § 6, 1 Stat. 624, 626; Act of Feb. 26, 1853, ch. 80, 10 Stat. 161, 168; Act of July 15, 1870, ch. 298, § 1, 16 Stat. 363, 363; Act of June 30, 1879, ch. 52, § 2, 21 Stat. 43, 43; Act of June 21, 1902, ch. 1138, 32 Stat. 396; Act of Apr. 26, 1926, ch. 183, § 2, 44 Stat. 323, 323; Act of June 30, 1932, ch. 314, § 323, 47 Stat. 382, 413; Act of June 25, 1948, ch. 652, § 2, 62 Stat. 1016, 1016; Act of July 14, 1949, ch. 333, 63 Stat. 411; Act of Sept. 2, 1965, Pub. L. No. 89-165, 79 Stat. 645; Jury Selection and Service Act of 1968, Pub. L. No. 90-274, § 102(a), 82 Stat. 53, 62; Jury System Improvements Act of 1978, Pub. L. No. 95-572, Sec. 5, § 1871(b), 92 Stat. 2453, 2454; Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 314, 104 Stat. 5089, 5115.

263. LEBERGOTT, *supra* note 167, at 27 n.13.

journey of thirty miles could take more than two days.<sup>264</sup> Federal jury duty would have entailed substantial travel. It would have required pulling farmers away from their crops for days or weeks at a time to attend district courts located in larger communities. Though wage estimates for the late eighteenth century vary, an examination of pertinent statistics indicates that the first Congress had set jury fees at approximately the rate the average laborer was paid in Philadelphia.<sup>265</sup> By providing a fee, particularly one that mirrored the cost of labor, the first Congress took a step that distinguished jury “duty” from the other types of community-mindedness and goodwill Americans were believed to have displayed during that same era.<sup>266</sup> Compensation for jury service, in fact, replaced a good portion of the juror’s lost earnings.

Chief among the historical documents explaining legislative reliance on prevailing wages in setting jury fees is a report prepared by William Bradford, Attorney General of the United States, in 1795.<sup>267</sup> As a result of a resolution passed in 1793, the House of Representatives had directed Attorney General Bradford to develop compensation standards for all officers of the courts.<sup>268</sup> Because Bradford experienced great difficulty comparing the amounts of compensation in different regions,<sup>269</sup> he approached the challenge of setting a uni-

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264. See ELLIS & NOYES, *supra* note 161, at 30 (stating that later in colonial era, “Lengthy travel was still inconvenient and difficult. Coaches were few, and most people traveled only when absolutely necessary”); LEBERGOTT, *supra* note 167, at 28 (“It took two days to go a mere 35 miles in rural Ohio ‘in good weather, and a great deal longer if the roads were bad.’” (quoting WILLIAM COOPER HOWELLS, *LIFE IN OHIO FROM 1813 TO 1840*, at 138 (photo. reprint 1963) (1895))). Seemingly, any type of travel during the time of the first Congress and before the automobile was “endless.” LEBERGOTT, *supra* note 167, at 28.

265. See *infra* Figure 3 (depicting daily federal jury fees in relation to laborer’s average daily wages).

266. See *supra* Part I.D (describing public roadwork and other community activities).

267. See REPORT OF THE ATTORNEY GENERAL OF FEES AND REGULATIONS PROPER TO BE ESTABLISHED IN THE COURTS OF THE UNITED STATES (Jan. 8, 1795), *reprinted in* Part II, 25 NATIONAL STATE PAPERS OF THE UNITED STATES 1789–1817, at 214–17 (Eileen Daney Carzo ed., 1985) [hereinafter BRADFORD REPORT].

268. See 4 THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789–1800, at 234 (Maeva Marcus ed., 1992) [hereinafter DOCUMENTARY HISTORY] (charting development of Bradford’s duties and efforts to fulfill them).

269. See BRADFORD REPORT, *supra* note 267, at 215.

[T]he comparative view, which I have taken, of the tables [of prevailing fees], transferred to me by the clerks of the District Courts, did not, in general, furnish a standard to ascertain the amount of the fees proper to be reported. . . . [I]n most instances, the tables transmitted differ so widely from each other, that no common measure could be collected from them.

form fee for federal jury compensation with a multifaceted methodology. Bradford averaged the compensation in various regions when possible, or he considered fees in relation to the compensation citizens expected from the labor market.<sup>270</sup> Congress's later fee-setting practices suggest that the labor market continued to play a measurable influence.<sup>271</sup>

In the founding period, Congress not only provided substantial compensation to jurors, but also, more importantly, increased it as prevailing wage levels rose.<sup>272</sup> Legislative materials accompanying generous fee hikes reveal a great deal about the purpose of the federal *per diem*. Commentary in the *Annals of Congress* for 1796 illustrates congressional concern for jurors' well-being. In the entry for May, Congress first remarked on the recent Whiskey Insurrection occurring in Pennsylvania and Kentucky:

The House went into a Committee of the Whole on the bill making additional compensation to Marshals, Jurors, Witnesses, &c., in the trials of persons concerned in the late insurrection. After some observation on the subject—in which it was allowed the pay now given to such persons was far too low . . . . By this bill, an additional allowance of . . . one-and-a-half dollar to Grand and Petit Jurors, who had before only fifty cents . . . .<sup>273</sup>

While the Senate rejected the House's recommendation to raise fees by \$1.50 per day, it doubled the jurors' *per diem* to one dollar, conceding the importance of providing payment to jurors, especially given the Senate's total elimination of provisions for marshals.<sup>274</sup>

Why did the Whiskey Rebellion, of all events, trigger a doubling of federal jury compensation? The answer was apparently the hardship faced by jurors who had been called to hear cases against the insurgents who had refused to pay the whiskey tax. Many trials lasted for long periods of time, which prompted Congress to consider the financial conditions of the jurors who had been called away to serve.<sup>275</sup> A number of letters to congressmen detailed the conditions

270. See *id.* at 215–16 (explaining how Bradford relied upon factors such as “a mean sum, between the highest and lowest of the state fees” and recommended that fees be set “proportioned to the nature and extent of [the officer’s] duties, and *the price of labor in the district*”) (emphasis added).

271. See *infra* Figure 3 (depicting daily federal jury compensation rates in comparison with laborers' average daily wages).

272. See *infra* Figure 3 (depicting congressional increases of jury compensation as laborers' average wages rose).

273. 5 ANNALS OF CONG. 1460–61 (1796).

274. See 4 DOCUMENTARY HISTORY, *supra* note 268, at 217 (evaluating impact of these trials on juror compensation).

275. *Id.*

federal jurors faced. Forced to wait for the marshal to pay their fees, jurors often sold their vouchers for pennies on the dollar: “[P]oor men called from Home to do the Business of others as Witnesses & Jurymen without any Thing to bear their Expences [sic] with, and put to the Necessity to sell their Certificates to Speculators for half the Amount, as has repeatedly been the Case, is dishonorable . . . .”<sup>276</sup>

While methods of compensating jurors were distinct from the amounts they were paid, other correspondence highlights particular concern over the financial losses jurors incurred from their service. For example, grand jurors in Georgia in 1793 complained that “the compensation allowed to jurors attending Court . . . is not adequate to their necessary expences [sic].”<sup>277</sup> Figure 3, below, compares the progression of Philadelphia laborers’ wages and the compensation provided to federal jurors during the founding period.

FIGURE 3  
DAILY FEDERAL JURY COMPENSATION COMPARED WITH  
PHILADELPHIA LABORERS’ DAILY COMPENSATION

	Laborer <sup>278</sup>	Juror <sup>279</sup>
1791	53¢	50¢
1796	\$1.00	\$1.00
1799	\$1.00	\$1.25

These fee increases signify Congress’s response to jurors’ financial concerns. Although not perfectly correlated, the relationship of

276. Letter from Henry Marchant, to Theodore Foster (Nov. 12, 1791), in 4 DOCUMENTARY HISTORY, *supra* note 268, at 563, 563–64.

277. Minutes of the U.S. Circuit Court for the District of Georgia 1790–1842, and Index to Plaintiffs and Defendants in the Circuit Court, 1790–1860, vol. 2, at 22 (National Archives Microfilm Publication M1184, roll 1); Records of District Courts of the United States, Record Group 21; National Archives and Records Administration—Southeast Region (Atlanta). Comments directed toward the juror’s need for immediate payment also indicated public recognition that the purpose of the fee was to do more than merely cover incidental or minimal losses: “Jurors . . . attend [court] with great punctuality when required, and they expect that after the Court adjourns, they shall have their fees[.] This not being the case, great uneasiness ensues, and if they be drawn again to serve as Jurors, they may not attend, and a Citation issues against them for their delinquency . . . .” Letter from Edmund T. Ellery, Clerk of the Rhode Island Court, to Charles Lee (Mar. 21, 1796), in 4 DOCUMENTARY HISTORY, *supra* note 268, at 600, 601. If jurors could not or would not attend court because they were unable to recover substantial financial losses, compensation’s role cannot be so easily brushed aside.

278. THOMAS L. PURVIS, ALMANACS OF AMERICAN LIFE: REVOLUTIONARY AMERICA 1763 TO 1800, at 97 tbl.4.183 (1995) (citing DONALD R. ADAMS, JR., WAGE RATES IN PHILADELPHIA, 1790–1830, at 202–04, 213 (1975)).

279. See sources cited *supra* note 262 (reviewing federal jury compensation standards).

federal jury compensation with the compensation of the average worker strongly supports the idea that federal jury pay was initially designed, and subsequently updated, to replace the juror's expected earnings from labor. Given this history, it is useful to examine how state legislatures have responded differently to issues relating to jury compensation.

*D. Historical Methodology for Comparing State and Federal Jury Compensation*

Americans are concerned about how much of their regular income they may lose as a result of serving on a jury.<sup>280</sup> Today, and for the last few generations, legislators have apparently decided that jurors should not expect compensation that provides anything approaching a total replacement of their lost employment income. Yet, most have been unable to explain just how much compensation jurors are due, prompting inquiry into whether jurors should expect enough compensation to meet their living costs (e.g., rent or utility expenses) certain types of incidental costs only (e.g., travel to the courthouse or lunch), or an amount that provides mere nominal consideration.<sup>281</sup> All of these standards suggest that researchers should compare jury fees with the income earned by citizens to determine how much of a financial burden jury service has caused. Such comparisons are relatively easy to perform because income rates have been recorded over the years and are readily accessible. Additionally, researchers can compare this income data with thresholds that account for the costs of living, such as the minimum wage or the poverty threshold, to determine the economic significance of the jury fees in their respective times. From a methodological perspective, two key issues are: (1) defining a starting point for the analysis and (2) selecting a method to observe national trends in jury compensation across fifty-one jurisdictions. The following analysis begins with the year 1870, and depicts the progression of daily jury fees in relation to average daily national income with an annual time plot.<sup>282</sup> Many historians have hailed the

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280. See, e.g., Sobol, *supra* note 4, at 171–72 (discussing how low jury pay impacts hardship excuses); Amy Pyle, *Jurors May Get 1<sup>st</sup> Pay Raise Since 1957*, L.A. TIMES, May 15, 2000, at A3 (recounting California Supreme Court Chief Justice Ronald George's view that low jury pay generates low response rates).

281. See STANLEY F. BREWSTER, *TWELVE MEN IN A BOX* 21–22 (1934) (suggesting that *per diem* is akin to few cents to pay for “good cigar or two to be smoked while deliberating on a verdict”).

282. My comparison of state and federal jury fees commences in the year 1870 for three reasons. First, jury fees were uniform beginning at about this period. Using the average prevailing wage as a benchmark, the great majority of jurisdictions reporting

time plot as an ideal form of analysis for comprehensive national data.<sup>283</sup> While these graphic representations sometimes fail to account for intervening variables,<sup>284</sup> the focus of this Article on income in relation to jury compensation limits the need for inquiry into tangential matters. It is assumed that factors related to Americans' average income over the years are more relevant to the analysis than other forces that may have contributed to changes in jury fees, such as American popular sentiment about the importance of civic participation.<sup>285</sup> To

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at this time compensated jurors equivalent to or just above it. *See infra* Figure 4 and Appendix A.

Second, this period marks a high point in the "gradual equalization of wages throughout the nation," which fluctuated to a great degree across regions in the decades before 1870. *LEBERGOTT, supra* note 167, at 89. Professor Lebergott explains, "In 1840 common labor earned \$16 a day in California and 50¢ in Kentucky. By 1860 California workers earned only 2.5 times as much; by 1890 only 1.5 times as much." *Id.* Another commentator points out that "[h]istory has not been kind to economic historians interested in the course of wages before the Civil War." ROBERT A. MARGO, *WAGES AND LABOR MARKETS IN THE UNITED STATES, 1820–1860*, at 6 (2000). Professor Margo cites the California gold rush as only one of many examples where migration patterns created fluctuating economic standards. *See id.* at 100–01, 120–36. *See also* Leo Wolman, *Foreword to CLARENCE D. LONG, WAGES AND EARNINGS IN THE UNITED STATES: 1860–1890*, at vii, vii (1960) (explaining "difficulties encountered in arriving at any single, most acceptable measure of money, prices, and real wages for a remote historical period in which available data were sparse and of doubtful quality"); LONG, *supra*, at 110–11 (arguing that money wages lagged behind living costs during Civil War due to absence of price controls, low unionization, and because much of able-bodied work force was diverted to armed forces). Others compare these years with periods after 1870 when wage levels seemed generally more consistent. *See, e.g.,* PAUL H. DOUGLAS, *REAL WAGES IN THE UNITED STATES 1890–1926*, at 584 (1966) ("The average annual money earnings of workers in urban industries employing 15 million workers in 1920, did not advance appreciably during the fifteen years from 1900 to 1914, being only 4 percent higher than in 1890–99."). The consistency in wage levels after 1870 more accurately depicts the meaning of jury compensation for that same time frame.

Third, from the perspective of national solidarity, in this period following the Civil War, states began to recognize and internalize national monetary standards. *See* LONG, *supra*, at 4 (discussing how labor unions "no doubt exercised marked influence" in developing national wage standards). The similarity of payment amounts among states early on and today suggests that state legislatures modified, and continue to modify, jury fee-setting practices as a matter of assimilation to interstate norms.

283. *See, e.g.,* CHARLES M. DOLLAR & RICHARD J. JENSEN, *HISTORIAN'S GUIDE TO STATISTICS 3* (1971) (commenting on "useful[ness] [of] plot[ting] time series on a graph" in case of data spanning "consecutive years or decades").

284. *See* HANS ZEISEL & DAVID KAYE, *PROVE IT WITH FIGURES: EMPIRICAL METHODS IN LAW AND LITIGATION 36* (1997) (commenting that with observational studies and nonrandomized control groups there exists "[t]he danger that a difference in the outcome in two groups is either a common response or the result of a confounding factor").

285. For an exhaustive study of American civic participation, see generally ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

simplify the following analysis, the Figure below represents variable ranges in rates by their approximate midpoints.<sup>286</sup>

While some commentators have mentioned the similarity between prevailing wages and jury compensation in states in the mid and late nineteenth century,<sup>287</sup> Figure 4 shows that the average American juror serving in the state courts received at least the prevailing wage of the time period from 1870 until roughly 1918.<sup>288</sup> After 1918, fees de-

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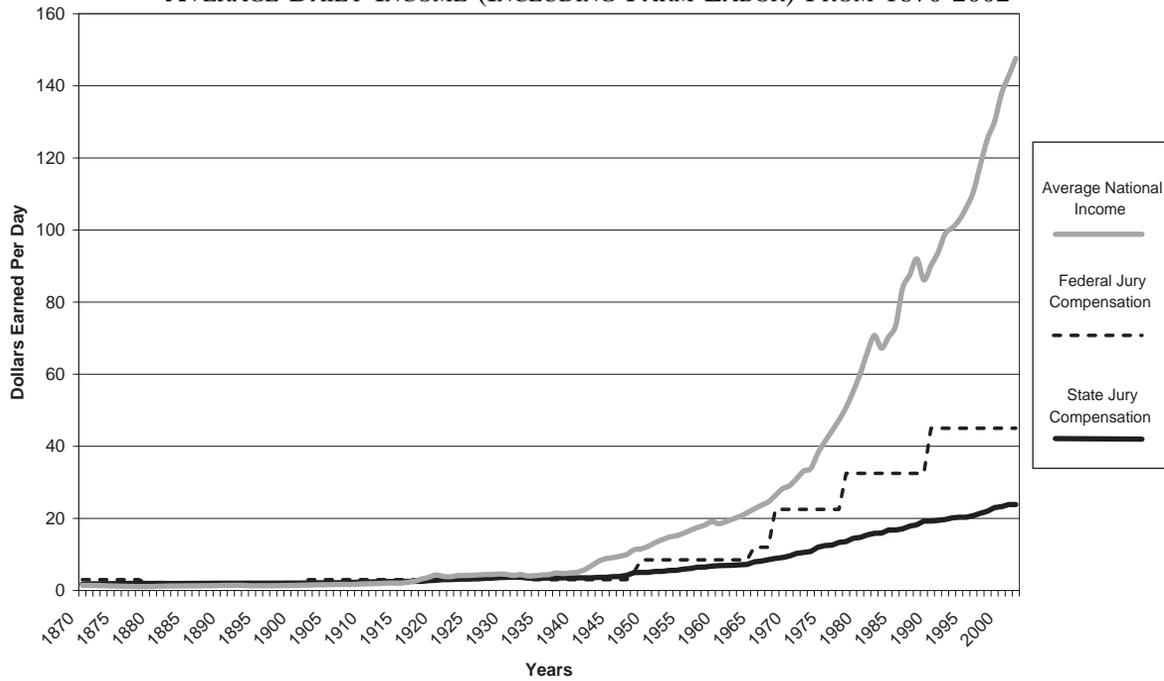
286. For purposes of the calculations, I have used the term “midpoint” to explain a rough average or mean amount (in case of variable ranges of pay) that attempts to accommodate for discrepancies in jury pay amounts. For example, in depicting federal jury pay, because jurors who serve less than thirty days receive \$40.00 per day and jurors who serve beyond thirty days receive an extra \$10.00 per day, I averaged this amount as  $((\$40.00 + \$50.00) / 2 = \$45.00)$ . Therefore, I have used \$45.00 as the midpoint representing ordinary federal jury compensation. Inherently, this method does, in some small sense, skew the analysis. Very few jurors serve more than thirty days, but that situation is contemplated in order to take into consideration Congress’s intention to raise the fee for those who serve longer.

The way I have calculated jury pay in the jurisdictions for each year since 1870 will no doubt raise serious concerns among social scientists. Averaging the approximate midpoints of pay ranges (in the case of counties) and pre and post waiting periods in compensation amounts (for time-sensitive jurisdictions) does not account for the discrete differences between each of the counties or the average length of a trial in each of the courthouses that increase fees after jurors’ extended service. Consequently, the study is not totally accurate. At the same time, the rough estimates that I provide for each year are probably among the more reliable approximations one could hope for given, limited funds and the normal constraints on collecting extremely detailed data of this sort. See *supra* note 217 and accompanying text (discussing difficulties in performing this sort of research). The data presented below is offered as a first attempt in estimating historical jury compensation. Social scientists with the time, resources, and inclination to improve and update the data set should do so should the need arise.

287. See, e.g., Mark Curriden, *Extra Money Helps El Paso Lure More Prospective Jurors*, DALLAS MORNING NEWS, Oct. 24, 2000, at 8A [hereinafter Curriden, *County Success*] (“Before 1866, Texas didn’t pay [jurors] anything. That year, lawmakers agreed to \$2 a day—then the prevailing average wage.”); Mark Curriden, *To Get More Jurors, Pay Raise Proposed*, DALLAS MORNING NEWS, Jan. 26, 2001, at 1A [hereinafter Curriden, *Pay Raise*] (noting how Texas lawmakers in 1866 set jury pay rate “intended to match the daily wage of that time”).

288. Charts depicting average American income over the years combine a number of data sets. For the years 1870–90, see STANLEY LEBERGOTT, *MANPOWER IN ECONOMIC GROWTH: THE AMERICAN RECORD SINCE 1800*, at 528 tbl.A-19 (1964). Based on data regarding the wage difference between all employees including farm labor, I calculated 1870–90 data by subtracting 10.75% of the nonfarm amount—the average difference consistently between 1890 and 1900. For data for 1890–1910, see THE STATISTICAL HISTORY OF THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT 91–92 tbl.D 603–17 (1965). For the period from 1910–54, see LEBERGOTT, *supra*, at 523 tbl.A-16. For 1955–96 (excluding 1965–74), see THE VALUE OF A DOLLAR: PRICES AND INCOMES IN THE UNITED STATES 1860–1999, at 299–460 (Scott Derks ed., 2d ed. 1999). For 1965–74, see *id.* at 345–46, 369–70 (manually averaging data listed for twenty-five occupational categories). From 1975–96, I averaged data for the categories “Wages per Full-Time Employee” and “Private Industries, incl.

FIGURE 4  
AVERAGE STATE JURY *PER DIEM* AND FEDERAL JURY *PER DIEM* COMPARED TO THE AVERAGE AMERICAN'S  
AVERAGE DAILY INCOME (INCLUDING FARM LABOR) FROM 1870-2002



creased gradually, to only a minimal amount below the prevailing wage, until the early to mid forties, when states began paying jurors significantly less. By 1943, state jurors received less than half their average daily income for jury service. By 1950, the average state's jury pay dropped below the federal minimum wage. By 1980, average state jury pay fell below the federal poverty threshold. Today, the decline seems to be continuing. Figures 5 and 6, below, depict that, on average, state rates have declined to the point where they currently amount to only 57.89% of the daily federal minimum wage and 69.23% of the 2000 federal poverty threshold.

