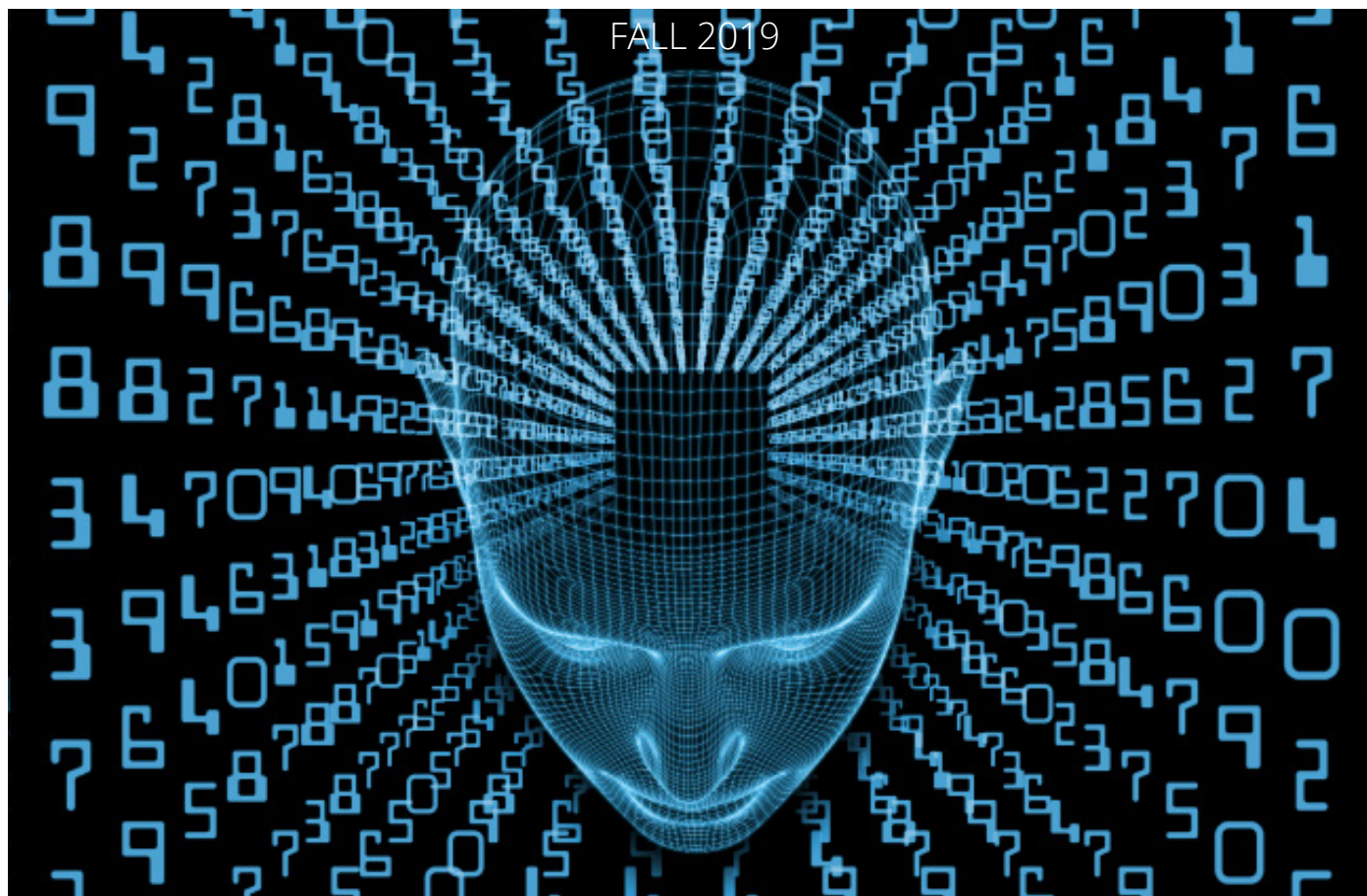


FALL 2019



# **Courting Hardships:** **Surprising Factors That Influence Jurors' Requests**



VINSON & COMPANY

EXPERTS IN COURTROOM PERSUASION &  
JURY SELECTION MODELS SINCE 1976

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## Pioneers in the Field

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# Courting Hardships

## ABSTRACT

The current survey was designed to determine if factors beyond situational necessities such as finances, medical issues, or caretaking responsibilities are related to whether a prospective juror will request to be excused for hardship. Factors that emerged included not only a juror's intrinsic characteristics such as demographics and latent attitudes but also factors beyond intrinsic characteristics, specifically the nature of the judge's appeal to the venire about hardships, and how the judge frames the question about an ability to serve. These findings suggest that the final jury pool may be less representative of the general population than the court has heretofore presumed, and the results provide clues about subtle factors that sway a venire's composition.

## HARDSHIP QUALIFIED

As part of the jury selection process, the Court and parties determine if jurors hold any biases, and consequently, cannot be fair and impartial in the trial. But even before that procedure, the Court typically questions jurors about their ability to serve for the anticipated length of the trial. Jurors must pass this attendance screening and are generally required to do so before they are questioned about overt bias or prejudice. If a juror passes the attendance screening, they are deemed "hardship qualified."

## WALK A MILE IN MY SHOES

*"But your honor, if I have to serve on this trial for 3 weeks, I won't be able to pay my mortgage, and I'll lose my house." The Court's response: "Sorry, we need to keep you. I'm sure you can make some arrangements. Hardship request denied."*

*"But your honor, I have to go home at ten o'clock every day to feed my cat, and I can't serve for 3 weeks with that responsibility." The Court's response: "Hardship request granted. You're excused."*

Most hardship requests and assessments are less extreme than the two examples described above, but both of these extreme situations and outcomes have occurred in the real world, albeit with different judges and in different venues. It seems arbitrary, inconsistent across courtrooms, and likely to unduly influence the ultimate composition of a venire. But—setting aside the criteria used by a court for granting a hardship request—what really influences whether or not a prospective juror asks for a hardship?

