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Jury Trials in a (Post) Pandemic World - National Survey Analysis

The National Center for State Courts commissioned this survey conducted by GBAO as part of NCSC's annual State of the State Courts survey. Reprinted with the permission of NCSC.

The coronavirus pandemic has had a profound impact on state courts' commitment to meet their constitutional duty to provide fair, timely jury trials. As many states begin to reopen public buildings and courthouses, court administrators face an unprecedented challenge in understanding how public concerns about the ongoing pandemic will impact their ability to recruit a representative jury pool and to meet the public health expectations of the citizens they serve.

In order to better understand these challenges and identify the most effective means of maximizing public confidence, the National Center for State Courts (NCSC) commissioned a national survey¹ to explore issues including the impact of the coronavirus pandemic, health and family obstacles preventing potential jurors from reporting to their local courthouse, access to internet services for potential online alternatives to in-person jury service, and attitudes toward such remote services. This research found that concerns about the safety of reporting to a courthouse and obstacles related to the health of potential jurors and their families are universal, but the intensity of these concerns and the likelihood they will impact an individual's willingness to report for jury service differ significantly along demographic lines – particularly race, gender, and age.

There is good news in this survey for court administrators. Public response to the pandemic, as well as protests across much of the country in the wake of George Floyd's killing – the survey was fielded two weeks after that tragic event and 12 days after the country exceeded 100,000 deaths related to coronavirus – have not undermined public confidence in state courts, which remains consistent with the average confidence levels measured over eight years of annual polling on public attitudes toward the courts. Similarly, ratings of the overall job performance of state courts, while mixed (46 percent excellent/good, 51 percent just fair/poor) are consistent with longer-term trends and do not show any negative impacts of recent events.

However, this survey makes clear that the public harbors significant concerns about the courts' ability to safely and effectively provide justice in a society where coronavirus remains a very real and present threat. They have high expectations for the steps courts must take to maximize the safety of all those entering courthouses, and while they are open to a range of technological solutions to minimize the need for in-person appearances, they also have doubts about how 'remote' justice would work and

whether it could deliver the same fair, impartial process they expect from in-person proceedings. Regardless of how individual states decide to tackle the challenges of this new world, it is clear that proactive communication and consistent reassurance will be necessary to maintain public confidence and maximize participation in the jury process.

Below are key findings across a number of key areas explored in this research:

THE IMPACT OF CORONAVIRUS

Direct impact is limited... Consistent with national coronavirus case records, just one percent of respondents reported testing positive for the virus, while 10 percent had received a negative test result, 7 percent reported experiencing symptoms consistent with the disease but not getting tested, and 81 percent reported not being tested or experiencing relevant symptoms.

...but majority face high risk or other complications. The real impact of coronavirus on the likelihood of individuals reporting for jury duty lies not in their own personal experience with the virus, but rather in their fears for contracting it themselves or exposing others. This survey found that 55 percent of potential jurors face at least one obstacle that makes it dangerous or logistically impossible for them to report for jury duty if summoned:

- 47% say that either they or someone in their household has an underlying medical condition that would make them more vulnerable if they contracted the virus
- 14% say they are currently the primary caregiver for an aging parent or other elderly family member
- 19% of those with kids say they could not leave their kids without child care and are currently unable to secure reliable child care

Important demographic differences impact availability of jury pool. As is often the case when it comes to both health conditions and serving as a caregiver, there are clear gender and age dynamics at play here that would have a direct impact on courts' ability to draw a representative jury pool. Just 41 percent of men under age 50 face one of the three obstacles identified above, but that number rises to 52 percent among

Footnotes

1. GBAO conducted a representative national survey of 1,000 registered voters on June 8-11, 2020. Interviews were conducted by live interviewers via landlines and cell phones, as well as online.

Survey results are subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level.

women under 50, 57 percent among men ages 50+, and 65 percent among women ages 50+.

DIGITAL DIVIDE AND ACCESS TO TECHNOLOGY

Vast majority of potential jurors have internet service at home. Overall, 85 percent report having some form of internet service at their home, and 79 percent say they have high-speed broadband service. What’s more, 95 percent say they have a cell phone of some sort, and 86 percent say they have a smartphone that provides them with the ability to connect to the internet and perform critical tasks such as sending and receiving e-mails or reviewing documents sent to them. Only 2 percent say they have no internet service at all.