In contrast to the large gap between state jury pay and these thresholds, today's federal jury compensation differs from the federal minimum wage by only 3%, assuming that most jurors do not serve over thirty days, which would qualify them for increased pay.<sup>289</sup> Aside from today, periods in which both the minimum wage and federal jury compensation have been closest have occurred between 1945–47 and 1956–60. However, a comparison between changes in the federal jury fee and the minimum wage in Figure 7, below, reflects that fluctuations in both amounts occurred almost simultaneously, reinforcing the assumption that the same economic factors influenced both fees.

Part of the reason for states' lower jury compensation rates may relate to the fact that few states have regularly updated fees. On average, states have modified their jury fees seven times since 1870 or since their incorporation as a state if their incorporation occurred after 1870. An examination of the frequency of fee modifications occurring

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Farm Labor." *Id.* at 387, 408, 424, 440, 460. For 1997–2000, I took the average of the difference between the Bureau of Economic Analysis (BEA) per capita annual income and mean income from 1990–96 in *THE VALUE OF A DOLLAR*, *supra*, (18.75% difference), and added this amount to the per capita income reported in BUREAU OF ECON. ANALYSIS, U.S. DEP'T OF COMMERCE, NATIONAL INCOME AND PRODUCT ACCOUNTS TABLES, TABLE 8.7: SELECTED PER CAPITA PRODUCT AND INCOME SERIES IN CURRENT AND CHAINED DOLLARS, at <http://www.bea.gov/bea/dn/nipaweb/TableViewFixed.asp?SelectedTable=170&FirstYear=2000&LastYear=2001&Freq=Ann> (last modified Mar. 28, 2002) (on file with the *New York Journal of Legislation and Public Policy*).

For any year after 2000, I added the average of the per capita increase from 1999–2000 (\$1,059) with the 18.75% figure to achieve an estimate. To calculate daily pay based on annual figures for weekly hours, see EMMA S. WOYTINSKY, PROFILE OF THE U.S. ECONOMY: A SURVEY OF GROWTH AND CHANGE 460 tbl.XV.7 (1967) (1870–1909 = 10 hours per day, 6 days per week (312 days per year); 1909–31 = 8 hours per day, 6 days per week (312 days per year); 1932–present = 8 hours per day, 5 days per week (260 days per year)).

289. This appears to be a safe assumption. See Longan, *supra* note 4, at 936 (estimating normal length of federal jury trial to be five days).

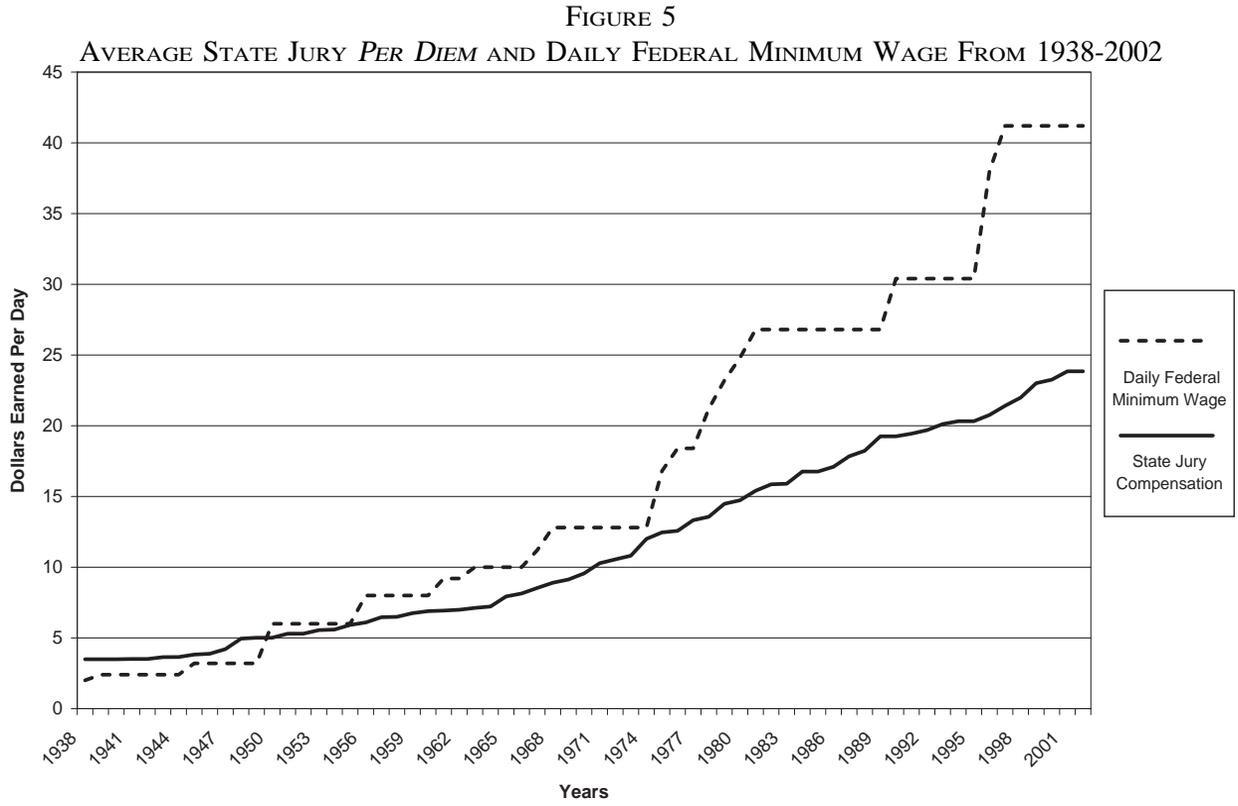


FIGURE 6

AVERAGE STATE JURY *PER DIEM* AND DAILY FEDERAL POVERTY THRESHOLD COMPENSATION FROM 1966-2000

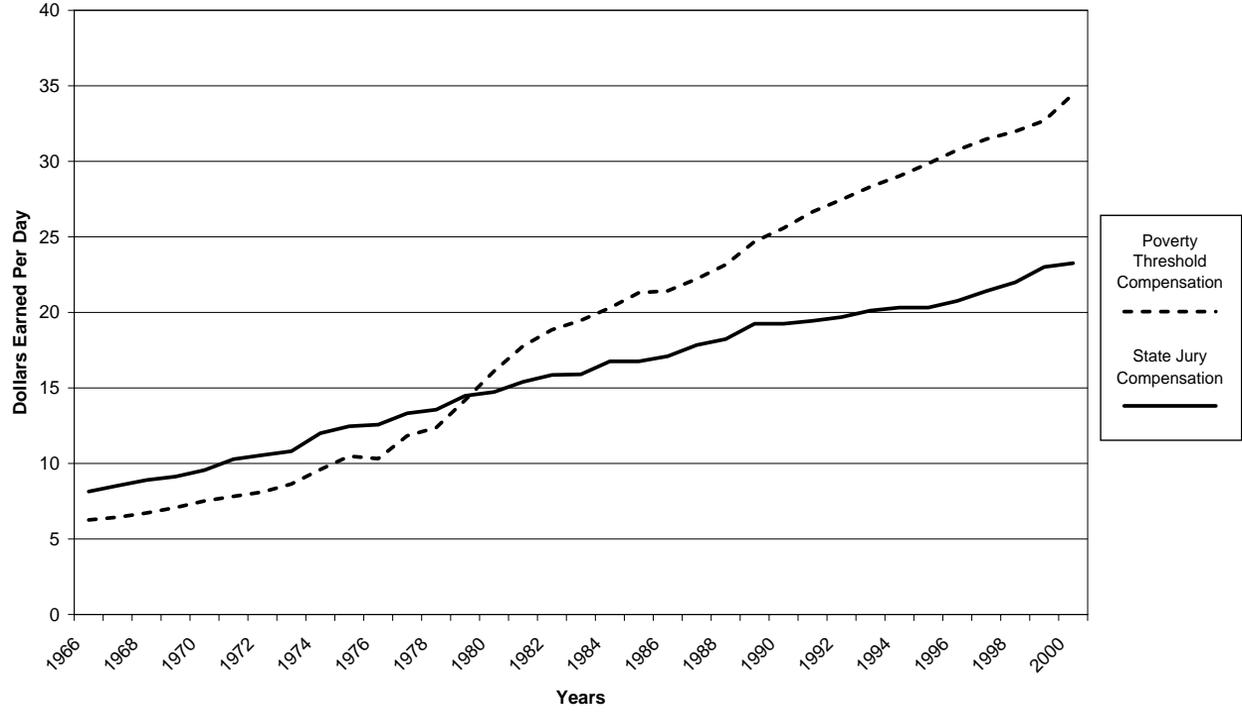
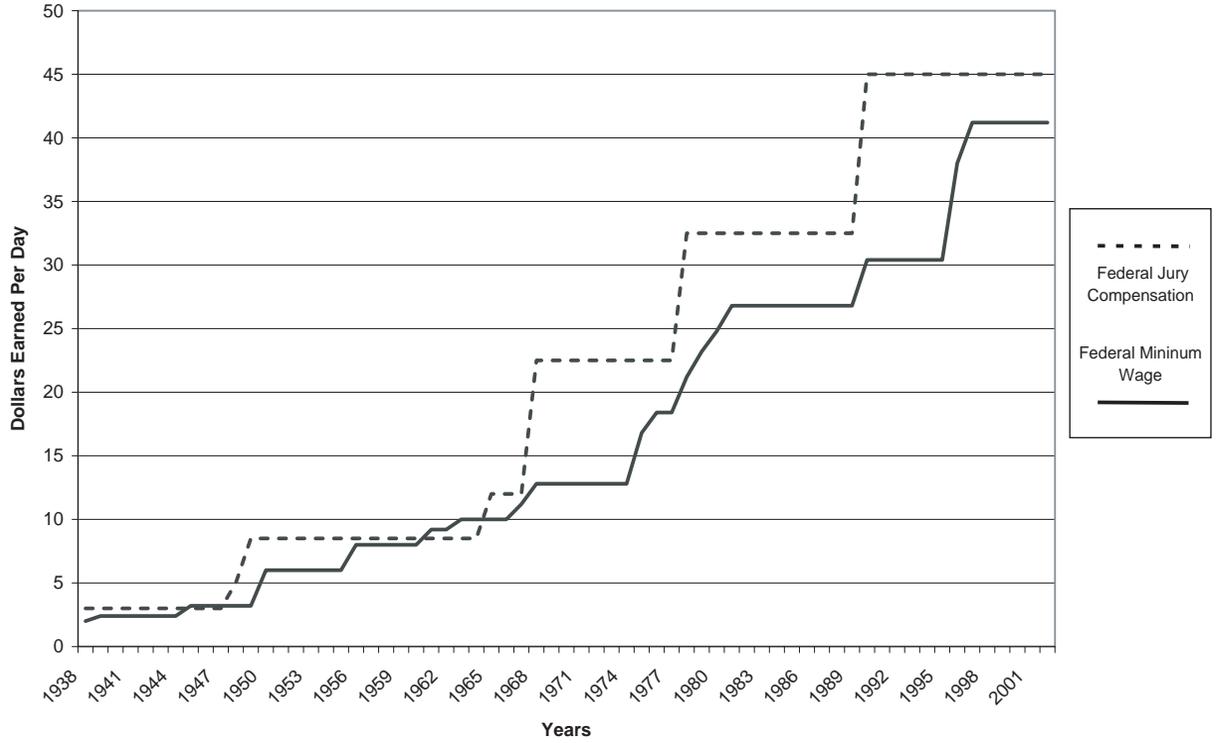


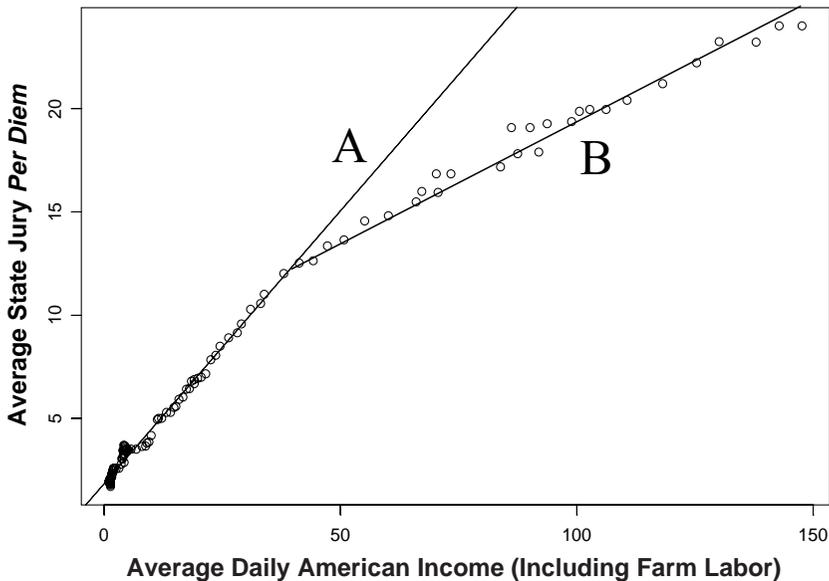
FIGURE 7

DAILY FEDERAL JURY COMPENSATION AND DAILY MINIMUM WAGE COMPENSATION FROM 1938-2002



among states over time reveals more activity by states between 1940 and 2000 than between 1870 and 1930. Along the time continuum, the decades in which all states modified fees the most were the 1940s (with forty-four alterations of fees in that decade) and the 1970s (with forty-one fee alterations). Even upon consideration of these more recent fee modifications, the amounts of those changes still left jurors in a financial position that was worse than the prior time frame. Albeit there were fewer modifications of jury compensation between 1870 and 1930; in those years, the few changes that occurred better reflected alterations in living costs. Approximately fourteen years have elapsed since jurisdictions last modified their juror compensation. Figure 8, below, compares average state jury compensation with average daily income.

FIGURE 8  
TRENDS IN DAILY AVERAGE INCOME (INCLUDING FARM LABOR) AND  
THE AVERAGE STATE JULY *PER DIEM* FROM 1870-2002



In the figure above, Line A estimates the relationship of these variables if states had continued to pay jurors relative to their income consistent with years prior to the 1940s. That time frame, however, marks the point at which the relationship changed. The increased horizontality of the relationship from that period (depicted with less concentrated dots on Line B), represents fewer jury fee increases occurring simultaneously with income changes over the years. The horizontal tapering of the line indicates that jurors are now earning less

jury compensation in relation to average wages than they had been in prior years when the two rates were equivalent. In sum, it is clear that the federal jury compensation amounts continued to account for the jurors' minimal financial needs while most states neglected this consideration. The following Part will propose a method by which states can determine the minimal jury compensation they should provide in order to avoid inflicting economic harm on those who serve.

### *E. A Proposed Jury Compensation Index*

Part II.D raised a number of questions about current jury compensation rates, especially among the majority of states, which provide pay well below the minimum wage and poverty threshold. Are states obligated to consider prevailing costs of living, to pay jurors the federal jury rate, to pay a standard minimum amount, or to structure their payment systems by some other standard? Trends in federal jury compensation provide strong support for paying jurors at approximately the federal minimum wage. After all, the federal government has been setting jury fees since 1790, a practice that provides Congress with more reason to remain true to the intentions of the framers of the jury compensation system.<sup>290</sup> However, until states either are compelled by law or willingly adopt a national jury compensation standard, they are free to institute any reform of jury fees or no reform whatsoever. Assuming that state legislators are sensitive to the needs of their constituents, and that they have been searching for standards for jury compensation in earnest, the data presented above clarifies a great deal about the historic purpose of jury compensation and how, somewhere along the time line, that purpose was lost by many states.<sup>291</sup>

The obligation of a state to relieve a juror's financial hardship is difficult to grasp because it may exist in a moral sense or in a legal sense, a distinction that the federal jury compensation statutes do not address on their face.<sup>292</sup> In fact, even the federal jury compensation

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290. See *supra* notes 267–270 and accompanying text (discussing early efforts to set federal jury compensation).

291. Based on the various figures presented above, it appears that a majority of states completely lost sight of their duties to ease jurors' financial hardship beginning in approximately 1980. After this year, instead of reflecting the minimum wage, most state fees plummeted far below the federal poverty threshold, see *supra* Figure 6, which compares state jury compensation to the federal poverty threshold, whereas federal jury compensation has dropped below the minimum wage only once and remains above the minimum wage in the present. See *supra* Figure 7 (comparing federal jury compensation with federal minimum wage).

292. The key issue is how to classify the government's obligation—essentially, the distinction is between positive and negative rights. See Penney Lewis, *Rights Dis-course and Assisted Suicide*, 27 AM. J.L. & MED. 45, 50 (2001) (explaining that nega-

provisions indicate limits on jurors' rights to financial relief. There is absolutely no statutory support for a duty on the part of a state to replace jurors' actual lost income. Jurors were never paid wages comparable to those earned by plantation owners or wealthy businessmen in the 1700s, 1800s, or at any time in the history of the nation.<sup>293</sup> In general, jury compensation statutes have attempted to protect the interests of those who would suffer the greatest financial burdens due to their lack of financial reserves.<sup>294</sup> In response, the statutes have identified a ceiling on how much jurors should be paid, which falls below the average American's actual income loss. The historical record alerts us that a floor as well as a ceiling should exist on jury compensation.

To fulfill the duty to compensate jurors adequately, it is essential to determine the minimal compensation that any state owes to its jurors. Determining where this floor lies involves more than merely adopting the prevailing federal minimum wage. Although this option may be appealing, *Brouwer v. Metropolitan Dade County* alerts us that the federal minimum wage was not intended to determine the compensation of jurors.<sup>295</sup> Adhering to the intentions of the framers of the jury compensation system, the formula proposed by this Article includes the federal minimum wage as one of the numerous factors Congress considered when implementing its jury compensation rates after shifting from using the prevailing wages earned by Americans in making its determination.<sup>296</sup>

Regression analysis seemed to be the appropriate method of understanding the components of federal jury compensation because it appeared that the same influences on the federal minimum wage over the years influenced federal jury compensation rates. The analysis be-

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tive right is "a right to non-interference" in which "others have a duty not to interfere with the individual[ ]," while "positive or welfare right" means that "others have a duty to assist the individual"). If jurors are owed only a right of non-interference by the government with their right to serve as jurors, the adequacy of compensation is no longer a relevant inquiry. However, if jury service is viewed as a positive right, then the same inquiry is hugely relevant. These two perspectives raise concerns similar to those raised in *supra* Part I.E with respect to distinguishing between the civic virtue and economic perspectives of jury duty.

293. See *supra* Figure 3 (demonstrating that jury daily wages were comparable to average daily wages of ordinary laborers).

294. *Id.*

295. See *Brouwer v. Metro. Dade County*, 139 F.3d 817, 819 n.1 (11th Cir. 1998) (citing federal jury compensation statute as proof that Congress did not intend that jurors be covered by minimum wage).

296. See *supra* text accompanying notes 288–289 (describing significant changes in compensation trends beginning in 1940s).

low focuses on daily federal jury compensation<sup>297</sup> and its relation to the amount Congress has prescribed as the minimum wage. This relationship was hypothesized to be a linear one, meaning that an increase in one variable would result in a proportional increase in the other. In deciding which model to use, quadratic, linear, and cubic terms were analyzed with an intercept. All were significant except the intercept term ( $p = .7887$ ). The best equation was a cubic model with no intercept. Data for the period inclusive of 1938–2002 revealed the following formula as the best match for the data set:<sup>298</sup>

$$JP = 1.1499(MW) + 0.0239(MW)^2 - 0.0006(MW)^3$$

In the equation above, JP represents the appropriate daily minimum rate states should pay to jurors and MW represents the daily equivalent of the prevailing federal minimum wage at any given point in time. The federal minimum wage was used as the independent variable and federal jury compensation was used as the dependent variable. The whole equation presents a method to determine minimum jury compensation based on the minimum wage at the time of its calculation. If the federal minimum wage equated to \$48.00 dollars per day, the daily jury compensation equation would indicate a corresponding rate of \$43.91 per day, only \$4.09 below the minimum wage.<sup>299</sup>

Using this equation at the state level would enable legislators to increase jury pay automatically every time the federal minimum wage increases. This should remedy the problem of inadequate compensation leaving jurors unable to sustain themselves. The equation also provides Congress guidance on when to increase federal jury fees, if Congress fails to increase jury fees along with the federal minimum wage. Most importantly, states with fees falling short of the poverty line should adopt the equation as a guideline to determine the *minimal* rate of compensation to which jurors are entitled. By no means is this equation intended to indicate amounts to which higher paying states should reduce their fees. The following Part explores the ways that the proposed jury compensation standard will assist legislators who

297. The amounts representing daily federal jury compensation were the approximate midpoints between rates paid to jurors serving less than thirty days and those serving beyond the thirty day threshold. For example, the midpoint for federal jury compensation since 1990 was  $(\$40.00 + \$50.00)/2 = \$45.00$ .

298. Adjusted  $R^2 = .9856$ ;  $F = 1,481$  on 3 and 62 degrees of freedom; Residual standard error = 3.188 on 62 degrees of freedom;  $p < .0001$ .

299. In computing the equation:  $1.1499 (\$48.00) + 0.0239 (\$2,304.00) - (0.0006) (\$110,592.00) = \$43.90$ .

currently have no means to determine or justify the need for jury fee increases.