## SITUATIONAL NECESSITIES V. LATENT FACTORS

Prospective jurors' reasons for requesting hardship excusal generally fall into three categories of situational necessities: 1) financial, 2) caretaking responsibilities, or 3) medical issues. Whether a prospective juror is granted a hardship request or not is generally up to the court's discretion. Asking for a hardship, on the other hand, is up to the juror and normally presumed to be authentically based on situational necessities such as those three listed above. But are hardship requests ever driven by other more subtle or latent factors seemingly unrelated to situational necessities?<sup>1</sup> And if so, do these requests impact the make-up of the final venire?

<sup>1</sup> The current survey results do not suggest situational factors play no role in requesting hardship, only that extraneous factors that relate to hardship requests may in turn affect the final make-up of the venire and may influence how representative or non-representative of the community, the venire is.

## SURVEY GOALS

Vinson & Company conducted a survey designed to determine whether some associated but latent factors beyond jurors' situational necessities influence the frequency of requests for hardship. To this end, the current survey explored three areas of latent influence: 1) a juror's long held attitudes, such as values concerning rewards and punishments; 2) a juror's demographics, such as age, gender or education; and 3) the content of the judge's speech explaining the hardship process to the venire. The first two—demographic and attitudinal—are intrinsic juror characteristics, part of the juror's make-up prior to entering the courthouse. The third is an influence external to the juror and entirely dependent upon the content of information imparted to jurors by the judge.

## PROCEDURE ONE: REASONS BEYOND THE OBVIOUS THAT INFLUENCE JURORS' HARDSHIP REQUESTS

One hundred and three (n=103) individuals were invited to participate in an internet survey that involved answering a short series of questions about themselves, watching a video presented by an actor playing the role of a judge, and answering questions in response to the video.<sup>2</sup> The entire survey took an average of 11 minutes (Table 1). It took 3 minutes to answer questions about themselves, such as age, education, and attitudes about values and the justice system; 6 minutes to watch the video of a judge's speech regarding jury service and hardships in a civil trial; and 2 minutes to gauge reactions to the video, specifically whether the respondent felt that they would be able to serve on the trial as described in the video, and, if so, for what length of trial they could commit to.