Some important differences in access emerge. As we would expect, while overall access to the internet and internet-enabled devices is very high, age emerges as a critical variable. Only 70 percent of seniors (ages 65+) have internet access at home, and less than 2-in-3 seniors (64 percent) have broadband access at home. Similarly, 86 percent of seniors have cell phones, but only 64 percent own smartphones. While age restrictions on required service in many states mean seniors comprise a smaller portion of the potential jury pool than they do the population as a whole, they are nonetheless a critical constituency, and age 65 is not a rigid dividing line here – the older any potential juror is, the less likely they are to have internet access or internet-connected devices.

Ability to participate in remote processes could be impacted by inconsistent cell phone plans. While overall cell phone access is extremely high, many potential jurors could be constrained by limits on their cell phone plans. As we detail later in this report, nearly half of potential jurors say they would rely on their cell phone if participating in a jury process remotely, and we can not automatically assume they will use broadband access, even if it is available. Just 58 percent report having both unlimited minutes (70 percent overall) and unlimited data (68 percent overall), while 17 percent have neither of these features. Again, there is significant drop-off based on age. Just 43 percent of

seniors have both unlimited minutes and data while 32 percent of seniors have neither. Among those ages 50-64, just 59 percent have both while 19 percent have neither. Among those under 50, 65 percent have both (including 79 percent with unlimited data) and just 7 percent have neither.

Growing comfort with video conferencing services, but large demographic gaps emerge. Use of video conferencing services has exploded as a result of the coronavirus pandemic, and 70 percent of respondents in this survey say they have used these services at least once in the last three months, including more than half (52 percent) who have used ‘video conferencing services such as Zoom, WebEx, Skype, or Google Hangouts’ regularly over this time period. However, as with any measure of technology usage, significant demographic gaps emerge. Regular usage of these services is highest among college-educated women (73 percent), women under 50 (72 percent), and anyone under age 30 (69 percent); it is lowest among non- college educated men (31 percent), men over age 50 (38 percent), and of course, seniors (just 30 percent).

We used this survey to measure not just experience with these services, but also how comfortable respondents would feel ‘using video conferencing services for meetings or appointments typically held in person,’ and 2-in-3 (66 percent) reported they would feel very or somewhat comfortable doing so. This number is much larger than the number who regularly use these services because men, across demographic lines, are much more likely to say they would be comfortable using these technologies despite a lack of experience with them.

REPORTING FOR JURY DUTY

Greater hesitation about reporting to courthouse than engaging in other activities. We asked respondents how comfortable they would personally feel engaging in a range of activities, regardless of current restrictions in their respective areas. We found that they are less comfortable reporting to their local courthouse or serving on a jury than engaging in any other activity tested, including going to other government buildings, going to a polling place, or eating out at a restaurant.

ACTIVITIES IN A ‘POST’ PANDEMIC WORLD — % NOT COMFORTABLE						
<i>Please indicate how comfortable you would personally feel right now doing each of the following on a scale of 0 to 10, where 10 means extremely comfortable and 0 means extremely uncomfortable...</i>	Total	Risk Obstacles	No Risk Obstacles	White	LatinX	African American
Visiting with a close friend or family member at their home	23%	30%	14%	20%	17%	40%
Going out to the grocery store	27%	34%	20%	27%	22%	34%
Going to a polling place to vote	36%	43%	28%	34%	34%	42%
Going to a government office or public building	44%	49%	37%	42%	33%	57%
Eating out in a restaurant	50%	57%	42%	47%	44%	67%
Reporting to your local courthouse for jury duty if you received a summons requiring you to appear	52%	57%	47%	50%	47%	65%
Reporting to your local courthouse for jury duty	52%	59%	48%	49%	50%	73%
Serving on a jury if selected	54%	59%	48%	51%	49%	66%