#### F. *Relieving the Burdens of Legislators*

“Whereas it has been ascertained by the Arkansas General Assembly that the rate per day being paid for jury service is wholly inadequate thereby forcing jurors to serve at a financial loss, and there is urgent need for remedying this inequity . . . an emergency is hereby declared to exist.”<sup>300</sup> With this statement, the Arkansas legislature raised jury pay from \$3.00 to \$7.50 per day in 1953.<sup>301</sup> The fee hike followed the pattern of prior acts in other jurisdictions, in which a state of emergency had likewise been declared so that the act could take effect immediately.<sup>302</sup> In practically every state’s history, fee increases have often occurred on this “emergency” basis. Although states today do not resort to the emergency language as often, the great majority of states continue to lack any standard indicating when or by what amount they should increase jury fees.<sup>303</sup>

California’s experience with jury compensation is perhaps the most telling. In 1957 California began to pay its jurors \$5 per day.<sup>304</sup> By 1998, the fee was still at this low level. Even after New York had increased its jury fee to \$40.00 per day, legislative efforts to raise jury compensation in California continued to fail.<sup>305</sup> In 2000, after years of struggle, the state legislature finally agreed to raise compensation to \$15.00 a day, after the juror has served their first day without pay.<sup>306</sup>

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300. Act of Feb. 9, 1953, No. 46, § 5, 1953 Ark. Acts 169, 170.

301. See Act of Mar. 28, 1917, No. 452, §§ 5, 23, 1917 Ark. Acts 2042, 2045, 2050 (establishing one dollar rate and declaring emergency).

302. See, e.g., Act of Mar. 15, 1881, ch. 40, § 3, art. 1081, 1881 Tex. Gen. Laws 31, 32 (“Whereas, the present law entails upon citizens of the State services burdensome, and in many instances unremunerated, and thereby creates an imperative public necessity and an emergency for the immediate passage of this act, it should therefore take effect and be in force after its passage.”); cf. Act of Apr. 11, 1949, ch. 129, sec. 2, § 10042, Tenn. Pub. Acts 413, 413 (raising jury fees because “the public welfare require[ed] it”).

303. See *supra* text accompanying note 43 (explaining that only New Mexico and Oregon have indexed jury fees to minimum wage).

304. See Act of July 4, 1957, ch. 1406, § 1, 1957 Cal. Stat. 2740, 2740.

305. See Editorial, *No Way to Treat a Juror*, SAN DIEGO UNION-TRIBUNE, May 22, 2000, at B6 (exploring California’s legislative history of jury compensation and Governor Pete Wilson’s veto of proposed fee increase).

306. See Act of July 8, 2000, ch. 127, sec. 1, § 215(a), 2000 Cal. Adv. Legis. Serv. 127 (Deering).

However, even this new rate still leaves many jurors exposed to substantial financial loss.<sup>307</sup>

The tough question is why states have not adopted fee increases as part of their comprehensive efforts to encourage juror participation. The answer appeared most vividly in the 1993 American Bar Association (ABA) publication *Standards Relating to Juror Use and Management*.<sup>308</sup> After making several attempts to articulate a standard for adequately compensating the nation's jurors, the ABA's Committee on Jury Standards admitted defeat.<sup>309</sup> Although they were concerned with the implications of undercompensation—foremost, the lingering threat of jury no-shows as a result of low pay—committee members found themselves unable to define a monetary cutoff.

The comments of the committee, though inconclusive, hinted at the concept of using costs of living and income levels to determine an appropriate standardized rate.<sup>310</sup> That the committee could not recommend a uniform standard for setting fees was predictable. Fifty years before, members of a congressional committee that pondered the same question publicly admitted that the fees they had set were “more or less arbitrary.”<sup>311</sup> Congress's reasons for settling for imprecision in 1949 were practically identical to the ABA's reasons for doing so in 1993. Both groups commented on the difficulty of creating a sliding scale that would alleviate jurors' hardships at all income levels.<sup>312</sup> Both observed the tremendous difficulty, if not the impossibility, of treating economic conditions in different regions similarly when many states are diverse enough to resemble miniature nations, complete with their own particularized customs, cultures, and ways of survival.<sup>313</sup>

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307. See LAO REPORT, *supra* note 41, at D-90 to D-91 (explaining inadequacy of jury fees as compared to parking and eating costs).

308. COMM. ON JURY STANDARDS, AM. BAR ASS'N., *STANDARDS RELATING TO JUROR USE AND MANAGEMENT* (1993) [hereinafter COMM. ON JURY STANDARDS].

309. See *id.* at 135 (“No specific amount is included in the standard [suggested by the ABA] because of the variation in juror fees and economic conditions around the country.”) (footnote omitted).

310. See *id.* (“[F]ee that is reasonable in one state or local jurisdiction may be far too low in another because of differing wage scales and living costs.”).

311. S. REP. NO. 81-187, at 2 (1949).

312. Compare COMM. ON JURY STANDARDS, *supra* note 308, at 135 (discussing ABA's concerns with establishment of standard), with S. REP. NO. 81-187, at 2 (“[I]t is recognized that certain [individuals summoned by the court] will not, under the proposed rates, be adequately compensated. In order to fairly compensate everyone appearing . . . it would be necessary to have either a graduated scale of fees, or, leave the amount of such fees in the discretion of the judge. Neither was considered feasible . . .”).

313. In fact, in the 1790s, when developing the national scales for congressional juror compensation, the Attorney General reportedly experienced a similar difficulty.

Since the ABA's 1993 report, other groups of scholars have revisited the issue. The National Center for State Courts's examination of jury trial innovations explored various methods to make jurors' experiences more pleasurable.<sup>314</sup> Some might consider these innovations to be a sort of psychological compensation or intrinsic reward that serves as the equivalent of cash payment, but none will ever be sufficient to ensure that jurors are able to sustain themselves. And while a great many states are at least considering jury reform, most sidestep the issue of increasing fees for the same reason as the ABA and the Congress, imagining the task to be overly difficult and confusing.

Compensating jurors to meet their basic financial needs is not as difficult as legislators might suggest. Although state legislatures provide various justifications for retaining minimal levels of jury compensation, their swift response to the financial needs of citizens serving as poll workers casts serious doubt on their assertions about the performance of public duties. In the State of Kansas, for example, while jurors in Kansas City receive a *per diem* of \$10.00, election workers are paid \$80.00 per day.<sup>315</sup> A number of persons supporting jury fee increases have expended a great deal of effort to highlight the apparent inequity of paying jurors less when they do so much more than poll workers who are basically paid to sit passively throughout the day.<sup>316</sup> Most counties have indexed poll worker pay to either the

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Unlike modern policymakers, however, he set a national standard that prevailed for some time. *See supra* notes 267–270 and accompanying text.

314. *See, e.g.*, JURY TRIAL INNOVATIONS, *supra* note 14, at §§ II-1, II-8, IV-5 (reviewing jury education campaigns that provide video introductions to jury service, legislative designations of "Jury Service Appreciation Week[s]," jury orientation via cable television, and providing jury tutorials to further explain jurors' roles and clarify complex information). These considerations also include procedures allowing jurors to take notes during trial, providing a greater number of computer simulations to present difficult information, "reordering the sequence of expert testimony" for better factual analysis by the jury, summarizing depositions, allowing jurors to question witnesses, encouraging attorneys to present short summaries to update juries during the trial, and requiring attorneys to use plain English. *See id.* §§ IV-3, IV-7, IV-9, IV-10, V-7, V-10, V-11. Although favoring systems that pay jurors more money after a certain number of days, as evident in the title of § II-3, "A More Sensible Way of Paying Jurors," the editors neglect to recommend any specific amount of compensation, and note the "[d]isadvantage" of higher implementation costs for these time-sensitive approaches. *Id.* at 32–33.

315. *Compare* KANSAS CITY BD. OF ELECTION COMM'RS, ELECTION JUDGES NEEDED, at <http://www.kceb.org/ejudge.pdf> (last visited April 6, 2002) (reporting fee) (on file with the *New York University Journal of Legislation and Public Policy*), with *supra* Figure 2 (depicting current Kansas jury pay structure).

316. For example, former Judge William Pfeuffer of the 207th District in Texas succeeded in persuading the County of Comal to pay jurors the prevailing poll worker rate. His tactic was simple: "I asked the commissioners, 'Don't you think the jurors

state or federal minimum wage.<sup>317</sup> In light of jurors' heightened sacrifices of time and energy, it makes little sense that only New Mexico and Oregon have indexed their jury fees in any way to the minimum wage.<sup>318</sup>

Claiming that they are unable to set a uniform national standard for jury compensation, legislators are not suggesting that standards do not exist. Nor are they indicating that such standards have not existed in the past. What they are really saying is that their research has failed to identify the factors that explain jury fee modifications. This result is hardly surprising given most legislators' reliance on the functions of the jury in describing why fees should or should not be raised.<sup>319</sup> But explanations for a failure to increase compensation based on the jury's functions, although projecting the appearance of justification, are still arbitrary. Given at least two dozen purposes for which the jury has been noted, prioritization of any one function over another demands exactly the type of standardization that legislators doubt is possible in

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are at least worth as much as election clerks?" and they couldn't really argue with that." Todd, *supra* note 31, at 19.

317. See, e.g., IDAHO CODE § 50-409 (Michie 2000) ("Compensation for the election judges and clerks . . . shall be not less than the minimum wage as prescribed by federal law."); N.D. CENT. CODE § 16.1-05-05 (1997) (prescribing that "poll clerks . . . must be paid at least the state minimum wage"); WYO. STAT. ANN. § 22-8-116 (Lexis 2001) ("If a flat rate is paid [to poll workers], said sum shall not be less than the state hourly minimum wage multiplied by the number of hours polls are open plus one (1) hour."); NEW YORK CITY VOTER ASSISTANCE COMM'N, BECOME AN ELECTION DAY WORKER, at [http://www.ci.nyc.ny.us/html/vac/html/news\\_worker.html](http://www.ci.nyc.ny.us/html/vac/html/news_worker.html) (last visited Mar. 3, 2002) (reporting uniform rate in New York City for poll worker pay of "\$200.00 per day (from 6:00 a.m. to 9:00 p.m.)") (on file with the *New York University Journal of Legislation and Public Policy*); SCOTT COUNTY AUDITOR, SCOTT COUNTY POLL WORKERS, at <http://www.co.scott.ia.us/auditor/pollworkers.html> (last visited Mar. 3, 2002) (reporting poll worker compensation rate of \$5.65 per hour and \$6.00 per hour for chairpersons) (on file with the *New York University Journal of Legislation and Public Policy*); COLLIN COUNTY, COLLIN COUNTY ELECTIONS: ELECTION WORKER RECRUITMENT, at [http://www.co.collin.tx.us/elections/election\\_information/election\\_worker\\_recruitment.jsp](http://www.co.collin.tx.us/elections/election_information/election_worker_recruitment.jsp) (last visited Mar. 3, 2002) (noting that most election workers in Collin County, Texas are paid \$6.00 per hour) (on file with the *New York University Journal of Legislation and Public Policy*). This contrasts sharply with the jury pay available in many of these jurisdictions. See *supra* Figure 2 (listing current jury compensation in various jurisdictions). For those concerned with the fact that a poll worker voluntarily associates with the county and receives pay, the Eighth Circuit Court of Appeals recently rejected the view that poll workers were employees. See *Evers v. Tart*, 48 F.3d 319 (8th Cir. 1995) (rejecting claim on practically same grounds used to reject jurors as employees in context of Fair Labor Standards Act).

318. See sources cited in *supra* note 39 (setting out unique jury compensation standards in both states).

319. See *supra* Part I.C.2 (exploring many functions of jury); Figure 1.

the case of fixing a single rate.<sup>320</sup> Professor Dale Broeder, who worked on the Chicago Jury Project in the 1950s, admitted just as much in his seminal article on the functions of the jury. He explained, “The striking fact . . . is that no one knows how well these supposed [symbolic or extralegal] functions of the jury are performed. Prevailing knowledge of the juror’s ability to perform the *strictly legal* tasks assigned to it is almost equally lacking.”<sup>321</sup> Broeder went on to describe a “universal public ignorance of the jury’s abilities”<sup>322</sup> that seems equally applicable today in current debates on the utility of the jury in society. From these difficulties, it is clear that a new paradigm is needed to resolve the dilemma of those legislators who are searching for a method to update jury fees. The proposed jury compensation index presents such an alternative.

### III

#### POLICY CONSIDERATIONS FOR STATES CONSIDERING A JURY COLA

Even where the law has not directly announced a duty to compensate jurors based on their financial hardships, public policy supports such a duty. As one scholar has noted, “Imposition of a duty by the state, whatever its support in history and tradition, raises substantial constitutional issues and is perhaps even more vulnerable on economic and other policy grounds.”<sup>323</sup> This Part considers the non-legal reasons supporting and militating against the implementation of a nationwide jury COLA.

##### A. *Reasons Favoring Adoption of New Jury Compensation Standards*

###### 1. *The Potential for Increasing Summons-Response Rates*

Although researchers can only speculate as to the causes of social phenomena, recent events in El Paso County, Texas, reveal that the number of jurors who appeared in response to summonses more than doubled after the county raised trial jurors’ fees from \$6.00 to \$40.00 per day.<sup>324</sup> It took only three months for court administrators to note this remarkable difference. The El Paso experiment illustrates merely

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320. See *supra* Part I.C.2 (exploring many functions of jury); Figure 1.

321. Broeder, *supra* note 121, at 386.

322. *Id.*

323. Shapiro, *supra* note 159, at 738–39.

324. Todd, *supra* note 31, at 18. Individuals summoned but not selected are still paid \$6.00 a day. *Id.*

one of a number of jurisdictions where jurors began to respond to summonses in significantly greater numbers after courts substantially raised fees.<sup>325</sup>

Summons-response rates directly relate to the cross-sectionality requirement, especially given the problem of ensuring minority participation on juries. In this respect, many studies indicate the fact that people of color earn substantially less than Caucasians, which creates burdens for them when they must miss work.<sup>326</sup> From these statistics, it seems clear that minorities will likely evade jury duty more often than any other group in an effort to maintain their income.<sup>327</sup> Put differently, minority groups evade jury service because they are more likely to have jobs that will not pay them a decent wage while they serve.<sup>328</sup> Also affected are minority defendants in criminal cases who

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325. See, e.g., Curriden, *supra* note 11 (describing how after New York raised jury pay “five-fold,” “[i]n New York City, which represents half of the state’s population and where the problem [of juror non-response] was most acute, 37 percent of people summoned now reported as ordered, up from 12 percent five years ago”).

326. See, e.g., HEINTZ ET AL., *supra* note 25, at 76 fig.4.9 (observing that “[b]etween 1979 and 1998, most men and women of color lost ground relative to whites of the same gender. . . . Increased racial inequality reflects the growing pay gap between less educated and more educated workers. Cutbacks in government jobs and a weakened commitment to fighting racial discrimination have also played parts”).

327. This result may also arise because minorities are paid so little that they lack enough savings to see themselves through jury service. See, e.g., Pusey & Curriden, *supra* note 11 (“Lower-income brackets are hit the hardest. Whether they showed or not, 40 percent of those surveyed with family incomes of less than \$35,000 said their employers cut or withhold pay during jury service. Only 14 percent of those with incomes above \$35,000 said they would lose money by serving.”).

328. The appellant in *People v. Stansbury*, 846 P.2d 756 (Cal. 1993) (en banc), pointed to a significant statistical disparity between Hispanic jurors excused on the basis of severe economic hardship and Caucasians. While acknowledging the nexus of hardship underlying these excuses, the court still rejected the claim on the grounds that other reasons also accounted for excuses and that statistics alone do not prove systematic defects. See *id.* at 782–83. But see Deborah A. Ramirez, *The Mixed Jury and the Ancient Custom of Trial by Jury De Medietate Linguae: A History and a Proposal for Change*, 74 B.U. L. REV. 777, 800 (1994) (“Minorities are disproportionately represented in low-skill, blue-collar jobs, and are disproportionately excused because of the economic hardship that jury service would present. As a result, minorities are almost always underrepresented in the jury venire.” (citing Nancy J. King, *Racial Jurymanering: Cancer or Cure? A Contemporary Review of Affirmative Action in Jury Selection*, 68 N.Y.U. L. REV. 707, 716–17 & nn.27–28 (1993))).

Although most of the former comments relate to hardship excuses rather than summons responses, consider the pervasiveness of the latter problem. See Symposium, *The Selection and Function of the Modern Jury* (panel 2), 40 AM. U. L. REV. 573, 579 (1991) (recording comments of Ronald Olson, of Munger, Tolles & Olson, on danger of jurors “who self-select out[,] [who] are those who do not want to bother with jury service [or] who feel that their time is too important to waste in the courthouse” and further alluding to fact that such individuals have number of resources with which to escape jury duty). Self-selection out of jury service, or “ducking jury duty,” is so prevalent among minorities that it has been compared with “the peacetime

may be denied the opportunity to have a true jury of their similarly-situated peers deciding their fate because the only people serving are those who can afford to do so.<sup>329</sup>

The courts have responded to challenges from defendants in a routine way when the issues of inadequate compensation and cross-sectionality arise in the same argument. Although aware of the potential that overrepresentation of only one race or ethnicity on the jury can bias jurors' verdicts, the courts have asked whether the government is responsible for systematically preventing a cognizable class of citizens from serving as jurors. Because such proof is difficult to obtain, this high standard has prevented the courts from paying minority jurors higher fees to increase their ability to participate by reducing their financial hardships. First, the courts explain that financially-strapped jurors, rather than the government, self-select out of jury duty by not appearing or by lying to get out of service.<sup>330</sup> Second, in order to demonstrate the absence of a cognizable class of jurors who face financial hardship, the courts point out many differences between those jurors who would face significant economic burdens if compelled to serve.<sup>331</sup>

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equivalent of draft-dodging." Deroy Murdock, *Are America's Juries Race-Obsessed?*, in *BLACK AND RIGHT: THE BOLD NEW VOICE OF BLACK CONSERVATIVES IN AMERICA* 87, 88 (Stan Faryna et al. eds., 1997). The point is simply that economic considerations are among the most significant motivators of such behaviors.

329. It is the exception rather than the rule that judges would cease trial proceedings on the grounds that minority representation is lacking on the jury. Yet, some judges have taken this defiant step to signify the importance of a fair trial. See David Zizzo, *Verdict Is in: Jury of Peers Hard to Find*, *DAILY OKLAHOMAN*, Sept. 11, 2000, at 1A (explaining how Oklahoma District Judge Susan Bragg "dismissed [a] group of 35 potential jurors because only one was black" and accepted defendant's assertion that he would not be able to have jury of his peers as African-American). Litigation specialists responded that such judicial intervention "has hardly happened anywhere" and is "highly unusual." *Id.*

330. See *State v. McKenzie*, 532 N.W.2d 210, 221 (Minn. 1995) (holding that loss of "[p]otential jurors 'self-selected' to be non-participants in the jury process, either by simply ignoring the summons to jury duty or by requesting to be excused for reasons of financial hardship," in case at bar and to criminal justice system at large, "was not the product of a systematic exclusion created by unfair or inadequate selection procedures, but rather occurred because of individual decisions made by potential jurors").

331. See *People v. DeSantis*, 831 P.2d 1210, 1219 (Cal. 1992) (en banc) (rejecting viability of an appellant's request for California jurors to be paid more than statutorily required \$5.00 *per diem*: "The only factor common to the excused venirepersons was the financial difficulty that participating in a protracted trial would cause. That is not enough of a common interest to form a cognizable excluded class"); see also *People v. Johnson*, 767 P.2d 1047, 1052 (Cal. 1989) ("[P]ersons with low incomes do not constitute a cognizable class"); *People v. Milan*, 507 P.2d 956, 962 (Cal. 1973) (rejecting claim that \$5.00 *per diem* created pool of jurors "composed of the wealthy, the retired, housewives, and those covered by contracts providing for payment during jury service").

Public policy reasons to increase jurors' compensation as a means to make their decisions fairer abound. It seems likely that increasing the *per diem* in accordance with costs of living at least provides the potential for the creation of a more representative jury pool. Even the chance for increasing the representativeness of the average jury panel by ten percent seems like a sufficient justification for upholding a duty to pay jurors adequately. Based on the data from El Paso County, the results of a substantial pay increase might exceed this estimate.<sup>332</sup>

## 2. *Psychological Fulfillment and Maslow's Needs Hierarchy*

While it is true that most jurors enjoy the experience of serving,<sup>333</sup> satisfaction has little relevance to overcoming financial burdens. Surely the jurors' smiles will become frowns when, after a month of considering even intriguing testimony, they must find a way to pay credit card bills, rent, and other living expenses.<sup>334</sup> Many jurors will resent jury service because it is not their choice whether or not to serve,<sup>335</sup> and, in combination with their feelings of underappreciation,<sup>336</sup> such circumstances pose a substantial risk that jurors will lash out against the legal system to even the score.<sup>337</sup> Perhaps a

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332. See Todd, *supra* note 31, at 18 (explaining El Paso County's increase in summons-response following County's increase in its jury compensation).

333. See MUNSTERMAN ET AL., *supra* note 6, at 28–37 (describing many jurors' positive reactions to their service on juries).

334. As with many jurors serving in protracted trials, David Oleson experienced the horror on a personal level. While he had notified the court that he had to support two teenage girls and that the contracting company for which he worked would not pay him while serving, Oleson's request to be excused had been denied. Bob Van Voris, *In St. Paul, Everybody Won But the Jurors*, NAT'L L.J., June 22, 1998, at A1. Not only did he have to sell his recreational vehicles to pay the bills, but he also ran several credit cards beyond their limits and ultimately refinanced the mortgage on his home to survive the ordeal. *Id.* As Oleson explained, "I can't make a \$1,300 [monthly] house payment on \$30 a day . . ." *Id.* (alteration in original). As Figure 2, *supra*, demonstrates, \$30.00 is well above the average state's compensation.