Table 1	
Respondents' Tasks	
Demographic & Attitude Questionnaire	3 minutes
Judge Hardship Speech <sup>3</sup> Actor Video	6 minutes
Ability to Serve Questionnaire	2 minutes

## ABILITY TO SERVE

After watching the video and being reassured that they were not being and would not be summoned for jury duty because of their participation in the research, all respondents were asked the following: "If you were summoned to the courthouse, would you be able to serve on a 3-week trial?" If they were not able to serve on a 3-week trial, they were asked if they would be able to serve on a 1-week trial.

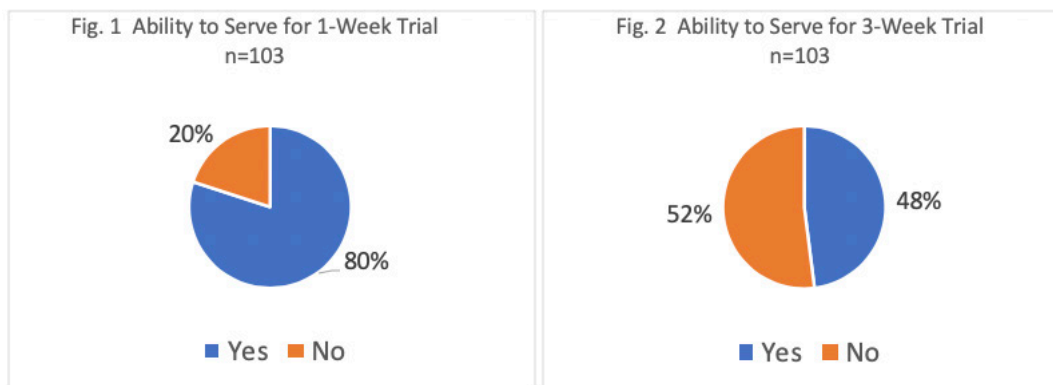
Overall, of the 103 respondents, 80% (n=82) indicated they would be able to serve on a 1-week trial (Fig. 1), and just under half of the 103, or 48% (n=49), said they would be able to serve on a 3-week trial (Fig. 2).<sup>4</sup> Despite the internet format being somewhat artificial, these percentages are consistent with percentages that result in real trials—in different venues and in both civil and criminal trials.<sup>5</sup>

<sup>2</sup> They were volunteers from all parts of the US and were paid with a gift card from the retailer of their choice.

<sup>3</sup> The nature of the case was described in the judge's speech as a civil products liability action brought by a plaintiff who claimed that her father suffered and died from malignant mesothelioma caused by exposure to asbestos made by the defendant company.

<sup>4</sup> Respondents who were able to serve on a 3-week trial were also able to serve on a 1-week trial and are included in that percentage in Fig. 1. There were 32% who said they could only serve on a 1-week trial and 20% who could not serve on either.

<sup>5</sup> For example, in a West Palm Beach, Florida trial in July 2019, 225 jurors were summoned for a 2-week trial, 118 (52%) volunteered to serve on the trial, and the remainder who did not volunteer, were excused. Those who were excused were presumably those who would have requested hardship. The current survey's procedure mirrored the volunteer procedure in that West Palm Beach trial. In other words, the respondents in this survey were asked if they would be able to serve—not if they would request a hardship. For trials longer than one week, based upon data obtained from hundreds of trials, the attrition rate generally approaches half. For a trial as long as three weeks, the number of those who are able to serve is generally less than half the original venire.



### THE HARDSHIP HEURISTIC

Are jurors who are able to serve on a trial any different either demographically or attitudinally, from jurors who are not able to serve? One heuristic that many assume to be true is that longer trials are populated by jurors who have fewer responsibilities in their daily lives and therefore may view evidence differently from those jurors who have more responsibilities. The results of the current survey indicated there were some demographic differences between those who were able to serve and those who were not. The more troubling differences that emerged were attitudinal differences.