While all groups are less comfortable reporting to the courthouse or serving on a jury, resistance is greatest among African Americans, who are less likely to engage in any of the activities measured, and those with high-risk obstacles. *Looking at the other end of the 0-10 scale employed in this measure, less than 1-in-4 African Americans and less than 30 percent of those facing obstacles say they would be comfortable reporting to the courthouse or serving on a jury.*

Two-in-three say they would appear if summoned. Despite the concerns detailed above, jury duty is not a volunteer activity, and 66 percent say they would report for jury duty if summoned, while 29 percent say they would not. Familiar demographic differences emerge on this question, although the gaps in self-reported intention to report for jury service are much smaller than those above on the level of personal comfort with that action:

- Race – 69% of white respondents would report, compared to 64% of Hispanics and 58% of African Americans
- Gender – 74% of men would report, compared to 59% of women
- Age – 74% of those under 50 would report, compared to 65% of those ages 50-64 and 53% of seniors

Predictably, those not facing high risk obstacles are more likely to report (70 percent) than those who do face such obstacles (63 percent), but again, the gap is not as great as on their level of personal comfort. This underscores the stress and anxiety that many potential jurors are likely to feel if they are summoned to the courthouse and the need to consistently provide reassurances in communications, as well as in the safety measures adopted at the courthouse.

We should note that there was no difference in intention to report between those who had previously reported for jury duty, served on a jury, or been in their local courthouse for any reason within the last five years. In other words, familiarity with the physical building or the process does not make potential jurors any more likely to report.

Large majorities support universal mask requirements within the courthouse. Despite some loud voices of dissent, public polling has consistently shown that large majorities of Americans support requirements to wear masks in public places, and the courthouse is no different. We asked respondents what rules they would want to see regarding the wearing of masks if they should be required to report for jury duty:

- 67 percent believe, ‘All individuals entering the courthouse should be required to wear masks’
- 16 percent say, ‘Masks should be encouraged but not required for all individuals entering the courthouse’
- Just 13 percent believe, ‘There should be no rules regarding masks in the courthouse’

Support for a mask requirement is high across most subgroups, but it peaks among African Americans (78 percent), seniors (77 percent) and college-educated women (81 percent).

Among those who say they would be uncomfortable returning to a public courthouse, the number supporting a mask requirement jumps to 89 percent. There is also a marked partisan dynamic to this question that is greater than on any other question in this survey, with support at 91 percent among Democrats, 65 percent among Independents, and just 42 percent among Republicans.

Temperature checks and coronavirus testing stand out as most important safety reassurances that court administrators can take. We tested seven potential steps that court administrators could adopt to maximize the safety and health of all those entering public courthouses and asked respondents whether each step would make them more comfortable with the idea of reporting to the courthouse if necessary. More than 2-in-3 said each of the measures tested would make them much more comfortable or somewhat more comfortable reporting to the courthouse, but two clearly stood out above the rest:

COURTHOUSE SAFETY MEASURES TO REASSURE POTENTIAL JURORS		
<i>Please indicate whether the implementation of this protective measure would make you much more comfortable, somewhat more comfortable, a little more comfortable, or no more comfortable reporting to your local courthouse for jury duty if you received a summons.</i>	Much More Comfortable	Total More Comfortable
All prospective jurors will be tested for coronavirus, and anyone testing positive for an active infection will be dismissed immediately	59%	76%
The temperatures of all prospective jurors will be checked upon arrival at the courthouse, and anyone with a fever will be sent home immediately	53%	74%
Prospective jurors will be provided a large space in the courthouse reserved just for them where they can safely socially distance while waiting, eating meals, or taking breaks	48%	72%
Masks will be worn by all individuals you come in contact with throughout your time in the courthouse	48%	70%
Safe social distancing will be strictly enforced in all areas of the courthouse	47%	70%
All prospective jurors will be provided with masks to be worn throughout their time in the courthouse	47%	68%
Access to the courthouse will be restricted to essential court employees and prospective jurors	44%	71%

Given the broad support for all of these measures, but the unique intensity behind the only two to get majorities saying it would make them much more comfortable – coronavirus testing and temperature checks – we believe the best way to interpret this exercise is that the bottom five steps represent the minimum expectations that most potential jurors or other visitors will have when they visit the courthouse, while the top two represent steps that courts could and should take, where possible, to send a powerful message that they are doing everything within their power to reduce the risk of exposure.