335. See Mark S. Sobus, *Mandating Community Service: Psychological Implications of Requiring Prosocial Behavior*, 19 LAW & PSYCHOL. REV. 153, 164 (1995) (explaining number of theories that lead to following conclusion: "[W]here people do not see their acts as self-determined there is a risk that internal motivation to do the acts will be diminished").

336. See DAVID A. STATT, *PSYCHOLOGY AND THE WORLD OF WORK* 287 (1994) (explaining equity theory, which recognizes that "we are pushed psychologically to *equalise*" the way that we are treated in comparison with others, as such comparisons are "the way we make sense of our lives." (emphasis in original)).

337. Cf. RICHARD C. HOLLINGER & JOHN P. CLARK, *THEFT BY EMPLOYEES* 142 (1983) ("When employees felt exploited by the company . . . these workers were more involved in acts against the organization as a mechanism to correct perceptions of inequity or injustice."). A judge, testifying about the potential for a jury pay increase

more substantial threat than retaliation is that jurors will not be able to participate to their fullest, which places in question their ability to serve any of the acclaimed jury functions noted earlier in Part I.C.2.

Psychological theory about how humans are motivated helps to shed light on why an increase in jury compensation could lead to juries that take their jobs more seriously and perform them more effectively. Psychologist Abraham H. Maslow's hierarchy of human needs, which describes the sources of human motivation, has often been used as a basis for such analysis.<sup>338</sup> The model appears as a triangle or pyramid with a number of levels representing certain types of objectives.<sup>339</sup> In order to set and achieve goals at the top of the triangle, one must satisfy the objectives of the levels below.<sup>340</sup> Maslow's model dictates that humans must first satisfy their needs for food, shelter, and water before they can recognize the intrinsic benefits of participating in an activity.<sup>341</sup>

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before the House Judiciary Committee, and later cited by Justice Frankfurter in his dissent in *Theil*, made clear how this point relates to the jury:

[I]t is easy to say that jury duty should be regarded as a patriotic service, and that all public-spirited persons should willingly sacrifice pecuniary rewards in the performance of an obligation of citizenship. With that statement I am in full accord, but it does not solve the difficulty. Adequate provision for one's family is the first consideration of most men. And if, with this thought predominant in a man's mind, he is required to perform a public service that means default of an insurance premium, the sacrifice of a suit of clothes, or the loss of this [his] job, he will entertain feelings of resentment that will be anything but conducive to the rendition of justice. In other words, persons with a grievance against the Government or who serve under conditions that expose them to self-denial are not likely to have the spiritual contentment and mental detachment that good jurors require.

*Improvement of the Jury System in the Federal Courts: Hearings on H.R. 3379, H.R. 3380, and H.R. 3381 Before the House Comm. on the Judiciary*, 79th Cong. 8 (1945) (statement of Hon. John C. Knox, United States District Judge for the Southern District of New York), *quoted in Theil v. S. Pac. Co.*, 328 U.S. 217, 231–32 (1946) (Frankfurter, J., dissenting).

338. See, e.g., Symposium, *Is There a Need to Amend the National Labor Relations Act?*, 52 *FORDHAM L. REV.* 1145, 1145 (1984) (using Maslow's theory of motivation to determine whether it is necessary to amend National Labor Relations Act).

339. See STEPHEN E.G. LEA ET AL., *THE INDIVIDUAL IN THE ECONOMY: A TEXTBOOK OF ECONOMIC PSYCHOLOGY* 31 (1987) (describing five levels of Maslow's pyramid).

340. See Betty D. Meador & Carl R. Rogers, *Person-Centered Therapy*, in *CURRENT PSYCHOTHERAPIES* 142, 156 (Raymond J. Corsini & Danny Wedding eds., 3d ed. 1984) (explaining Maslow's theory).

341. See generally Abraham H. Maslow, *Management as a Psychological Experiment*, in *CONCEPTS AND CONTROVERSY IN ORGANIZATIONAL BEHAVIOR* 60 (Walter R. Nord ed., 1972) (applying theory to employment motivation context); Abraham H. Maslow, *A Theory of Human Motivation*, 50 *PSYCHOL. REV.* 370 (1943) (introducing theory).

The dilemma for undercompensated jurors with no alternative source of income is that they may find themselves unable attain these most basic necessities. Their desires to serve the community and make a difference will be less relevant than their quest for subsistence.<sup>342</sup> The literature surveying industrial psychology explains that this sort of strain can influence people to conserve their energy and devote the most minimal efforts to labor-related tasks.<sup>343</sup> A number of courts have observed the potential for this reaction among underpaid jurors.<sup>344</sup> The threat that jurors will be prevented from contributing

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342. Consider the great many jurors who are forced to work the graveyard shift in addition to their jury service for fear of destitution. A number of commentators have noted this booming trend. *See* Van Voris, *supra* note 334 (describing “financially pressed juror [who] would go to work at four in the morning and work until he had to report to the courthouse at 9:15 a.m.”); Paula McMahon, *Ex-Juror Claims Service on Panel Cost Him His Job: Lawsuit Is Filed Against Company*, SUN-SENTINEL (Fort Lauderdale, Fla.), Mar. 9, 2000, LEXIS, Sunsen File (explaining how juror who served on six-month trial was fired, “even [though he] went into the office at night to do his work after hearing testimony during the day”). Washington State Superior Court Judge Robert Harris notes: “We’ve had people pull a night shift and come in the next day for jury duty. They’re sleepy.” Stephanie Thompson, *New Jury Rules Could Make Duty Less of a Chore*, THE COLUMBIAN (Vancouver, Wash.), Feb. 11, 2001, LEXIS, Colmbn File.

343. The following exchange between Judge Crosier and a perspective juror, Ms. Kathleen DeCarlucci, which ultimately led to her excuse from the venire, best illustrates this point:

THE COURT: Your situation is such that [your employer doesn’t] honor jury service by paying you while you are here? Are you just on a commission?

JUROR NO. 8: It’s counted against my time off. And if I don’t have enough days to compensate that, then I don’t get paid.

THE COURT: By days, you mean such as in lieu of vacation?

JUROR NO. 8: Yes, sir.

THE COURT: Well, is that going to impair your ability to sit here patiently and listen to this case and be fair and impartial to both sides?

JUROR NO. 8: I am concerned that I would be preoccupied with the fact that I am missing work.

THE COURT: Of course, you understand everybody here had probably rather be somewhere else.

JUROR NO. 8: Oh, I understand that. *It’s the potential I will lose pay.*

*Butler v. State of Texas*, 830 S.W.2d 125, 127–28 (Tex. Crim. App. 1992). In this case, the Texas Court of Criminal Appeals found that limiting the trial judge’s discretion to excuse venirepeople for inability to render a fair decision “would unnecessarily hamstring trial judges in the exercise of their duties.” *Id.* at 131.

344. For example, in *State v. McKenzie*, 532 N.W.2d 210 (Minn. 1995), the Minnesota Supreme Court remarked that the legislature should expect jurors to evade their duty if not paid reasonable fees, even in light of its recent introduction of noncash accommodations:

Although the jury selection process [of self-selection and excuse of financially burdened jurors from the pool] in this case violated no state constitutional limits, these facts illustrate the need for improvement in jury compensation. The legislature has made an effort to eliminate some of

their best efforts to the courts by their fears of financial loss echoes Benjamin Franklin's concerns about the volunteer night patrol.<sup>345</sup> While the courts need not eliminate the jury in favor of a corps of trained professionals as the colonies did with professional peace officers, providing for jurors' minimal financial needs is essential to ensuring that they can do their job effectively. The proposed index resolves these concerns.

### 3. *Shortcomings of the Survey Research Results*

A significant consideration thought to downplay the importance of jurors' financial burdens is their own level of motivation. According to this view, although some jurors may be experiencing severe financial hardships, the empowering nature of jury service justifies their hardship, giving them reasons to ignore their suffering and perform diligently nonetheless. The theory is based on juror satisfaction surveys. Yet, the most telling thing about these surveys can be gleaned from their name—the question of satisfaction sheds little or no light on the question of whether jurors are suffering from significant financial hardships. A recent study of Kansas jurors confirmed this important observation when researchers realized that their inquiries about satisfaction gave them a misleading impression that jurors' pleasure from serving on the jury was sufficient to overcome their financial burdens.<sup>346</sup> This distinction raises the important consideration of how such jurors dealt with financial hardship and how they balanced their duties as jurors with the duties required by survival. Of concern, the researchers commented:

We believe that the data . . . should signal some cause for concern. If you were about to constitute a petit jury from a pool of 50 citizens, for 17 out of the 50 jury experience will constitute an eco-

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the financial burdens of serving on a jury by statutorily providing for daily compensation for jury duty and reimbursement for round-trip travel, day care and parking expenses. Nonetheless, the financial hardship of serving on a jury is not equal: small businesses can't afford to pay employees indefinitely, self-employed people often can't be away for several weeks and low income people (particularly single women with children) need every dollar of their paychecks. If the state expects citizens to willingly meet their civic obligation to serve on a jury, some further effort to alleviate this concern may be necessary. However, such innovation cannot come on a case-by-case basis by requiring financially distressed or otherwise unwilling jurors to serve.

*Id.* at 221 n.11 (citation omitted).

345. *See supra* Part I.D.3 (explaining that volunteers often shirked their duties because they served without compensation).

346. Cann & Kaye, *supra* note 6, at 15.

conomic loss and for half of them (8 people) the loss would work a hardship. . . . Obviously, the question[s] of economic loss and hardship are related to income level. . . . Given that jurors need to devote their full attention to what is transpiring at trial, it is probably unfair to one or both adversaries to have jurors who are worried about the costs of being there.<sup>347</sup>

Given the law's treatment of jury service as a duty of citizenship,<sup>348</sup> one would expect jurors to give an enthusiastic answer to the question of whether they enjoyed their service for the simple reason of avoiding the perception that they are un-American. In the alternative, the psychological literature tells us that it is almost instinctual for people who have undergone emotionally trying experiences to cast them in the most positive light as a means of achieving a degree of inner peace.<sup>349</sup> Perhaps yet another reason why a default answer to the surveys appears as praise relates to how little people participating in community service of any type truly know about their own motivations.

In this regard, Professor Howard Radest explains that terms like "civic duty" or "community service" become elusive because justifications lack particularized support:

[T]he justification for being a doer of service is often put in terms of some larger goal—ideological, religious, political, moral—as in "I serve you by doing this because it is commanded of me" or "because it is the right thing to do," or "because it is expected of a citizen."<sup>350</sup>

At the end of the day, those who perform such services are left with insufficient explanations for why they actually engaged in the activity. As Rachel, a community service worker, notes:

After I realized how elusive the concept of community service was, I sat down for a long time to try to reason out these ideas for myself. I discovered that although I could come up with one concrete benefit of my own experience, a deeper valuing of education and more distinct sense of purpose, I still felt as though the question remained unanswered. . . . Even more surprising was the realization that . . . people felt that there was no need to question their community service; service was simply to be done and not examined. . . .

347. *Id.*

348. *See supra* Part II.D (explaining "civic duty" justification for compelling jury service without compensating jurors for their financial burdens).

349. Regarding the justification of past behavior, Professor Aronson and his colleagues explain: "[I]t is often possible for normal people . . . to put a slightly different spin on the existing facts, one that puts [them] in the best possible light." ELLIOT ARONSON ET AL., *SOCIAL PSYCHOLOGY: THE HEART AND THE MIND* 20 (1994).

350. RADEST, *supra* note 186, at 3.

For most people community service is a feeling. . . . It is simply a part of them and the benefits, which not one person with whom I spoke questioned . . . just melt into the fabric of the personality.<sup>351</sup>

Radest appropriately defines Rachel's dilemma as that of public service: "She knows she is doing a good thing but she cannot say what it is that she is really doing—and she is not alone."<sup>352</sup> Jurors face a similar confusion in figuring out exactly what the purpose of their duty is.

Even if current surveys indicate that jurors are satisfied with jury duty, this does not make consideration of jurors' financial compensation insignificant. Explaining that jurors are satisfied with their positions does not mean that they are unworthy of financial remuneration. That jurors are optimists should not prevent them from making ends meet. In this regard, the words of Maine Chief Justice Daniel E. Walthen drive home the main point: "It is one thing not to pay jurors a reasonable wage, it is quite another to make them pay for the privilege of serving."<sup>353</sup> In combination with the other concerns explored above, the benefits of adopting a new jury compensation standard that is based on satisfaction of jurors' most basic needs surely outweighs the associated costs.

## *B. Reasons Disfavoring Adoption of New Jury Compensation Standards*

### *1. The Potential for Encouraging Professional Jurors Who Would Transform the Meaning of Jury Service to Mere Employment*

In generations past, the term "professional juror" was widely used.<sup>354</sup> Practically every court had one. Usually, he was an elderly

351. *Id.* at 31 (citing Rachel Hochauer, *Untitled* (May 1991) (unpublished essay)) (omission in original).

352. *Id.* at ix.

353. Chief Justice Daniel E. Walthen, *The State of the Judiciary: We All Must Do Something About Justice*, A Report to the Joint Convention of the 119th Legislature, Maine (Feb. 15, 2000), at <http://www.courts.state.me.us/statjud00.htm> (on file with the *New York University Journal of Legislation and Public Policy*).

354. *See, e.g.*, H.B. WILSON, *THE AMERICAN JUROR* 30 (1868) (regarding professional jurors as "most contemptible class of hangers-on about courts of justice"); G. Carlton Jackson, *Jurors by Occupation*, VA. L. J. *reprinted in* 39 ALB. L.J. 77, 77–78 (1889) (explaining common characteristics of "professional jurors"). Some say the professional juror still exists today. *See Williams, supra* note 11, at 16 (noting that Arkansas is still home to "same few jurors [who] end up serving on case after case after case" and that "[t]he verdicts by these 'professional' jurors are unfair, unrepresentative and constitute a denial of true justice"). Others claim that the professional

man who had once occupied a respectable station in life but who had since lost his job or fallen on bad fortune.<sup>355</sup> Faced with inadequate sources of sustenance, he would turn to the local courthouse and befriend the bailiffs and other staff members.<sup>356</sup> Often, he would ask to be added to a list of locals who sought the opportunity to serve as jurors for the compensation they received. It was observed by many that these “professional jurors” had employment daily and often agreed with the majority position during deliberations so as not to gain a reputation for causing trouble, as their reputation for being good jurors encouraged court personnel to select them.<sup>357</sup>

While the legal system has evolved and most courts now prohibit jurors from serving repeatedly, concerns that financial gain will somehow taint the jury system persist to this day.<sup>358</sup> Today, however, that concern might take the form of jurors intentionally prolonging their service, especially during deliberations, in order to be paid more, or that they might be overly sympathetic to the state, which provides them with compensation for their time, in a criminal case. For legislators, there is practically no way to prevent either of these situations, making them both valid considerations for the committees currently wrestling with proposals for fee increases.

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juror has received a bad rap and have recommended moving to a volunteer jury system that values the professional juror’s enthusiasm. See Gary M. Galles, Editorial, *Time to Pay Jurors What They Are Worth*, SAN DIEGO UNION-TRIB., Mar. 29, 2000, at B-9 (“It is time to consider replacing our system of ‘drafting’ jurors with a system of ‘professional’ jurors paid for the value of their services.”).

355. See HENRY S. WILCOX, *FRAILTIES OF THE JURY* 89–90 (1907) (observing how professional juror “had passed his prime, and was no longer fitted for the little tasks which he once did . . . He drew no pension[, and] as a last resort to drive away the wolves of want, he hung about the court and sought a place as talesman on the jury.”).

356. See *id.* at 90 (“The sheriff was his friend, and wished to favor him in every way he could, so when talesman were needed to fill up the box, this needy gentleman was chosen. He always testified that he was qualified.”).

357. Wilcox, a practicing attorney in Chicago at the time, noted, about the professional juror:

He kept with the majority and signed the verdict that they wished. . . . His poverty made him as yielding here as he had ever been through life. He did not dare to hang the jury or refuse to take the way the largest number went, lest he might lose his chance to sit again.

*Id.*

358. See Editorial, *supra* note 189 (“The federal jury was an excellent example of the cross section of participants. Young, old, black and white were anxious to serve because they were rewarded with good compensation. In fact, many expressed their hopes that it would be a long trial, because \$40 a day was nothing to sneeze at.”).

2. *Studies Showing That Jurors of Low Incomes Are Still Satisfied With Jury Duty and Their Resulting Psychological Compensation*

Court administrators have long been students of intrinsic motivation—the notion that people participate in an activity not for financial gain, but rather to serve an idealistic purpose, do some good, or make a difference.<sup>359</sup> Jury commissioners often explain that it is not money that makes jurors appreciate their service but the enormous responsibility they have when they are sitting in the jury box. Many jurors respond the same way.<sup>360</sup> Among those jurors who are motivated by the sense of fulfilling a civic obligation rather than compensation, many may feel insulted by more than token compensation. To such people, substantial compensation detracts from the significance of their role as jurors and removes them from their temporary station of magistracy.<sup>361</sup>

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359. See S. ALEXANDER HASLAM, *PSYCHOLOGY IN ORGANIZATIONS: THE SOCIAL IDENTITY APPROACH* 97 (2001) (“An activity that is intrinsically motivated is one that is engaged in for its own sake because it is enjoyable or interesting, rather than because it is associated with an extrinsic factor like monetary reward.” (citations omitted)).

Professor Lepper’s research experiment with children and their drawings is often noted in the psychology literature as the prototype for intrinsic motivation. See generally Mark R. Lepper et al., *Undermining Children’s Intrinsic Interest with Extrinsic Reward: A Test of the “Overjustification” Hypothesis*, 28 J. PERSONALITY AND SOC. PSYCHOL. 129 (1973) (reporting results of study). This study, conducted with mere toddlers, was consistent with the findings of Professor Deci, who observed that payment diminished the interest of college students in an activity they would otherwise have enjoyed. Edward L. Deci, *Effects of Externally Mediated Rewards on Intrinsic Motivation*, 18 J. PERSONALITY AND SOC. PSYCHOL. 105 (1971). To show that material gain does not always explain people’s engagement in tasks, Professor Lepper and his colleagues selected a group of children who enjoyed drawing. During regularly scheduled drawing time, the aspiring artists were told that they would be rewarded for each completed drawing. When the students began treating this pleasurable act as a job, their production levels decreased substantially as they had lost the intrinsic incentive formerly associated with the activity. See Lepper et al., *supra*, at 135 (“In the expected-award condition, children showed decreased interest in the drawing activity after having undertaken it in order to obtain a goal which was extrinsic to the pleasures of drawing in its own right.”). Through blind review, the researchers also noted that the quality of the drawings was significantly worse in the reward-oriented group. *Id.*

360. See Van Voris, *supra* note 334 (“Despite the financial problems of some of the jurors, they say they were able to stay focused on [four-month long tobacco trial.]”); sources cited *supra* note 6 (discussing studies).

361. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 334-37 (Westvaco Corp. 1999) (1840) (“[The jury] invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society and the part which they take in its government.”).

Jurors may also be motivated to do their job effectively because of the potential consequences of not doing so. Many jurors will resist the temptation to evade service out of fear of fines or jail time.<sup>362</sup> Likewise, peer pressure may provide a powerful source of motivation in the jury room, leading many persons to expect that jurors will keep their peers participating in earnest throughout the process and will not tolerate those they know to be taking jury duty lightly.<sup>363</sup> Given the responsibilities and the penalties associated with jury service, it is perhaps the combination of guilt over not fulfilling their civic responsibility and fear of the potential punishment if they do not do so that legislators believe motivates jurors. Raising fees would do nothing to increase these types of motivation.

### 3. *The Impossibility of Proving a Causal Link Between Increased Jury Compensation and Increased Summons-Response Rates*

Many state legislators are reluctant to increase jury compensation because they lack evidence that it will improve jury summons-response rates.<sup>364</sup> Existing data from counties that have experimented with fee hikes are still questionable based on regional differences and varied living conditions.<sup>365</sup> Correlation hardly proves causation, and while research methods have improved measurably in the social sciences, simply observing how attendance and jury fees have correlated over time can never account for all of the factors that explain the juror's decision to appear.

Perhaps the real concern relates to economic principles of cost avoidance. More than likely, economists observe, rational workers will not remove themselves from their source of employment to accept

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362. Cf. Jeffrey A. Miles & Jerald Greenberg, *Using Punishment Threats to Attenuate Social Loafing Effects Among Swimmers*, 56 *ORG. BEHAV. & HUM. DECISION PROCESSES* 246 (1993) (discussing research results exploring effectiveness of threats in reducing group members' loafing behavior).

363. Cf. Kenneth H. Price, *Decision Responsibility, Task Responsibility, Identifiability, and Social Loafing*, 40 *ORG. BEHAV. & HUM. DECISION PROCESSES* 330, 331 (1987) (“[I]ncreasing individual identifiability, when task responsibility is shared, appears to reduce social loafing.”).

364. See Todd, *supra* note 31, at 19 (noting realistic conclusions of committee member proposing fee increase: “Davis said she does not expect the committee’s recommendation to include changing the current [jury] pay range because there isn’t enough data available to back it up. ‘You have to show (raising juror pay) has a direct correlation to (juror) participation and there isn’t enough data,’ she said”).

365. Cf. *supra* notes 308–313 and accompanying text (describing how these factors make setting uniform jury pay standard more difficult).

lower pay.<sup>366</sup> It stands to reason that unless all jurors are paid the same rate provided by their employers, a certain number will always attempt to evade service.<sup>367</sup> For these inevitable jury shirkers, the better solution may be more heavily enforcing fines or other penalties for noncompliance with jury summonses. The proposed jury compensation index would be unlikely to remedy this problem because it would not replace perspective jurors' total loss of income.

### CONCLUSION

It seems clear that the state and federal governments have an obligation to compensate jurors as a means to relieve their financial burdens. The issue is an important one because most current state juror compensation rates are so low that they fail to sustain jurors who are uncompensated by their employers during their service, are self-employed, or who must provide for dependents while they serve.<sup>368</sup> These low fees are even more troublesome because courts and commentators continue to praise jurors for their many contributions to society, seemingly ignoring jurors' financial needs and the potential repercussions of leaving them unfulfilled.<sup>369</sup> In light of this praise, lawmakers can reject fulfilling the government's duty to compensate jurors adequately on the basis that citizens owe the government a duty to serve on juries.<sup>370</sup> This public duty justification is terribly weak because the courts' analogies to other forms of public service ignore elements of those services intended to ensure against undue hardship, and that differentiate them from jury service.<sup>371</sup> Furthermore, a grow-

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366. See Donald L. Martin, *The Economics of Jury Conscripton*, 80 J. POL. ECON. 680, 688 (1972) ("Juror fees that fall considerably below the opportunity costs of draftees encourage these individuals to seek excuses, exemptions, and deferments. For any desired number of jurors, this raises the number of persons who must be initially called and examined before that demand can be satisfied.").

367. When people invest great effort into evading summonses, their actions can be seen as efforts to maximize wealth and minimize opportunity costs. Economists also liken these efforts to social welfare costs. On this view, perspective jurors who devote time and energy to evasion divert the same resources away from their jobs and cause societal losses in the long run. See *id.* at 683 (explaining how jurors' "foregone income, associated with the number of days spent on . . . jury duty, would . . . represent an opportunity cost to society").

368. See *supra* Introduction (characterizing many jurors' financial burdens); Figure 2 (depicting current rates).

369. See *supra* Part I.C.2 (describing many functions for which jury service has been celebrated); Figure 1.

370. See *supra* Part I.D (describing public duty justification for compelling jury service without financial consideration).

371. See *id.* (pointing out several flaws in courts' analogies of jury service to other forms of public service).

ing number of state supreme court interpretations of workers' compensation statutes have challenged the prevailing view by holding that jurors occupy the status of official appointees deserving of employment benefits rather than persons fulfilling a "civic duty" who are entitled to no such benefits.<sup>372</sup>

Notwithstanding several reasons to increase jury compensation, even those legislators who are in favor of amending the existing statutes are hard pressed to justify why fee increases are necessary from a statutory perspective or how much fees should be increased. Legislators lack support because there are no indexes providing direction.<sup>373</sup> To provide necessary guidance, this Article proposes a mathematical formula to aid legislators and courts in determining when to increase jury fees.<sup>374</sup> This proposed jury compensation index can be established by tracing federal jury compensation since 1790 and state jury compensation since 1870, and by focusing on the relationship of these jury fees with American's income rates during the same time periods.<sup>375</sup>

The proposed jury compensation index specifically accounts for the relationship between federal jury compensation and the federal minimum wage, given that Congress has often increased the minimum wage and federal jury compensation at much the same time.<sup>376</sup> States with jury fees falling below the minimum wage or the poverty threshold are therefore encouraged to adopt the jury compensation index as a method to remedy their neglect of this crucial standard. Although adoption of this jury compensation index would be costly, it seems the benefits of its adoption would far outweigh its costs—jurors would be more likely to serve and would be able to devote more energy to their obligations while serving.<sup>377</sup>

A final objection that could be raised to the adoption of the jury compensation index is that it would require states to spend money that they do not have on the compensation of jurors. In short, while it is possible that certain benefits, such as instituting a weekend or evening

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372. *See supra* Part I.B.2 (reviewing holdings of six courts finding jurors eligible for workers' compensation benefits on basis of their status as employees).

373. *See supra* Part II.F (highlighting drawbacks in legislators' approaches to amending jury compensation).

374. *See supra* Part II.E (presenting, explaining, and applying jury compensation equation).

375. *See supra* Parts II.B–D (investigating history of state and federal jury fee increases).

376. *See supra* Part II.D (expanding on Congress's reliance on federal minimum wage in setting federal jury compensation rates to meet jurors' financial needs).

377. *See supra* Part III.A (discussing benefits of instituting proposed compensation formula to determine minimal jury compensation levels).

trial to allow jurors the benefits of their regular work schedules, could substitute for low fees in relieving financial hardship, the importance of a fair fee cannot be underestimated.<sup>378</sup> My interviews with several jury consulting firms revealed that levels of compensation, while variable, signify researchers' expectations that jurors will commit significant energy to their jobs and take their duties seriously. As one consultant reported, "If it is an intellectual property matter, where you are paying people to sit through really *boring* stuff, then you have to pay them more. *Then*, you can insist that they pay attention and don't fall asleep."<sup>379</sup> Whatever fee the legislature chooses to implement, it should be high enough that the juror arrives at court with the understanding that their pay recognizes the importance of the service. Setting a low fee may send jurors the message that they will not be taken seriously when they put forth their best efforts. Put differently, adequate wages convey the message that with recognition comes responsibility.<sup>380</sup>

If state legislators are concerned about funding the necessary fee increase, perhaps they should ask themselves how much justice is worth in their courts. When police arrest suspected criminals, do they open the jailhouse doors because funds are lacking? Of course not. Counties find a way to pay the associated costs, just as they have developed ways to meet poll workers' financial burdens—even in the face of tight budgets.<sup>381</sup> Perhaps it is time to answer Judge Pfeuffer's question: "Don't you think the jurors are at least worth as much as election clerks?"<sup>382</sup> Or, better yet, Ms. Brouwer's: Isn't a juror wor-

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378. See *supra* notes 187–188 and accompanying text (describing alternatives under economic perspective of jury compensation that would assist jurors in meeting financial demands).

379. E-mail from David Island, President, Island Trial Consulting, to Evan R. Seamone (May 16, 2001) (on file with the *New York University Journal of Legislation and Public Policy*).

380. I should at least acknowledge the view that states might lose out whether they increase or maintain current rates. As Professor Martin explained, there are always two concerns regarding jury pay. On the one hand, the threat exists that jury pay is so low that a dearth of jurors will curtail the number of trials, shrinking the size of the jury, substituting forms of alternative dispute resolution, and causing delays in the judicial process where juries are required by law. On the other hand, raising compensation levels on par with what jurors "could earn elsewhere would make the jury trial prohibitively costly." Martin, *supra* note 366, at 698. The result would largely be the same—a possible reduction in the use of juries. This perspective is unpersuasive because it negates jury compensation increases and presents no feasible alternative.

381. See *supra* note 317 and accompanying text (exploring statutes providing for election workers' financial needs).

382. Todd, *supra* note 31, at 19; see also *supra* text accompanying note 316 (describing context of this inquiry).

thy of “a fair day’s pay for a fair day’s work?”<sup>383</sup> Can our responses be anything but “yes”? Should we reserve the question until we sit before twelve faces during the course of litigation to which we are parties, it may be too late to reap the jury’s many benefits.

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383. Plaintiff-Appellant’s Initial Brief at 39, *Brouwer v. Metropolitan Dade County*, 139 F.3d 817 (11th Cir. 1998) (No. 97-4802).

APPENDIX A  
HISTORY OF JURY COMPENSATION

In developing this Appendix, the author was mainly concerned with consecutive statutes from 1870 to the present for the reason addressed in Part II of the Article. Information in this Appendix dating before 1870 into territorial and colonial laws was developed based on a convenience sample of statutes available in the University of Iowa Law Library or ones that were sent by a particular state's law library to the author. Such statutes are intended to be a baseline for analysis, but this Appendix is by no means completely inclusive. The history of compensation recounted here is only that of compensation paid directly to petit jurors. It does not include fees paid to talesmen, jurors attending various other court proceedings, or jurors not actually selected to serve.

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
AL	1975	\$10.00						Act of Oct. 10, 1975, No. 1205, § 16-154, 1975 Ala. Acts 2384, 2507-08	
AL	1951	\$6.00						Act of Sept. 4, 1951, No. 625, § 3, 1951 Ala. Acts 1079, 1080	
AL	1947	\$4.00						Act of Aug. 7, 1947, No. 297, § 1, 1947 Ala. Acts 148, 148	
AL	1919	\$3.00						Act of Feb. 11, 1919, No. 35, 1919 Ala. Acts 39	
AL	1876	\$2.00						Act of Mar. 7, 1876, No. 55, § 1, 1876 Ala. Acts 174, 175	
AL	1852	\$1.50						ALA. CODE § 3481 (1852)	
AK	1981	\$25.00						ALASKA CT. R. ADMIN. 14(a) (1980) (on file with the <i>New York University Journal of Legislation and Public Policy</i> )	
AK	1977	\$20.00						Alaska Supreme Court Order No. 283 (effective July 1, 1977) (amending ALASKA CT. R. ADMIN. 17(a)) (on file with the <i>New York University Journal of Legislation and Public Policy</i> )	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
AK	1971	\$15.00						Alaska Supreme Court Order No. 130 (effective June 4, 1971) (amending ALASKA CT. R. ADMIN. 17(a)) (on file with the <i>New York University Journal of Legislation and Public Policy</i> )	
AK	1960	\$10.00						ALASKA CT. R. ADMIN. 17(a) (1960) (on file with the <i>New York University Journal of Legislation and Public Policy</i> )	
AZ	1970	\$12.00						Act of May 1, 1970, ch. 124, sec. 5, § 21-221(A)(1), 1970 Ariz. Sess. Laws 383, 385	
AZ	1956	\$8.00						Act of Apr. 9, 1956, ch. 91, sec. 1, § 21-221(A)(1), 1956 Ariz. Sess. Laws 142, 143	
AZ	1949	\$6.00						Act of Mar. 5, 1949, ch. 17, sec. 1, § 34-130(a), 1949 Ariz. Sess. Laws 26, 26	
AZ	1921	\$4.50						Act of Feb. 9, 1921, ch. 5, § 1, 1921 Ariz. Sess. Laws 4, 4	
AZ	1913	\$3.00						ARIZ. REV. STAT. tit. 15, § 3207 (1913)	
AZ	1887	\$2.00						ARIZ. REV. STAT. § 1981 (1887)	
AZ	1865	\$1.00		\$1.00				ARIZ. REV. STAT. ch. 57, § 14 (1865)	paying \$1 per day for civil trial or \$0 per day for criminal trial
AR	1999		\$35.00					Act of Mar. 16, 1999, No. 629, sec. 1, § 16-34-103(3), 1999 Ark. Acts 2280, 2281	paying at least \$35 per day
AR	1987			\$20.00				ARK. CODE ANN. § 16-34-103 (Michie 1987)	paying no more than \$20 per day
AR	1953	\$7.50						Act of Feb. 9, 1953, No. 46, § 2(c), 1953 Ark. Acts 169, 170	
AR	1947	\$5.00						Act of Feb. 7, 1947, No. 48, § 1, 1947 Ark. Acts 91, 92	
AR	1909	\$3.00						Act of May 31, 1909, No. 314, § 1, 1909 Ark. Acts 932, 933	
AR	1875	\$2.00						Act of Feb. 25, 1875, § 38, 1875 Ark. Acts 167, 185	
CA	2000	\$15.00						Act of July 8, 2000, sec. 1, § 215(a), 2000 Cal. Adv. Legis. Serv. 127 (Deering)	paying \$15 after the first day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
CA	1999	\$10.00						Act of Sept. 28, 1998, § 54.5, 1998 Cal. Adv. Legis. Serv. 931 (Deering)	raising fee to \$10 per day effective January 1, 1999
CA	1998	\$5.00						Act of Sept. 28, 1998, § 54, 1998 Cal. Adv. Legis. Serv. 931 (Deering)	
CA	1987		\$5.00	\$10.00				Act of July 7, 1987, ch. 134, sec. 1, § 196, 1987 Cal. Stat. 436, 437	paying between \$5 and \$10 per day
CA	1984		\$10.00	\$25.00				Act of Sept. 29, 1984, ch. 1640, sec. 1, § 196, 1984 Cal. Stat. 5915, 5915	paying between \$10 and \$25 per day
CA	1957	\$5.00						Act of July 4, 1957, ch. 1406, sec. 1, § 1143, sec. 3, § 196, 1957 Cal. Stat. 2740, 2740	separate civil and criminal provisions with same rate
CA	1923	\$3.00						Act of May 29, 1923, ch. 242, sec. 1, § 1143, 1923 Cal. Stat. 490, 490	paying \$3 per day in criminal cases
CA	1868	\$2.00						Act of Mar. 28, 1868, ch. 366, § 17, 1868 Cal. Stat. 436, 443	
CA	1855	\$3.00						Act of Apr. 10, 1855, ch. 74, § 14, 1855 Cal. Stat. 81, 86	
CA	1851	\$2.00						Act of Mar. 11, 1851, ch. 2, § 20, 1851 Cal. Stat. 31, 39	
CO	1989		\$0.00– \$50.00	\$50.00			3	Colorado Uniform Jury Selection and Service Act, ch. 136, sec. 1, § 13-71-126, 1989 Colo. Sess. Laws 765, 770	paying employees nothing, and reimbursing unemployed jurors up to \$50 per day for the first three days, and paying \$50 per day to all thereafter
CO	1955	\$6.00						Act of Mar. 21, 1955, ch. 150, sec. 1, § 56-6-1, 1955 Colo. Sess. Laws 395, 395	
CO	1933				\$3.00	\$4.50	14	Act of Mar. 16, 1933, ch. 118, sec. 1, § 7905, 1933 Colo. Sess. Laws 653, 653	paying \$3 per for the first 2 weeks, then \$4.50 per day thereafter in counties of the first class, and \$3 per day in all other counties