Reassurances do not change most potential jurors’ minds about reporting if summoned. While the measures outlined above would make large majorities ‘more comfortable,’ they are not enough to change the calculus for most, as 71 percent at the end of the survey say they would likely report (up from 66 percent) while 25 percent still say they would not (down from 29 percent). Perhaps most importantly, these reassurances do not change the clear demographic dividing lines that could skew the representativeness of any jury poll as courthouses reopen. There is a clear hierarchy in this research about which groups are most likely to report, with gender, age, and race the most relevant variables.

GREATEST LIKELIHOOD OF REPORTING (80%+)	Younger white men
	Conservative white men
	Non-college educated white men
MEDIUM LIKELIHOOD OF REPORTING (65-75%)	Younger Hispanic men
	Younger white women
	College-educated white men
	Older white men
	Older Hispanic men
	African American men
LEAST LIKELIHOOD OF REPORTING (45-60%)	Younger Hispanic women
	Younger African American women
	Older white women
	Older Hispanic women
	Older African American women

CONSIDERING REMOTE PROCEEDINGS

Massive shift in attitudes toward remote proceedings. In 2014, we measured public attitudes toward the concept of appearing remotely via video conferencing and found a majority saying they would be unlikely to use such an option (43 percent likely, 55 percent unlikely). Six years later, 64 percent say they would be likely to use these services to appear remotely while just 33 percent say they would not. While it is impossible to say exactly what has driven such a dramatic shift in attitudes, it is safe to assume we are seeing a combination of increased comfort with and confidence in the relevant technologies, as well as public health concerns driven by the coronavirus pandemic.

In addition to this question about remote proceedings, we also asked this year how likely they would be to use video conferencing technology to report for jury duty (72 percent likely to use it, 25 percent not) or to serve as a member of a jury in a trial conducted remotely (64 percent likely to do so, 33 percent not). The fact that nearly 2-in-3 potential jurors are open to either of these solutions is encouraging, but it also obscures a difficult truth for court administrators – *With the exception of African Americans, those who are least likely to report to the courthouse for jury duty because of health or safety concerns – especially seniors and older women – are also those least likely to embrace the possibility of remote proceedings.* So while new technologies and growing public openness to remote proceedings offer a possible alternative to in-person appearances, they do not address the question of how to secure a representative jury pool.

Given a choice, potential jurors prefer remote proceedings to reporting in person, but serious doubts remain. Potential jurors are divided on whether, if summoned to report for jury duty, they would be more comfortable appearing in person (25 percent) or reporting remotely (41 percent), with 33 percent saying they have no preference. We believe the fact that a plurality expresses a preference for remote proceedings reflects the primacy of their concerns about safety and health rather than a vote of confidence in remote proceedings. Many of the same groups expressing the strongest preference for remote proceedings are those who express the greatest health concerns, including African Americans (prefer remote proceedings by 32 points) and older women (29 points).

Reinforcing this interpretation, we found that 61 percent say they would be very concerned about their ability to receive a fair and impartial trial if they were party to a case that was tried online rather than in person, including 1-in-3 who says they would be very concerned. These concerns are remarkably consistent across traditional demographic or ideological dividing lines and speak to how broad-based these concerns about the unknown will be for courts seeking to transition to a greater reliance on remote proceedings.

Survey provides some clues about logistics of engaging in remote proceedings from home. In order to help court administrators put themselves in the shoes of potential jurors, we asked some questions about how they might approach remote proceedings – in addition to the earlier questions about internet access, cell phone usage, and cell phone plans. We found that nearly 40 percent report they would be unable to isolate themselves in a quiet place for up to eight hours without being interrupted, including 45 percent of parents and 58 percent of those in the lowest income bracket.

We also asked what device or devices they would use if required to serve remotely on a jury and found the greatest number (59 percent) would rely on a laptop computer, followed by a cell phone (45 percent), a tablet computer (26 percent), and finally a desktop computer (25 percent). It is particularly noteworthy that nearly half would rely on a cell phone for at least part of their participation – including more than half of African Americans, Hispanics, and younger jurors without a college degree.