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
CO	1929				\$4.50	\$6.00	14	Act of Apr. 5, 1929, ch. 119, sec. 1, § 7905, 1929 Colo. Sess. Laws 425, 425	paying \$3 per day for the first 2 weeks, then \$4.50 per day thereafter in counties of the first class, and paying \$4.50 for the first two weeks, then \$6 per day thereafter, in all other counties
CO	1891		\$1.50	\$2.50				Act of Apr. 6, 1891, § 10, 1891 Colo. Sess. Laws 200, 214	paying \$1.50 per day in counties of the first class, \$2 per day in counties of the second class, and \$2.50 per day in all other counties
CO	1877	\$2.50						Act of Feb. 11, 1876, § 4, 1876 Colo. Sess. Laws 72, 74	
CT	1991				\$20.00– \$50.00	\$50.00	5	Act effective Sept. 1, 1991, No. 91-160, § 1(b)(1), 1(b)(3), 1991 Conn. Acts 280, 281 (Reg. Sess.)	paying employees nothing and unemployed from \$20–50 per day for 5 days then \$50 per day to all
CT	1987				\$20.00– \$50.00	\$50.00	3	Act effective Sept. 1, 1988, No. 87-385, § 1(b)(1)–(2), 1987 Conn. Acts. 676, 677 (Reg. Sess.)	paying employees nothing and unemployed from \$20–50 per day for 3 days then \$50 per day to all
CT	1967	\$10.00						Act Raising the Salary of Jurors, No. 703, 1967 Conn. Pub. Acts 1149, 1150.	
CT	1955	\$8.00						CONN. GEN. STAT. § 1974d (Supp. 1955)	
CT	1941	\$5.00						CONN. GEN. STAT. § 389f (Supp. 1941)	
CT	1930	\$4.00						CONN. GEN. STAT. § 2262 (1930)	
CT	1918	\$3.00						CONN. GEN. STAT. § 2231 (1918)	
CT	1875	\$2.50						CONN. GEN. STAT. tit. 13, ch. 9 (1875)	
CT	1866	\$1.50						CONN. GEN. STAT. tit. 53, § 8 (1866)	
CT	1849	\$1.25						CONN. GEN. STAT. tit. 56, § 10 (1849)	
CT	1835	\$0.67						CONN. GEN. STAT. tit. 85, § 21 (1835)	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
DE	1994					\$20.00	1	Act of July 8, 1994, ch. 331, § 1, 69 Del. Laws 781, 781	paying nothing the first day to jurors who serve one day or one trial then \$20 per day
DE	1975	\$15.00						Act of July 9, 1975, ch. 225, sec. 1, § 4511, 60 Del. Laws 695, 708	
DE	1970	\$20.00						Act of Apr. 9, 1970, ch. 358, sec. 1, § 8901, 57 Del. Laws 1084, 1084	
DE	1949	\$10.00						Act of May 5, 1949, ch. 43, sec. 1, § 5364, 47 Del. Laws 81, 81	
DE	1927	\$5.00						Act of Feb. 2, 1927, ch. 234, sec. 1, 4868, § 21, 35 Del. Laws 635, 635	
DE	1919	\$3.00						Act of Apr. 10, 1919, ch. 245, sec. 1, 4868 § 21, 30 Del. Laws 657, 657	
DE	1865	\$2.00						Act of Mar. 14, 1865, ch. 536, § 1, Del. Laws 605, 605	
DE	1805	\$1.00						Act of Jan. 23, 1805, ch. 173, 3 Del. Laws 385, 386	
DE	1797	\$0.80						Act of June 15, 1793, ch. 27, § 28, 2 Del. Laws 1100, 1120	
DC	1987	\$30.00						Juror Fees Act of 1987, D.C. Act 7-116, sec. 2, § 15-718(a), 34 D.C. Reg. 8115, 8115	
DC	1978				\$30.00	\$25.00	44	28 U.S.C. § 1871, <i>amended by</i> Pub. L. No. 95-572 (1978)	paying \$30 per day for the first 44 days and \$25 per day thereafter
DC	1968				\$20.00	\$25.00	29	28 U.S.C. § 1871, <i>amended by</i> Pub. L. No. 90-274 (1968)	paying \$20 per day for the first 29 days and \$25 per day thereafter
DC	1965				\$10.00	\$14.00	29	Act of Sept. 2, 1965, Pub. L. No. 89-165, 79 Stat. 645	paying \$10 per day for the first 29 days and \$14 per day thereafter
DC	1949	\$7.00						D.C. CODE ANN. tit. 11, § 1513 (1949)	tying pay to 28 U.S.C. § 1821, 62 Stat. 992
DC	1929	\$4.00						D.C. CODE ANN. tit. 10, § 16-17 (1929)	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
DC	1902	\$3.00						Act of June 21, 1902, ch. 1138, 32 Stat. 396	
DC	1857	\$2.00						D.C. REV. CODE ch. 9, § 11 (1857)	
FL	1992				\$15.00	\$30.00	3	Act of July 2, 1992, sec. 2, § 40.24(3)-(4), 1992 Fla. Laws ch. 92-297	paying nothing to employees and \$15 per day to unemployed for three days then \$30 per day to all
FL	1972	\$10.00						Act of Apr. 24, 1972, sec. 1, § 40.24, 1972 Fla. Laws ch. 72-308	
FL	1951	\$5.00						Act of June 11, 1951, No. 389, sec. 1, § 40.24, 1951 Fla. Laws ch. 26868	
FL	1911	\$3.00						Act of May 26, 1911, No. 100, sec. 1, § 1586, 1911 Fla. Laws ch. 6219	
FL	1889	\$2.00						Act of June 8, 1889, No. 7, § 1, 1889 Fla. Laws ch. 3853	
FL	1879	\$1.25						Act of Mar. 7, 1879, No. 8, § 5, 1879 Fla. Laws ch. 3106	
FL	1828	\$0.37						Act of Jan. 19, 1828, § 3, 1828 Fla. Acts 90, 91	paying \$0.37 per verdict in criminal cases
FL	1825	\$0.25						Act of Dec. 8, 1825, 1825 Fla. Acts 29, 29	paying \$0.25 per verdict in civil cases
GA	1999		\$5.00	\$50.00				Act of Apr. 28, 1999, No. 405, sec. 1, §15-12-17(a)(2), 1999 Ga. Laws 836, 837	paying \$5-\$50 to petit jurors
GA	1989		\$5.00	\$35.00				Act of Mar. 30, 1989, No. 348, sec. 1, § 15-12-17(a)(2), 1989 Ga. Laws 242, 242	paying between \$5 and \$35 per day
GA	1972		\$5.00	\$25.00				Act of Apr. 6, 1972, No. 1509, § 1, 1972 Ga. Laws 1132, 1133	paying between \$5 and \$25 per day
GA	1957		\$2.00	\$10.00				Act of Feb. 15, 1957, No. 59, § 1, 1957 Ga. Laws 43, 44	paying between \$2 and \$10 per day
GA	1946		\$2.00	\$6.00				Act of Jan. 31, 1946, No. 606, § 1, 1946 Ga. Laws 72, 72-73	paying between \$2 and \$6 per day
GA	1919			\$3.00				Act of Aug. 7, 1919, No. 61, sec. 1, § 876, 1919 Ga. Laws 104, 104-05	paying no more than \$3 per day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
GA	1872			\$2.00				Act of Dec. 11, 1871, No. 51, § 4, 1871 Ga. Laws 47, 48	paying no more than \$2 per day; law took effect in 1872
GA	1835	\$1.00						Act of Dec. 21, 1835, § 1, 1835 Ga. Acts 138, 138	
HI	1986	\$30.00						Act of May 29, 1986, No. 251, sec. 1, § 612-8(a), 1986 Haw. Sess. Laws 456, 456	
HI	1974	\$20.00						Act of June 4, 1974, No. 147, sec. 1, § 612-8, 1974 Haw. Sess. Laws 266, 266	
HI	1965	\$10.00						Act of June 24, 1965, No. 187, sec. 1, § 221-7, 1965 Haw. Sess. Laws 264, 264	
HI	1955	\$4.00						HAW. REV. LAWS § 221-7 (1955)	
ID	1969	\$10.00						Act of Mar. 14, 1969, ch. 147, sec. 1, § 2-601, 1969 Idaho Sess. Laws 472, 472-73	
ID	1957	\$8.00						Act of Mar. 7, 1957, ch. 144, sec. 1, § 2-601, 1957 Idaho Sess. Laws 244, 245	
ID	1953	\$6.00						Act of Mar. 2, 1953, ch. 88, sec. 1, § 2-601, 1953 Idaho Sess. Laws 118, 119	
ID	1927	\$4.00						Act of Feb. 24, 1927, ch. 62, sec. 1, § 6553, 1927 Idaho Sess. Laws 78, 78	
ID	1893	\$2.00						Act of Feb. 27, 1893, sec. 1, § 6138, 1893 Idaho Sess. Laws 65, 65	
IL	1999		\$4.00	\$10.00				Act of July 29, 1999, No. 91-0321, sec. 5, § 4-11001, 1999 Ill. Laws 3436, 3436	removing \$15.50 cap for counties effective 2000
IL	1965		\$4.00	\$15.50				Act of Aug. 2, 1965, sec. 1, § 44, 1965 Ill. Laws 2241, 2242	paying \$4 per day in counties of the first class, \$5 per day in counties of the second class, and \$10 per day in counties of the third class, or other amount fixed by county no more than \$15.50 per day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
IL	1947		\$4.00	\$7.50				Act of Aug. 7, 1947, sec. 1, § 44, 1947 Ill. Laws 987, 987	paying \$4 per day in counties of the first class, \$5 per day in all other counties or other amount fixed by county no more than \$7.50 per day
IL	1931	\$4.00						Act of July 3, 1931, sec. 1, §44, 1931 Ill. Laws 598, 598	paying \$4 per day in counties of the first class and \$5 per day in all other counties
IL	1925	\$5.00						Act of June 30, 1925, sec. 1, §44, 1925 Ill. Laws 399, 399	
IL	1911	\$3.00						Act of June 5, 1911, sec. 1, § 44, 1911 Ill. Laws 346, 346	
IL	1885	\$2.00						Act of June 27, 1885, sec. 1, § 44, 1885 Ill. Laws 198, 199	
IL	1879	\$1.50						Act of May 31, 1879, sec. 1, § 44, 1879 Ill. Laws 163, 164	
IL	1847	\$1.00						Act of Feb. 4, 1847, § 1, 1847 Ill. Laws 49, 49	
IL	1819	\$0.25						Act of Mar. 29, 1819, § 1, 1819 Ill. Laws 329, 329	
IN	1997	\$40.00						Act of May 13, 1997, Pub. L. No. 204-1997, sec. 1, § 4(a)(2)(B), 1997 Ind. Acts 2918, 2918	
IN	1988		\$17.50	\$35.00				Act of Mar. 3, 1988, Pub. L. No. 59-1988, sec. 2, § 4(a)(2)(B), 1988 Ind. Acts 1095, 1096	paying at least \$17.50 but allowing counties to double that amount
IN	1975	\$17.50						Act of Apr. 29, 1975, No. 306, sec. 1, § 8, 1975 Ind. Acts 1704, 1704	
IN	1959	\$7.50						Act of Mar. 12, 1959, ch. 238, sec. 1, § 10, 1959 Ind. Acts 545, 546	
IN	1947	\$5.00						Act of Mar. 14, 1947, ch. 322, sec. 1, § 10, 1947 Ind. Acts 1287, 1287	
IN	1933	\$2.50						Act of Feb. 17, 1933, ch. 23, sec. 1, § 10, 1933 Ind. Acts 115, 115	
IN	1927	\$3.00						Act of Mar. 10, 1927, ch. 206, sec. 1, § 10, 1927 Ind. Acts 589, 590	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
IN	1913	\$2.50						Act of Mar. 3, 1913, ch. 57, sec. 1, § 10, 1913 Ind. Acts 114, 114	
IN	1881	\$2.00						Act of Apr. 14, 1881, ch. 49, sec. 1, § 34, 1881 Ind. Acts 503, 504	
IN	1879	\$1.60						Act of Mar. 31, 1879, ch. 51, § 34, 1879 Ind. Acts 130, 142	
IN	1871	\$2.50						Act of Feb. 21, 1871, ch. 17, § 9, 1871 Ind. Acts 25, 28	
IN	1869	\$2.00						Act of Apr. 20, 1869, ch. 37, sec. 1, § 16, 1869 Ind. Acts 81, 82	
IN	1853	\$1.25						Act of Mar. 2, 1853, ch. 44, § 1, 1853 Ind. Acts 61, 70	
IA	1974	\$10.00						Act of May 27, 1974, ch. 1261, sec. 1, § 607.5, 1974 Iowa Acts 967, 967	
IA	1953	\$5.00						Act of Mar. 12, 1953, ch. 248, sec. 1, § 607.5, 1953 Iowa Acts 330, 330	
IA	1917	\$3.00						Act of Mar. 23, 1917, ch. 59, sec. 1, § 354, 1917 Iowa Acts 77, 77	
IA	1909	\$2.50						Act of Feb. 23, 1909, ch. 23, sec. 1, § 354, 1909 Iowa Acts 23, 23	
IA	1864	\$2.00						Act of Mar. 28, 1864, ch. 92, § 1, 1864 Iowa Acts 105, 105	
IA	1862	\$1.50						Act of Feb. 17, 1862, ch. 15, § 2, 1862 Iowa Acts 13, 13	
KS	1971	\$10.00						Act of Apr. 14, 1971, ch. 176, § 20, 1971 Kan. Sess. Laws 368, 374	
KS	1949	\$5.00						Act of Mar. 30, 1949, ch. 262, sec. 1, § 28-122, 1949 Kan. Sess. Laws 441, 441	
KS	1921	\$3.00						Act of Mar. 12, 1921, ch. 195, sec. 1, § 4725, 1921 Kan. Sess. Laws 290, 290	
KS	1913	\$2.50						Act of Mar. 17, 1913, ch. 197, § 20, 1913 Kan. Sess. Laws 314, 329	
KS	1871	\$2.00						Act of Feb. 25, 1871, ch. 84, sec. 3, § 16, 1871 Kan. Sess. Laws 200, 202	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
KS	1862	\$1.50						Act of Mar. 6, 1862, ch. 99, § 20, 1862 Kan. Sess. Laws 558, 564	
KS	1859	\$1.00						Act of Feb. 9, 1859, ch. 36, § 59, 1859 Kan. Sess. Laws 305, 324	
KS	1858	\$0.50						Act of Feb. 12, 1858, ch. 42, § 92, 1858 Kan. Sess. Laws 273, 29192	paying 50 cents per verdict
KS	1855	\$1.00						Act Concerning Jurors, ch. 92, §18, 1855 Kan. Sess. Laws 444, 446	
KY	1978	\$12.50						Act of Dec. 22, 1976, ch. 22, § 28, 1976 Ky. Acts (Extraordinary Session) 202, 208	law took effect in 1978
KY	1950	\$5.00						Act of Mar. 24, 1950, ch. 123, § 20, 1950 Ky. Acts 526, 533	
KY	1944	\$3.00						Act of Mar. 20, 1944, ch. 47, 1944 Ky. Acts 94	
KY	1926				\$3.00	\$4.00	1 day	Act neither approved nor disapproved, ch. 49, sec. 1, § 2260, 1926 Ky. Acts 164, 164 (relating to compensation of petit jurors)	paying \$3 per day and \$4 per day if kept overnight
KY	1887				\$2.00	\$3.00	1 day	KY. GEN. STAT. ch. 62, art. 5, § 11 (1887)	paying \$2 per day and \$3 per day if kept overnight
KY	1880	\$1.50						Act of Jan. 24, 1880, ch. 73, § 1, 1880 Ky. Acts 13, 13	
KY	1873	\$2.00						KY. GEN. STAT. ch. 62, art. 5, § 11 (1873)	
KY	1860	\$1.50						Act of Mar. 3, 1860, sec. 1, § 11, 1860 Ky. Acts 755, 755	
KY	1817	\$1.00						Act of Jan. 3, 1817, ch. 12, § 1, 1816 Ky. Acts 23, 23	
LA	1984		\$12.00	\$25.00				Act of July 6, 1984, No. 441, sec. 1, § 3049(B), 1984 La. Acts 1085, 1086	paying between \$12 and \$25 per day for criminal cases
LA	1979	\$12.00						Act of July 18, 1979, No. 632, sec. 1, § 3049(B), 1979 La. Acts 1685, 1685–86	paying \$12 per day for civil cases
LA	1956	\$8.00						Act of June 28, 1956, No. 97, sec. 1, § 3049, 1956 La. Acts 277, 277	
LA	1920	\$4.00						Act of July 8, 1920, No. 173, sec. 1, § 12, 1920 La. Acts 276, 277	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
LA	1912	\$2.50						Act of July 8, 1912, No. 113, sec. 1, § 12, 1912 La. Acts 134, 135	
LA	1847	\$1.00						Act of May 4, 1847, No. 258, § 3, 1847 La. Acts 214 , 214	
LA	1823	\$1.50						Act of Mar. 24, 1823, § 1, 1823 La. Acts 58, 58	
ME	1991	\$10.00						Act of July 17, 1991, ch. 591, sec. E-13, § 1215, 1991 Me. Acts 1030, 1030	
ME	1971	\$20.00						Act effective Jan. 1, 1973, ch. 316, 1971 Me. Laws 557	
ME	1961	\$12.00						Act of Sept. 16, 1961, ch. 232, 1961 Me. Laws 279, 279–80	
ME	1956	\$10.00						Act of June 1, 1956, ch. 412, sec. 1, § 8, 1955 Me. Laws 425, 425	
ME	1953	\$8.00						Act of Aug. 8, 1953, ch. 148, 1953 Me. Laws 133, 133	
ME	1945	\$6.00						Act of July 21, 1945, ch. 193, 1945 Me. Laws 221, 221	
ME	1933	\$4.00						Act of Mar. 10, 1933, ch. 56, 1933 Me. Laws 197, 197	
ME	1927	\$5.00						Act of Apr. 15, 1927, ch. 163, 1927 Me. Laws 150, 150	
ME	1921	\$4.00						Act of Mar. 17, 1921, ch. 36, 1921 Me. Laws 37, 38	
ME	1907	\$3.00						Act of Feb. 13, 1907, ch. 8, 1907 Me. Acts 8, 8	
ME	1866	\$2.00						Act of Feb. 23, 1866, ch. 54, § 1, 1866 Me. Laws 32, 32	
ME	1850	\$1.50						Act of July 29, 1850, ch. 165, 1850 Me. Laws 146, 146	
MD	2001	\$15.00						Act of May 18, 2000, ch. 652, § 1, 2000 Md. Laws 3344, 3346 (effective July 1, 2001)	paying \$15 per day but may be supplemented by local ordinance
MD	1998	\$5.00						Act of May 21, 1998, ch. 771, § 1, 1998 Md. Laws 3572, 3574–75	removing, “expense money” as a description of what counties paid the jurors, and specific county amounts were removed— now the minimum amount can be supplemented by a “local ordinance”

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MD	1988				\$10.00	\$40.00		Act of Apr. 12, 1988, ch. 84, sec. 1, § 8-106, 1988 Md. Laws 1891, 1892	paying \$20 per day plus \$20 more if jury kept past 6 p.m. in Cecil Co.
MD	1975				\$10.00	\$30.00		Act of Mar. 4, 1975, ch. 16, sec. 1, §8-1061975 Md. Laws 26, 27	paying \$15 per day plus \$15 more if jury kept past 6 p.m. in Queen Anne's Co., \$10 per day in Baltimore City
MD	1973				\$10.00	\$20.00		Act of Aug. 22, 1973, ch. 2, § 8-106, 1973 Md. Laws 4, 260-63	paying \$20 per day in Calvert Co., \$10 per day in Baltimore City
MD	1957				\$5.00	\$10.00		Act of Apr. 10, 1957, ch. 451, sec. 1, § 22, 1957 Md. Laws 674, 674	
MD	1955				\$5.00	\$7.50		Act of Apr. 11, 1955, ch. 402. sec. 1, § 22, 1955 Md. Laws 672, 672	
MD	1949		\$5.00	\$6.00				Act of Apr. 22, 1949, ch. 250, sec. 1, § 20, 1949 Md. Laws 645, 645	paying \$6 in Anne Arundel county, \$5 in all others
MD	1945		\$3.50	\$5.00				Act of Apr. 27, 1945, ch. 885, sec. 1, § 20, 1945 Md. Laws 1124, 1124-25	variable by County
MD	1943		\$3.00	\$6.00				Act of Apr. 30, 1943, ch. 369, sec. 1, § 20, 1943 Md. Laws 407, 408	variable by County
MD	1914	\$3.00						Act of Apr. 10, 1914, ch. 709, sec. 1, § 20, 1914 Md. Laws 1212, 1212	
MD	1865	\$2.50						Act of Mar. 22, 1865, ch. 78, sec. 1, § 16, 1865 Md. Laws 121, 121	
MD	1860		\$1.50					MD. CODE art. 50, § 16 (1860)	
MD	1833	\$1.00						Act of Mar. 2, 1833, ch. 121, 1832 Md. Laws	
MD	1830	\$1.50						Act of Jan. 27, 1830, ch. 69, § 1, 1830 Md. Laws 67, 67	paying \$1.50 per day when trial is held in Kent County

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MD	1827	\$1.25						Act of Jan. 10, 1829, ch. 7, § 1, 1827 Md. Laws; Act of Feb. 29, 1828, ch. 80, § 3, 1827 Md. Laws	paying \$1.25 per day when trial is held in Dorchester County, \$1 per day in Baltimore County
MD	1818	\$2.00						Act of Dec. 23, 1818, ch. 31, 1818 Md. Laws	paying \$2 per day when trial is held in Baltimore County
MA	1982				\$0.00–\$50.00	\$50.00	3	Act of July 9, 1982, ch. 298, § 49–51, 1982 Mass. Acts 774, 791–92	allowing multiple counties to pay unemployed jurors up to \$50 per day for three days then all jurors \$50 per day
MA	1978	\$16/\$22 or \$14/\$20						Act of July 18, 1978, ch. 478, § 25, 1978 Mass. Acts. 586, 707	paying murder jurors \$16 or \$22 per day if held over and others \$14 or \$20 if held over
MA	1977				\$0.00	\$40.00	3	Act of July 13, 1977, ch. 415, § 37, 1977 Mass. Acts 528, 543	paying \$0 for the first 3 days and \$40 per day thereafter in Middlesex County only
MA	1967	\$16/\$22 or \$14/\$20						Act of Oct. 13, 1967, ch. 678, 1967 Mass. Acts 570, 570	paying first degree murder jurors \$16 or \$22 per day if held over and others \$14 or \$20 if held over
MA	1966		\$14.00	\$16.00				Act of Sept. 2, 1966, ch. 613, § 25, 1966 Mass. Acts 576, 576	paying \$14 per day, \$16 per day for first degree murder trial
MA	1955		\$10.00	\$12.00				Act of May 2, 1955, ch. 328, § 25, 1955 Mass. Acts 192, 192–93	paying \$10 per day, \$12 per day for first degree murder trial
MA	1949		\$8.00	\$10.00				Act of May 24, 1949, ch. 335, § 25, 1949 Mass. Acts 298, 298	paying \$8 per day, \$10 per day for first degree murder trial

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MA	1945		\$6.00	\$8.00				Act of Apr. 24, 1945, ch. 236, sec. 1, § 25, 1945 Mass. Acts 173, 173	paying \$6 per day, \$8 per day for first degree murder trial
MA	1933		\$5.00	\$6.00				Act of May 5, 1933, ch. 162, § 25, 1933 Mass. Acts 237, 237	paying \$5 per day, \$6 per day for first degree murder trial
MA	1924		\$6.00	\$7.00				Act of Mar. 15, 1924, ch. 111, § 25, 1924 Mass. Acts 75, 75	paying \$6 per day, \$7 per day for first degree murder trial
MA	1919		\$4.00	\$5.00				Act of Apr. 18, 1919, ch. 112, § 1, 1919 Mass. Acts 83, 83	paying \$4 per day, \$5 per day for first degree murder trial
MA	1879	\$3.00						Act of Apr. 1, 1879, ch. 182, 1879 Mass. Acts 527, 527	
MA	1869	\$3.50						Act of Mar. 17, 1869, ch. 73, § 1, 1869 Mass. Acts 454, 454	
MA	1866	\$2.50						Act of Apr. 7, 1866, ch. 121, § 1, 1866 Mass. Acts 80, 80	
MA	1855	\$2.00						Act of Mar. 31, 1855, ch. 120, § 1, 1855 Mass. Acts 567, 567	
MA	1836	\$1.75						MASS. REV. STAT. ch. 122, § 10 (1836)	
MA	1806	\$1.25						Act of Mar. 7, 1806, ch. 63, § 1, 1806 Mass. Acts 472, 472	
MA	1795	\$0.90						Act of Feb. 13, 1796, ch. 41, § 1, 1795 Mass. Laws 391, 404	
MA	1787	3 shillings						Act of Mar. 1, 1787, ch. 27, 1787 Mass. Laws 602, 610	
MI	1982		\$15.00					Act of Sept. 16, 1982, No. 226, sec. 1, § 600.1344(1), 1982 Mich. Pub. Acts 685, 686	paying not less than \$15 per day
MI	1966	\$15.00						Act of Apr. 13, 1966, No. 20, sec. 1, § 600.1231, 1966 Mich. Pub. Acts 37, 37	
MI	1954	\$8.00						Act of Apr. 5, 1954, No. 57, sec. 1, § 602.147, 1954 Mich. Pub. Acts 68, 69	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MI	1949	\$6.00						Act of May 11, 1949, ch. 80, sec. 1, § 602.147, 1949 Mich. Pub. Acts 89, 89	
MI	1931	\$4.00						Act of May 29, 1931, No. 224, 1931 Mich. Pub. Acts 391, 392	
MI	1907	\$3.00						Act of June 27, 1907, No. 236, sec. 1, § 18, 1907 Mich. Pub. Acts 305, 305	
MI	1893	\$2.50						Act of June 1, 1893, No. 204, § 23, 1893 Mich. Pub. Acts 337, 343	
MI	1869	\$2.00						Act of Mar. 17, 1869, No. 40, sec. 1, § 18, 1869 Mich. Pub. Acts 66, 66-67	
MI	1857	\$1.50						Act of Feb. 16, 1857, No. 138, sec. 1, § 18, 1857 Mich. Pub. Acts 383, 383	
MN	1993	\$30.00						Act of May 14, 1993, ch. 192, sec. 104, § 593.48, 1993 Minn. Laws 711, 782	paying at a rate to be determined by the Minn. S.C., currently \$30 per day
MN	1975	\$15.00						Act of June 5, 1975, ch. 318, sec. 1, § 357.26, 1975 Minn. Laws 920, 920	
MN	1969	\$10.00						Act of Apr. 1969, ch. 135, sec. 1, § 357.26, 1969 Minn. Laws 211, 211	
MN	1953	\$6.00						Act of Apr. 21, 1953, ch. 478, sec. 1, § 357.26, 1953 Minn. Laws 561, 562	
MN	1949				\$3.00	\$5.00		Act of Mar. 8, 1949, ch. 101, sec. 1, § 357.26, 1949 Minn. Laws 129, 129	paying \$5 per day in counties with populations <220,000 and \$3 for counties with populations >250,000
MN	1943				\$3.00	\$4.00		Act of Apr. 17, 1943, ch. 484, sec. 1, § 7010, 1943 Minn. Laws 653, 653-54	paying \$4 per day in counties with populations <200,000 and \$3 for counties with populations >225,000

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MN	1937	\$4.00						Act of Apr. 12, 1937, ch. 192, § 1, 1937 Minn. Laws 254, 254	paying \$4 per day when trial is held in city with population of over 200,000
MN	1933				\$2.00	\$3.00		Act of Mar. 28, 1933, ch. 123, sec. 1, § 7010, 1933 Minn. Laws 133, 133-34	paying \$3 per day for counties with populations <225,000 or >350,000, and \$2 per day for counties with populations >225,000 but less than 350,000
MN	1921				\$2.00	\$4.00		Act of Mar. 16, 1921, ch. 95, sec. 1, § 5778, 1921 Minn. Laws 147, 147	paying \$4 for counties with populations <225,000, \$3 for counties with populations >350,000, and \$2 for counties with populations >225,000 but <350,000
MN	1919				\$2.00	\$3.00		Act of Mar. 18, 1919, ch. 73, sec. 1, § 5778, 1919 Minn. Laws 71, 71	paying \$3 for counties with populations <200,000 or >350,000, and \$2 for counties with populations >200,000 or <350,000
MN	1870	\$2.00						Act of Mar. 3, 1870, ch. 80, sec. 1, § 27, 1870 Minn. Laws 148, 148	
MS	1996		\$25.00	\$40.00				Act of Mar. 8, 1996, ch. 312, sec. 1, § 25-7-61, 1996 Miss. Laws 35, 36	paying between \$25 and \$40 per day
MS	1989		\$15.00	\$40.00				Act of Mar. 14, 1989, ch. 395, sec. 2, § 25-7-61(a), 1989 Miss. Laws 144, 145	paying between \$15 and \$40 per day
MS	1989	\$15.00						Act of Mar. 12, 1989, ch. 345, sec. 1, § 25-7-61(a), 1989 Miss. Laws 56, 56	
MS	1974	\$15.00						Act of Mar. 25, 1974, ch. 420, sec. 1, § 25-7-61(a), 1974 Miss. Laws 501, 501	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MS	1962	\$8.00						Act of May 4, 1962, ch. 383, sec. 1, § 3959(a), 1962 Miss. Laws 666, 666	
MS	1946	\$5.00						Act of Feb. 7, 1946, ch. 180, sec. 1, § 1811(a), 1946 Miss. Laws 135, 135	
MS	1936	\$3.00						Act of Mar. 26, 1936, ch. 248, sec. 1, § 1811(a), 1936 Miss. Laws 490, 490	
MS	1932	\$2.50						Act of Apr. 9, 1932, ch. 192, sec. 1, § 1811(a), 1932 Miss. Laws 488, 488	
MS	1920	\$4.00						Act of Mar. 27, 1920, ch. 143, § 1(a), 1920 Miss. Laws 198, 198	
MS	1908	\$3.00						Act of Feb. 26, 1908, ch. 178, sec. 1, § 2207(a), 1908 Miss. Laws 191, 191	
MS	1906	\$2.50						Miss. CODE § 2027 (1906)	
MS	1892	\$2.00						Miss. CODE ANN. § 2028 (1892)	
MS	1842	\$1.50						Act of Feb. 14, 1842, ch. 61, art. 15, 1848 Miss. Laws 891, 891	
MS	1837	\$2.00						Act of May 13, 1837, § 1, 1837 Miss. Laws 315, 315	
MS	1825	\$1.50						Act of Feb. 4, 1825, ch. 56, § 5, 1825 Miss. Laws 118, 119	
MS	1822	\$1.00						Circuit Court Act of June 28, 1822, ch. 61, art. 1, § 143, 1822 Miss. Laws 873, 880	
MS	1820	\$2.00						Act of Feb. 10, 1820, ch. 33, 1820 Miss. Laws 46, 47	
MO	1999				At least \$6.00			Act of July 13, 1999, S.B. 1, § 494.455, 1999 Mo. Laws 827, 860-61	
MO	1957	\$6.00						Act of Mar. 22, 1957, sec. 1, § 494.100, 1957 Mo. Laws 509, 510	
MO	1913	\$3.00						Act of Mar. 20, 1913, sec. 1, § 7275, 1913 Mo. Laws 392, 392-93	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
MO	1889		\$1.00	\$2.00				MO. REV. STAT. §§ 6076, 6082 (1889)	paying \$2 per day day to those on the "regular panel" and \$1 per day to certain criminal juror
MO	1887	\$1.00						Act of Mar. 31, 1887, § 1, 1887 Mo. Laws 189, 189	
MO	1874	\$1.50						Act of Mar. 28, 1874, § 5, 1874 Mo. Laws 96, 98	
MO	1870	\$1.00						MO. STAT. vol. 1, ch. 80, §26, at 789, 800-01 (Wagner 1872) (enacted 1870)	
MO	1860	\$1.50						Act of Jan. 6, 1860, § 1, 1860 Mo. Laws 63, 63	
MO	1855				\$0.50	\$1.00	1	MO. REV. STAT. ch. 88, § 28 (1856)	paying \$0.50 for the first day and \$1 per day thereafter
MO	1838	\$1.00						Act of Feb. 13, 1839, sec. 1, § 25, 1838 Mo. Laws 76, 76	
MO	1827	\$0.25						Act of Dec. 28, 1826, ch. 21, § 3, 1827 Mo. Laws 31, 32	
MT	1981	\$25.00						Act of Mar. 31, 1981, ch. 200, sec. 1, § 3-15-201, Mont. Laws 278, 278-79	
MT	1971	\$12.00						Act of Mar. 15, 1971, ch. 332, sec. 1, § 25-401, 1971 Mont. Laws 1316, 1316	
MT	1963	\$10.00						Act of Mar. 1, 1963, ch. 117, sec. 1, § 25-401, 1963 Mont. Laws 225, 225	
MT	1945	\$6.00						Act of Feb. 5, 1945, ch. 9, sec. 1, § 4933, 1945 Mont. Laws 11, 11	
MT	1917	\$4.00						Act of Feb. 6, 1917, ch. 6, sec. 1, § 3178, 1917 Mont. Laws 4, 4	
MT	1873	\$3.00						Act of Apr. 29, 1873, § 1, 1873 Mont. Laws, 53, 53	
MT	1864	\$4.00						Act of Feb. 9, 1865, 1864 Mont. Laws 470, 473	
NE	1994	\$35.00						Act of Feb. 25, 1991, No. 147, sec. 1, § 33-138(1), 1991 Neb. Laws 262, 262	increasing pay to \$35 effective Jan. 1, 1994
NE	1991	\$30.00						Act of Feb. 25, 1991, No. 147, sec. 1, § 33-138(1), 1991 Neb. Laws 262, 262	
NE	1974	\$20.00						Act of Mar. 13, 1974, No. 736, sec. 1, § 33-138(1), 1974 Neb. Laws 510, 510	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NE	1965	\$10.00						Act of May 12, 1965, ch. 187, sec. 1, § 33-138(1), 1965 Neb. Laws 578, 578	
NE	1957	\$6.00						Act of Feb. 28, 1957, ch. 134, sec. 1, § 33-138(1), 1957 Neb. Laws 450, 450	
NE	1947	\$4.00						Act of Apr. 3, 1947, ch. 125, sec. 1, § 33-138, 1947 Neb. Laws 364, 364	
NE	1933	\$3.00						Act of Mar. 1, 1933, ch. 62, sec. 1, § 33-143, 1933 Neb. Laws 296, 296-97	
NE	1929	\$4.00						Act of Feb. 2, 1929, ch. 105, sec. 1, § 2404, 1929 Neb. Laws 395, 395	
NE	1911	\$3.00						Act of Mar. 29, 1911, ch. 51, sec. 1, § 9473, 1911 Neb. Laws 234, 234	
NE	1865	\$2.00						Act of Feb. 13, 1865, § 15, 1865 Neb. Laws 20, 27	
NV	1981				\$15.00	\$30.00	5	Act of May 1, 1981, ch. 159, sec. 2, § 6.150, 1981 Nev. Stat. 326, 327	
NV	1967	\$15.00						Act of Mar 22, 1967, ch. 151, sec. 1, § 6.150, 1967 Nev. Stat. 277, 277	
NV	1965	\$10.00						Act of Mar. 19, 1965, ch. 168, sec. 1, § 6.150, 1965 Nev. Stat. 311, 311	
NV	1949					\$6.00		Act of Feb. 11, 1949, ch. 8, sec. 1, § 2, 1949 Nev. Stat. 10, 10	paying \$6.00 for jurors serving
NV	1933	\$4.00						Act of Mar. 10, 1933, ch. 60, sec. 1, § 1, 1933 Nev. Stat. 68, 68	
NV	1862	\$3.00						Act of Dec. 23, 1862, ch. 136, § 9, 1862 Nev. Stat. 182, 187	
NV	1861	\$2.00						Act of Nov. 29, 1861, ch. 57, § 9, 1861 Nev. Stat. 244, 251	
NH	1991	\$20.00						Act of July 2, 1991, ch. 355, sec. 1, § 500-A:15(I), 1991 N.H. Laws 577, 599	paying \$10 for each "half day's attendance"
NH	1983	\$30.00						Act of June 22, 1983, ch. 383, sec. 75, § 500-A:15, 1983 N.H. Laws 452, 468	paying \$15 for each "half day's attendance"

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NH	1981	\$30.00						Act of June 29, 1981, ch. 527, sec. 2, § 500-A:15, 1981 N.H. Laws 783, 787	paying "the same fees as paid to witnesses"
NH	1979	\$30.00						Act of June 20, 1979, ch. 259, sec. 1, § 500-A:16, 1979 N.H. Laws 226, 226	paying \$30 for "each day or part of a day"
NH	1968	\$15.00						Act of Apr. 19, 1968, ch. 62, sec. 1, § 26, 1967 N.H. Laws 56, 56	paying \$15 for "each day or part of a day" effective 1968
NH	1960	\$10.00						Act of May 29, 1959, ch. 129, sec. 1, § 26, 1959 N.H. Laws 140, 140	paying \$10 for each day or part of a day" effective 1960
NH	1953	\$7.00						Act of Feb. 26, 1953, ch. 18, sec. 1, § 26, 1953 N.H. Laws 23, 23	paying \$6 per day "for each day or part of a day", plus \$1 per day "for expenses"
NH	1947	\$6.00						Act of June 17, 1947, ch. 200, sec. 1, § 26, 1947 N.H. Laws 284, 284	paying \$5 per day "for each day or part of a day" plus \$1 per day "for expenses"
NH	1947	\$5.75						Act of Apr. 30, 1947, ch. 117, sec. 1, § 26, 1947 N.H. Laws 127, 127-28	paying \$5 per day "for each day or part of a day" plus \$.75 per day "for expenses"
NH	1933	\$4.75						Act of Mar. 15, 1933, ch. 39, sec. 1, § 26, 1933 N.H. Laws 44, 44	paying \$4 per day "for each day or part of a day" plus \$.75 per day "for expenses"
NH	1923				\$4.00	\$7.00		Act of Apr. 5, 1923, ch. 31, sec. 1, § 21, 1923 N.H. Laws 44, 44	paying \$4 per day "for each day or part of a day" plus up to \$3 per day for "reasonable expenses"
NH	1919	\$4.00						Act of Mar. 28, 1919, ch. 136, sec. 1, § 21, 1919 N.H. Laws 200, 200	
NH	1907	\$3.00						Act of Mar. 22, 1907, ch.78, sec. 1, § 21, 1907 N.H. Laws 78, 78	
NH	1866	\$2.00						Act of July 7, 1866, ch. 4248, § 1, 1866 N.H. Laws 3267	
NH	1806	\$1.25						Act of June 19, 1806, ch. 36, 1801-1811 N.H. Laws 536	
NH	1800	\$1.00						Act of Dec. 10, 1800, 1800 N.H. Laws 577, 577	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NH	1796	\$0.40						Act of Dec. 16, 1796, 1796 N.H. Laws 9, 14	
NH	1791							Act of Feb. 9, 1791, ch. 47, 1791 N.H. Laws 613, 619	paying 2 shillings per trial
NH	1768							Act of Mar. 12, 1768, ch. 15, 1768 N.H. Laws 486, 495	paying 1 shilling per trial
NH	1693							Act of Mar. 2, 1692-93, ch.1, 1693 N.H. Laws 552, 553	paying 4 shillings per trial
NJ	2001				\$5.00	\$40.00	3	Act of Mar. 23, 2001, ch. 38, sec. 1, § C.22A:1-1.1, <a href="http://www.njleg.state.nj.us/2000/Bills/PL01/38_.PDF">http://www.njleg.state.nj.us/2000/Bills/PL01/38_.PDF</a>	paying \$5 for three days then \$40 per day
NJ	1949	\$5.00						Act of May 18, 1949, ch. 127, sec. 1, § 22:1-1, 1949 N.J. Laws 496, 496	
NJ	1933	\$3.00						Act of Feb. 4, 1933, ch. 21, sec. 1, § 3, 1933 N.J. Laws 36, 36	
NJ	1929	\$5.00						Act of May 6, 1929, ch. 316, sec. 1, § 3, 1929 N.J. Laws 729, 729	
NJ	1920	\$3.00						Act of Apr. 15, 1920, ch. 181, sec. 1, § 3, 1920 N.J. Laws 367, 367	
NJ	1915	\$2.50						Act of Mar. 30, 1915, ch. 99, sec. 1, § 3, 1915 N.J. Laws 154, 154	
NJ	1867	\$2.00						Act of Apr. 9, 1867, ch. 370, § 1, 1867 N.J. Laws 833, 833	
NM	1993	\$34.00						Act of Apr. 5, 1993, ch. 217, sec. 1, § 50-4-22(A), 1993 N.M. Laws 2144, 2144	setting \$4.25 hourly wage
NM	1981	\$26.80						Act of Mar. 31, 1983, ch. 59, sec. 1, § 50-4-22(A), 1983 N.M. Laws 343, 343	setting \$3.35 hourly wage effective July 1, 1981
NM	1980	\$23.20						Act of Mar. 31, 1983, ch. 59, sec. 1, § 50-4-22(A), 1983 N.M. Laws 343, 343	setting \$2.90 hourly wage effective July 1, 1980
NM	1979	\$21.20						Act of Mar. 31, 1983, ch. 59, sec. 1, § 50-4-22(A), 1983 N.M. Laws 343, 343	setting \$2.65 hourly wage effective July 1, 1979
NM	1979							Act of Apr. 5, 1979, ch. 285, sec. 1, § 38-5-15, 1979 N.M. Laws 1120, 1120	paying the highest prevailing state minimum wage
NM	1976	\$18.40						Act of Mar. 4, 1976, ch. 16, sec. 1, § 19-1-15, 1976 N.M. Laws 311, 311	paying \$2.30 per hour, 8 hour day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NM	1970	\$12.80						Act of Feb. 25, 1970, ch. 40, sec. 3, § 19-1-15, 1970 N.M. Laws 123, 125	paying \$1.60 per hour, 8 hour day
NM	1949	\$5.00						Act of Feb. 15, 1949, ch. 7, sec. 1, § 30-137, 1949 N.M. Laws 43, 43	
NM	1915	\$3.00						Act of Mar. 6, 1915, ch. 24, § 1, 1915 N.M. Laws 37, 37	
NM	1878	\$2.00						Act of Feb. 9, 1878, ch.12, § 2, 1878 N.M. Laws 61, 62	
NM	1859	\$1.00						Act of Feb. 2, 1859, art. 30, ch. 68, § 14, 1865 N.M. Laws 492, 496	
NY	1995	\$40.00						Act of June 28, 1995, ch. 85, sec. 4, § 521(a), 1995 N.Y. Laws 2591, 2592	took effect Feb. 15, 1998
NY	1995	\$27.50						Act of June 28, 1995, ch. 85, sec. 1, § 519, sec. 2, § 521, 1995 N.Y. Laws 2591, 2591	took effect Feb. 15, 1997
NY	1988				\$15.00	\$21.00	30	Act of Aug. 1, 1988, ch. 473, secs. 2-3, §§ 521-521-a, 1988 N.Y. Laws 2669, 2669	paying \$15 for the first 30 days and an additional \$6 per day thereafter
NY	1964			\$12.00				Act of Apr. 10, 1964, ch. 469, sec. 1, § 749-a, 1964 N.Y. Laws 1375, 1375	paying no more than \$12 per day
NY	1959			\$8.00				Act of Apr. 22, 1959, ch. 693, sec. 1, § 749-a, 1959 N.Y. Laws 1642, 1642	paying no more than \$8 per day
NY	1950			\$6.00				Act of Mar. 27, 1950, ch. 187, sec. 1, § 1, 1950 N.Y. Laws 706, 706-07	paying no more than \$6 per day
NY	1928	\$4.00	\$6.00					N.Y. JUD. LAW § 749-h (West 1928)	paying no more than \$4 per day within New York City and no more than \$6 per day outside of New York City
NY	1924	\$4.00						Act of Mar. 24, 1924, ch. 62, sec. 1, § 1, 1924 N.Y. Laws 98, 98	
NY	1918			\$3.00	\$4.00			Act of May 13, 1918, ch. 638, sec. 1, § 1, 1918 N.Y. Laws 2025, 2025	paying no more than \$3 per day within New York City and no more than \$4 per day outside of New York City

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NY	1907	\$3.00						Act of Apr. 11, 1907, ch. 148, sec. 1, § 3314, 1907 N.Y. Laws 196, 196-97	
NY	1866			\$2.00				Act of Mar. 31, 1866, ch. 307, sec. 1, § 1, 1866 N.Y. Laws 660, 660	paying no more than \$2 per day
NY	1864			\$1.50				Act of May 2, 1864, ch. 545, sec. 1, § 1, 1864 N.Y. Laws 1197, 1197	paying no more than \$1.50 per day
NY	1828			\$1.00				Act of Dec. 10, 1828, ch. 10, § 38, 1828 N.Y. Laws 507, 535	paying no more than \$1 per day
NC	1983				\$12.00	\$30.00	5	Act of July 20, 1983, ch. 881, § 2, 1983 N.C. Sess. Laws 1080, 1080	paying \$12 per day for the first 5 days and \$30 per day thereafter
NC	1979				\$8.00	\$30.00	5	Act of July 1, 1979, ch. 985, § 1, 1979 N.C. Sess. Laws 1323, 1323	paying \$8 per day for the first 5 days and \$30 per day thereafter
NC	1969	\$8.00						Act of July 1, 1969, ch. 1190, § 32, 1969 N.C. Sess. Laws 1369, 1374	
NC	1965	\$7.00						Act of Apr. 27, 1965, ch. 310, § 7A-312, 1965 N.C. Sess. Laws 369, 416	
NC	1951		\$3.00	\$8.00				Act of Feb. 23, 1951, ch. 98, § 1, 1951 N.C. Sess. Laws 74, 74	paying between \$3 and \$8 per day
NC	1949		\$3.00	\$6.00				Act of Apr. 13, 1949, ch. 915, § 1, 1949 N.C. Sess. Laws 1039, 1039	paying between \$3 and \$6 per day
NC	1947		\$2.00	\$5.00				Act of Apr. 5, 1947, ch. 1015, sec. 1, § 9-5, 1947 N.C. Sess. Laws 1475, 1475	paying between \$2 and \$5 per day
NC	1920		\$2.00	\$4.00				Act of Aug. 25, 1920, ch. 61, § 1, 1920 N.C. Sess. Laws 93, 93	paying between \$2 and \$4 per day
NC	1919		\$2.00	\$3.00				Act of Feb. 24, 1919, ch. 85, § 1, 1919 N.C. Sess. Laws 128, 128	paying between \$2 and \$3 per day
NC	1871			\$1.50				Act of Mar. 21, 1871, ch. 139, § 6, 1871 N.C. Sess. Laws 205, 208	paying no more than \$1.50 per day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
NC	1855		\$0.50	\$2.00				N.C. REV. CODE ch. 28, § 15 (1855)	paying between \$0.50 and \$2.00 per day
ND	2001				\$25.00	\$50.00	1	N.D. CENT. CODE § 27-09.1-14 (Supp. 2001)	paying \$25 for the first day and \$50 per day thereafter
ND	1981	\$25.00						Act of Apr. 6, 1981, ch. 319, sec. 43, § 27-09.1-14, 1981 N.D. Laws 857, 868	
ND	1971	\$20.00						Act of Mar. 17, 1971, ch. 304, § 14, 1971 N.D. Laws 700, 707	
ND	1949	\$6.00						Act of Mar. 5, 1949, ch. 209, sec. 1, § 27-0905(1), 1949 N.D. Laws 271, 271	
ND	1943	\$4.00						N.D. REV. CODE § 27-0905 (1944)	
ND	1903	\$3.00						Act of Feb. 9, 1903, ch. 117, sec. 1, § 2096(1), 1903 N.D. Laws 157, 157	
ND	1899	\$2.00						N.D. REV. CODE § 2096 (1899)	
ND	1875	\$0.50						Act of Jan. 9, 1875, ch. 10, § 75, 1875 Territory of Dakota Laws 8, 15	
OH	1998				\$0.00–40.00	\$15.00–80.00	10	Act of Jan. 15, 1998, sec. 1, §2313.34(B), 1998 Ohio Laws 7172, 7173	paying from \$0–40 for the first ten days and then between \$15 and \$80 after paying no more than \$15 per day, but at least \$15 after ten days
OH	1974				\$0.00–15.00	\$15.00	10	Act of Dec 3, 1974, sec. 1, § 2313.14, 1974 Ohio Laws 405, 405	paying no more than \$15 per day
OH	1965			\$10.00				Act of Aug. 12, 1965, sec. 1, § 2313.34, 1965 Ohio Laws 657, 657, 1691–92	paying no more than \$10 per day
OH	1931			\$5.00				The Jury Code, sec. 1, § 11419-43, 1931 Ohio Laws 193, 205	paying no more than \$5 per day
OH	1921	\$3.00						Act of May 14, 1921, sec. 1, § 3008, 1921 Ohio Laws 234, 234	
OH	1865	\$2.00						Act of Apr. 8, 1865, § 1, 1865 Ohio Laws 105, 105	
OH	1858	\$1.50						Act of Apr. 12, 1858, sec. 1, § 15, 1858 Ohio Laws 155, 155–56	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
OH	1831	\$1.00						OHIO STAT. 1788–1833, vol. 3, ch. 840, § 15, at 1770, 1773 (Chase 1835) (enacted in 1831)	
OH	1824	\$0.50						OHIO STAT. 1810-11 to 1824-5, vol. 2, ch. 602, § 14, 2, at 1354, 1357 (1824)	
OH	1792	\$0.15						OHIO STAT. 1788–1833, vol. 1, ch. 36, at 133, 137 (Chase 1833) (enacted in 1792)	
OK	1996	\$20.00						Act of June 12, 1996, ch. 339, sec. 7, § 86, 1996 Okla. Sess. Laws 1571, 1581–82	
OK	1977	\$12.50						Act of June 14, 1977, ch. 189, sec. 1, § 86, 1977 Okla. Sess. Laws 460, 460–61	
OK	1963	\$7.50						Act of May 21, 1963, ch. 79, sec. 1, § 86, 1963 Okla. Sess. Laws 107, 107	
OK	1947	\$5.00						Act of May 16, 1947, ch. 1b, sec. 1, § 86, 1947 Okla. Sess. Laws 248, 248	
OK	1923	\$3.00						Act of Feb. 13, 1923, sec. 1, § 6441, 1923 Okla. Sess. Laws 5, 5	
OK	1910	\$2.00						OKLA. REV. LAWS § 3236 (1910)	
OK	1897	\$1.00						Act of Mar. 12, 1897, ch. 15, § 48, 1897 Okla. Sess. Laws 160, 177	
OK	1895	\$1.50						Act of Mar. 8, 1895, ch. 25, § 47, 1895 Okla. Sess. Laws 124, 141	
OK	1890	\$2.00						OKLA. STAT. § 2903 (1890)	
OR	1999				\$10.00	\$50.00	2	Act of Sept. 1, 1999, ch. 1085, § 4, 1999 Or. Laws 2909, 2909	paying \$10 per day for the first 2 days, then \$50 per day thereafter
OR	1971	\$10.00						Act of June 9, 1971, ch. 358, sec. 1, § 10.060, 1971 Or. Laws 522, 522	
OR	1955	\$7.50						Act of Apr. 18, 1955, ch. 296, sec. 1, § 10.060, 1955 Or. Laws 327, 327	
OR	1907	\$3.00						Act of Feb. 23, 1907, ch. 68, 1907 Or. Laws 120, 120	
OR	1851	\$2.00						Act of Feb. 1, 1851, § 11, 1851 Or. Laws 146, 150	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
OR	1845	\$1.00						Act of Aug. 15, 1845, § 3, 1845 Or. Laws 30, 31	
OR	1844	\$0.25						Act of Dec. 24, 1844, § 1, 1844 Or. Laws 97, 97	
PA	1980				\$9.00	\$25.00	3	Act of June 26, 1980, No. 78, § 4561, 1980 Pa. Laws 266, 273	paying \$9 per day for the first 3 days, then \$25 per day thereafter
PA	1959	\$9.00						Act of Oct. 15, 1959, No. 446, sec. 1, § 1, 1959 Pa. Laws 1322, 1322-23	
PA	1951	\$7.00						Act of Mar. 22, 1951, No. 12, sec. 1, § 1, 1951 Pa. Laws 56, 56	
PA	1949	\$5.00						Act of Apr. 6, 1949, No. 44, sec. 1, § 1, 1949 Pa. Laws 398, 398	
PA	1943	\$4.00						Act of Apr. 30, 1943, No. 66, sec. 1, § 1, 1943 Pa. Laws 133, 133	
PA	1933	\$3.00						Act of May 22, 1933, No. 153, § 1, 1933 Pa. Laws 851, 851	
PA	1907	\$2.50						Act of June 1, 1907, No. 262, § 1, 1907 Pa. Laws 364, 364	
PA	1873	\$2.00						Act of Feb. 28, 1873, No. 12, § 1, 1873 Pa. Laws 37, 37	
PA	1805	\$1.00						PA. STAT. 1802-1805, vol. 17, ch. 2589, § 13, at 1011, 1018-19 (Mitchell et al. 1915) (approved Mar. 29, 1805)	
PA	1795	\$0.26						PA. STAT. 1682-1801, vol. 15, ch. 1863, at 359, 368 (Mitchell & Flanders 1911) (approved Apr. 20, 1795)	
RI	1967	\$15.00						Act of May 24, 1967, ch. 150, sec. 1, § 9-29-5, 1967 R.I. Acts & Resolves 496, 496	
RI	1951	\$10.00						Act of Apr. 19, 1951, ch. 2707, sec. 1, § 8, 1951 R.I. Acts & Resolves 102, 102	
RI	1930	\$5.00						Act of Apr. 10, 1930, ch. 1535, sec. 1, § 8, 1930 R.I. Acts & Resolves 242, 242	
RI	1923	\$3.00						R.I. GEN. LAWS § 6641 (1923)	
RI	1882	\$2.00						R.I. PUB. STAT. tit. 33, ch 257, § 13 (1882)	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
RI	1870	\$2.50						Act of Mar. 31, 1870, sec. 1, § 12, 1871 R.I. Pub. Laws 623, 623	
RI	1844	\$1.00						Act in Relation to Jurors, § 13, 1844 R.I. Pub. Laws 154, 157	
SC	1974		\$2.00	\$12.50				Act of Sept. 4, 1974, No. 1265, § 1, 1974 S.C. Acts 2988, 2988	varying rate by county
SC	1964		\$2.00	\$10.00				Act of Mar. 21, 1964, No. 853, § 2, 1964 S.C. Acts 2068, 2068	varying rate by county
SC	1963		\$2.00	\$7.50				Act of May 15, 1963, No. 204, § 1, 1963 S.C. Acts 234, 234	varying rate by county
SC	1960		\$1.50	\$7.50				Act of May 24, 1960, No. 851, § 1, 1960 S.C. Acts 1984, 1984	varying rate by county
SC	1947		\$1.50	\$6.00				Act of Jan. 30, 1947, No. 1, § 1, 1947 S.C. Acts 1, 1	varying rate by county
SC	1933		\$1.50	\$5.00				Act of Mar. 2, 1933, No. 100, sec. 1, § 632, 1933 S.C. Acts 111, 111-12	
SC	1920	\$3.00						Act of Feb. 19, 1920, No. 365, sec. 1, § 4040, 1920 S.C. Acts 735, 735	
SC	1907	\$2.00						Act of Feb. 20, 1907, No. 244, sec. 1, § 2938, 1907 S.C. Acts 518, 518	
SC	1836	\$1.50						Act of Dec. 21, 1836, ch. 27, § 1, 1836 S.C. Acts 63, 63	
SC	1816	\$1.00						Act of Dec. 19, 1816, 1816 S.C. Acts 10, 10	
SD	1999	\$50.00						Act of Feb. 26, 1999, ch. 107, sec. 1, § 16-13-46, 1999 S.D. Laws 169, 169	
SD	1991	\$40.00						Act of Feb. 25, 1991, ch. 176, sec. 1, § 16-13-46, 1991 S.D. Laws 205, 206	
SD	1974	\$20.00						Act of Feb. 20, 1974, ch. 157, sec. 1, § 16-13-46, 1974 S.D. Laws 283, 283	
SD	1967	\$7.50						Act of Mar. 11, 1967, ch. 141, 1967 S.D. Laws 283	
SD	1947	\$5.00						Act of Mar. 8, 1947, ch. 150, sec. 1, § 32.1021, 1947 S.D. Laws 199, 199	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
SD	1933	\$3.00						Act of Feb. 14, 1933, ch. 75, sec. 1, § 5305, 1933 S.D. Laws 70, 70	
SD	1921	\$4.00						Act of Feb. 8, 1921, ch. 184, sec. 1, § 5305, 1921 S.D. Laws 276, 276	
SD	1909	\$3.00						Act of Mar. 4, 1909, ch. 181, sec. 1, § 1843, 1909 S.D. Laws 278, 278	
SD	1869	\$2.00						Act of Jan. 14, 1869, ch. 6, § 15, 1868 Territory of Dakota Laws 181, 192	
TN	1973		\$10.00					Act of Apr. 23, 1973, ch. 138, § 1, 1973 Tenn. Pub. Acts 376, 377	
TN	1965		\$8.00					Act of Feb. 18, 1965, ch. 61, § 1, 1965 Tenn. Pub. Acts 158, 158	
TN	1949		\$4.00					Act of Apr. 11, 1949, ch. 129, sec. 1, § 10042, 1949 Tenn. Pub. Acts 412, 412	
TN	1915	\$2.00						Act of Apr. 3, 1915, ch. 70, sec. 1, § 4031, 1915 Tenn. Pub. Acts 194, 194-95	paying \$2 per day or \$3 per day depending on county
TN	1871	\$1.50						TENN. CODE § 4031 (1871)	
TN	1866	\$2.00						Act of Nov. 21, 1866, ch. 3, § 1, 1866 Tenn. Pub. Acts 5, 5	
TN	1858	\$1.50						TENN. CODE § 4031 (1858)	
TN	1835	\$1.00						Act of Dec. 3, 1835, ch. 6, § 8, 1835 Tenn. Pub. Acts 45, 4748	
TN	1817	\$1.00						Act of Nov. 22, 1817, ch. 171, 1817 Tenn. Pub. Acts 203, 204	paying no more than \$1 per day
TN	1822			\$2.00				Act of Aug. 23, 1822, ch. 44, § 1, 1822 Tenn. Pub. Acts 39, 40	paying no more than \$2 per day in "Western District"
TN	1817	\$1.00						Act of Nov. 22, 1817, ch. 171, § 3, 1817 Tenn. Pub. Acts 203, 204	
TN	1803	\$0.16						Act of Nov. 5, 1803, ch. 2, § 3, 1803 Tenn. Pub. Acts 25, 26	paying 15 and 2/3 cents per day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
TX	1997		\$6.00	\$50.00				Act of June 17, 1997, ch. 758, sec. 1, § 61.001, 1997 Tex. Gen. Laws 2469, 2469	
TX	1979		\$6.00	\$30.00				Act of June 6, 1979, ch. 401, § 1, art. 2122(a), 1979 Tex. Gen. Laws 881, 881	
TX	1975		\$5.00	\$30.00				Act of June 19, 1975, ch. 510, § 1, art. 2122(a), 1975 Tex. Gen. Laws 1353, 1353	
TX	1965		\$4.00	\$10.00				Act of May 21, 1965, ch. 426, § 1, art. 2122(a), 1965 Tex. Gen. Laws 484, 484	
TX	1953		\$4.00	\$5.00				Act of June 8, 1953, ch. 379, § 1, art. 2122, 1953 Tex. Gen. Laws 917, 917	
TX	1925	\$4.00						Act of May 24, 1945, ch. 239, § 2, 1945 Tex. Gen. Laws 371, 372	
TX	1919	\$3.00						Act of Feb. 19, 1919, ch. 26, § 1, 1919 Tex. Gen. Laws 35, 35	
TX	1911	\$2.50						Act of Mar. 13, 1911, ch. 66, § 1, art. 1113, 1911 Tex. Gen. Laws 109, 110	
TX	1881	\$2.00						Act of Mar. 15, 1881, ch. 40, § 1, art. 1081, 1881 Tex. Gen. Laws 31, 3132	
TX	1852	\$1.50						Act of Feb. 16, 1852, ch. 104, § 6, 1852 Tex. Gen. Laws 129, 129	
TX	1848	\$1.25						Act of Mar. 18, 1848, ch. 111, § 1, 1848 Tex. Gen. Laws 139, 139	
UT	1998				\$18.50	\$49.00	1	Act of Mar. 14, 1998, ch. 74, sec. 1, § 21-5-4, 1998 Utah Laws 278, 278	paying \$18.50 for the first day and \$49 per day thereafter
UT	1989	\$17.00						Act of Mar. 13, 1989, ch. 153, sec. 4, § 21-5-1, 1989 Utah Laws 363, 364	
UT	1979	\$14.00						Act of Mar. 29, 1979, ch. 130, sec. 1, § 78-46-18, 1979 Utah Laws 742, 749	
UT	1949	\$8.00						Act of Feb. 19, 1949, ch. 59, sec. 1, § 48-0-5, 1949 Utah Laws 148, 148	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
UT	1933	\$3.00						Act of Mar. 9, 1933, ch. 36, sec. 1, § 48-0-5, 1933 Utah Laws 36, 36	
UT	1929	\$4.00						Act of Feb. 27, 1929, ch. 13, sec. 1, § 2542, 1929 Utah Laws 14, 15	
UT	1913	\$3.00						Act of Feb. 15, 1913, ch. 7, sec. 1, § 991, 1913 Utah Laws 11, 11	
UT	1882	\$2.00						Act of Mar. 9, 1882, ch. 49, § 1, 1882 Utah Laws 94, 94	
VT	1977	\$30.00						Act of Apr. 12, 1978, No. 222, sec. 22, § 1511, 1977 Vt. Acts & Resolves 331, 345	
VT	1969	\$15.00						Act of Apr. 9, 1970, No. 294, sec. 21, § 1511, 1969 Vt. Acts & Resolves 444, 455	
VT	1957	\$10.00						Act of June 29, 1957, No. 298, sec. 7, §10,504, 1957 Vt. Acts & Resolves 318, 320	
VT	1951	\$7.00						Act of May 11, 1951, No. 233, sec. 1, § 10,504, 1951 Vt. Acts & Resolves 323, 323	
VT	1945	\$5.00						Act of Apr. 18, 1945, No. 190, sec. 1, § 9000, 1945 Vt. Acts & Resolves 257, 257	
VT	1933	\$3.00						Act of Mar. 22, 1933, No. 153, § 36, 1933 Vt. Acts & Resolves 190, 197	
VT	1921	\$4.00						Act of Feb. 15, 1921, No. 245, sec. 1, § 7447, 1921 Vt. Acts & Resolves 239, 239	
VT	1919	\$3.00						Act of Feb. 27, 1919, No. 217, sec. 1, § 7447, 1919 Vt. Acts & Resolves 222, 222-23	
VT	1917	\$2.00						Act of Mar. 16, 1917, No. 251, sec. 1, § 20, 1917 Vt. Acts & Resolves 272, 272	
VT	1912	\$2.50						Act of Nov. 16, 1912, No. 250, sec. 1, § 6246, 1912 Vt. Acts & Resolves 321, 321-22	
VT	1866	\$2.00						Act of Nov. 12, 1866, No. 18, sec. 1, § 39, 1866 Vt. Acts & Resolves 33, 33	
VT	1852	\$1.25						Act of Nov. 11, 1852, No. 17, § 1, 1852 Vt. Acts & Resolves 13, 13-14	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
VT	1849	\$1.00						Act of Nov. 6, 1849, No. 5, 1849 Vt. Acts & Resolves 5, 5	
VT	1802							Act of Nov. 12, 1802, ch. 117, § 2, 1802 Vt. Acts & Resolves 198, 198	paying \$6 per trial
VT	1799							Act of Nov. 8, 1798, ch. 3, 1799 Vt. Acts & Resolves 3, 11-12	paying \$1.50-\$5.00 per trial depending on circumstance
VT	1782	4 shillings and 6 pence						Act of Oct. 14, 1782, 1782 Vt. Acts & Resolves 34, 38	
VA	1996	\$30.00						Act of Mar. 22, 1996, sec. 1, § 14.1-195.1, 1996 Va. Acts ch. 332	
VA	1982	\$20.00						Act of Apr. 11, 1982, sec. 1, § 14.1-195.1, 1982 Va. Acts ch. 610	
VA	1980	\$15.00						Act of Apr. 3, 1980, sec. 1, § 14.1-195.1, 1980 Va. Acts ch. 593	
VA	1973	\$12.00						Act of Mar. 20, 1973, sec. 1, § 8-208.33, 1973 Va. Acts ch. 438	
VA	1968	\$8.00						Act of Apr. 4, 1968, sec. 1, § 8-204, 1968 Va. Acts ch. 632	
VA	1958	\$5.00						Act of Mar. 13, 1958, sec. 1, §8-204, 1958 Va. Acts ch. 303	
VA	1944	\$3.50						Act of Mar. 29, 1944, sec. 1, §§ 4928, 6007, 1944 Va. Acts ch. 325	
VA	1928	\$2.50						Act of Mar. 14, 1928, sec. 1, § 6007, 1928 Va. Acts ch. 212	
VA	1908	\$1.50						Act of Feb. 8, 1908, sec. 1, § 3160, 1908 Va. Acts ch. 21	
VA	1867	\$1.00						Act of Trial and Its Incidents, § 10, 1867 Va. Acts ch. 38	
WA	1979		\$10.00	\$25.00				Act of May 7, 1979, ch. 135, sec. 7, § 1, § 2.36.150, 1979 Wash. Laws 1411, 1414	paying between \$10 and \$25 per day

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
WA	1959	\$10.00						Act of Mar. 3, 1959, ch. 73, sec. 1, § 2, § 2.36.150, 1959 Wash. Laws 474, 474-75	
WA	1943	\$5.00						Act of Mar. 19, 1943, ch. 188, sec. 1, § 4229, 1943 Wash. Laws 584, 584	
WA	1933	\$3.00						Act of Mar. 2, 1933, ch. 52, sec. 1, § 4229, 1933 Wash. Laws 285, 285	
WA	1927	\$5.00						Act of Feb. 24, 1927, ch. 171, sec. 1, § 4229, 1927 Wash. Laws 192, 192	
WA	1863	\$3.00						Act of Jan. 28, 1863, sec. 1, § 8, 1862 Wash. Laws 391, 396	
WV	1986		\$15.00	\$40.00				Act of Mar. 7, 1986, ch. 94, art. 1, § 52-1-17(a), 1986 W. Va. Acts 684, 698	paying between \$15 and \$40 per day
WV	1974		\$15.00	\$25.00				Act of Mar. 8, 1975, ch. 126, art. 1, § 52-1-21, 1974 W. Va. Acts 362, 382-83	paying between \$15 and \$25 per day
WV	1957		\$5.00	\$8.00				Act of Jan. 28, 1957, ch. 101, § 21, 1957 W. Va. Acts 541, 542	paying between \$5 and \$8 per day
WV	1943		\$2.00	\$5.00				Act of Mar. 1, 1943, ch. 57, § 21, 1943 W. Va. Acts 207, 208	paying between \$2 and \$5 per day
WV	1933		\$2.00	\$2.50				Act of June 3, 1933, ch. 46, § 21, 1933 W. Va. Acts 340, 340-41	paying between \$2 and \$2.50 per day
WV	1923		\$2.00	\$3.50				W. VA. CODE § 52-1-21 (1923)	paying between \$2 and \$3.50 per day
WV	1909		\$1.50	\$2.50				Act of Feb. 20, 1909, ch. 37, § 23, 1909 W. Va. Acts 375, 375	paying between \$1.50 and \$2.50 per day
WV	1882	\$1.50						Act of Mar. 6, 1882, ch. 83, sec. 1, § 23, 1882 W. Va. Acts 186, 191	
WV	1870		\$1.50	\$2.00				Act of Feb. 7, 1870, ch. 20, § 23, 1870 W. Va. Acts 19, 20	paying \$1.50 per day but \$2 for felony jurors
WV	1868	\$1.50						W. VA. CODE ch. 116, § 23 (1870)	
WV	1863	\$1.00						Act of Nov. 1, 1863, ch. 93, sec. 1, § 29, 1863 W. Va. Acts 106, 108	

State	Year	\$Per Day	\$Min	\$Max	Before Time	After Time	Time Limit	Statute	Misc.
WI	1977		\$16.00					Act of May 18, 1978, ch. 318, sec. 30, § 255.25(1), 1977 Wis. Laws 1306, 1312	paying no less than \$16 per day
WI	1975		\$4.00					Act of May 4, 1976, ch. 224, sec. 128, § 255.25, 1975 Wis. Laws 744, 804	paying no less than \$4 per day
WI	1955		\$4.00	\$16.00				Act of June 11, 1955, ch. 187, 1955 Wis. Laws 190, 190	paying between \$4 and \$16 per day
WI	1949		\$4.00	\$8.00				Act of July 22, 1949, ch. 498, sec. 2, § 255.31, 1949 Wis. Laws 455, 455	paying between \$4 and \$8 per day
WI	1919	\$4.00						Act of Apr. 14, 1919, ch. 76, 1919 Wis. Laws 72, 72	
WI	1903	\$3.00						Act of Apr. 28, 1903, ch. 126, 1903 Wis. Laws 176, 176	
WI	1870	\$2.00						Wis. REV. STAT. ch. 133, § 49 (1870)	
WI	1849	\$1.50						Wis. REV. STAT. ch. 131, § 28 (1849)	
WI	1839	\$1.00						Act Concerning Costs and Fees, § 23, 1839 Wis. Laws 387, 399	
WY	1984		\$30.00	\$50.00				Act of Mar. 7, 1983, ch. 138, § 2, 1983 Wyo. Sess. Laws 402, 405	paying \$30 per day and an additional \$20 per day at the court's discretion; took effect 1984
WY	1967	\$12.00						Act of Feb. 20, 1967, ch. 129, sec. 1, § 1-136, 1967 Wyo. Sess. Laws 154, 154	
WY	1959		\$7.00	\$12.00				Act of Feb. 19, 1959, ch. 112, sec. 1, § 12-303, 1959 Wyo. Sess. Laws 126, 126	paying between \$7 and \$12 per day
WY	1937		\$5.00	\$6.00				Act of Feb. 16, 1937, ch. 43, sec. 1, § 61-242, 1937 Wyo. Sess. Laws 54, 54	paying between \$5 and \$6 per day
WY	1921		\$4.00	\$5.00				Act of Feb. 16, 1921, ch. 82, sec. 1, § 1245, 1921 Wyo. Sess. Laws 86, 86	paying between \$4 and \$5 per day
WY	1870	\$1.00						Act of Dec. 16, 1871, § 50, 1870 Wyo. Sess. Laws 15, 31	
WY	1869	\$3.00						Act of Dec. 10, 1869, ch. 33, § 15, 1869 Wyo. Sess. Laws 373, 381	