## ATTITUDES

### ATTITUDES ABOUT A CORPORATE RESPONSIBILITY

Before watching the judge's video and before being asked about their ability to serve on a trial, respondents were asked for an opinion about a personal injury lawsuit. Table 2 below lists the results. Most, or 77%, felt there was a 50-50 chance that either side—the company being sued or the person suing—was in the right. Additionally, 6% felt the company was likely responsible, while 17% felt the company was likely not responsible, indicating that 23% held a leaning or potential bias before hearing anything about the details of the case.

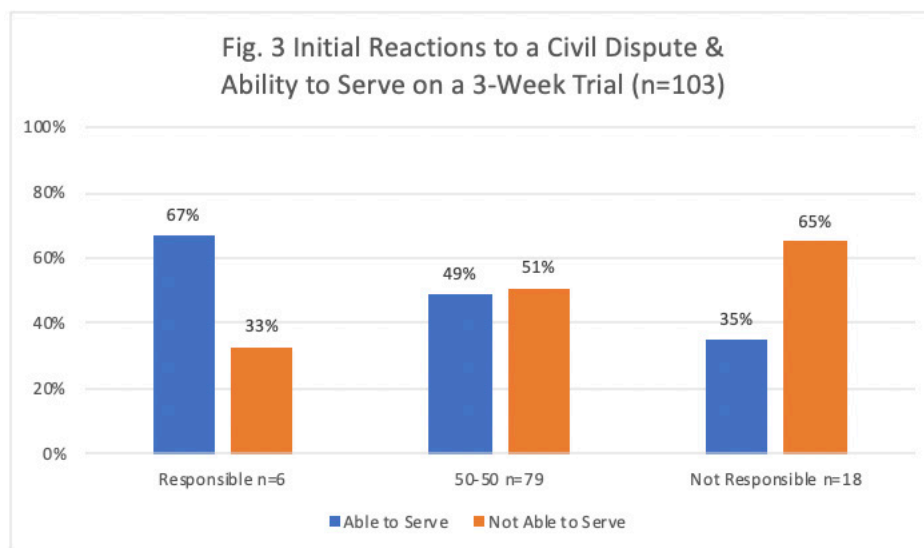
Table 2. In a civil trial, where a company is being sued by a person who claims he was injured by the company's product, before hearing any evidence, what would you tend to think? (n=103)	
6%	Said "the company is likely responsible, but I would need to be convinced."
77%	Said "there is a 50-50 chance either side is in the right."
17%	Said "the company is likely not responsible, but I would need to be convinced."

Was holding any of these views related to a juror's ability to serve or not serve on a lengthy trial?

### SMALL NUMBERS CAN BE BIG PROBLEMS

As shown in the chart below (Fig. 3), the small percentage, or 6%, who believed that the company was "likely responsible," were more often able to serve on a long trial than those who felt it was 50-50 that either side is right, and much more likely to serve than those who felt the company was "likely not responsible."





Those percentages would represent 1 potential juror in a venire of 30 who would be predisposed to be against the company *and* able to serve, and 2 potential jurors in the venire of 30 who would be predisposed to find for the company *and* able to serve.<sup>6</sup> Even those small numbers could become big problems if any of those three who seem to have no compunction about serving on a long trial were able to skate through the voir dire process and wind up on the jury.

### LARGE NUMBERS ARE EVEN WORSE—ATTITUDES ABOUT A CRIMINAL DEFENDANT

Regardless of ability to serve on a trial, fully 30% of the sample were inclined to believe a criminal defendant on trial for murder was guilty before hearing any evidence (Table 3). The previous scenario captured reactions to a corporate defendant prior to the judge's video, but even more troubling was the relationship between the prejudice to believe a criminal defendant is guilty before hearing any evidence and the ability to serve.<sup>7</sup>

Table 3. In a criminal trial, where a defendant is on trial for murder, before hearing any evidence, what would you tend to think? (n=103)	
2%	Said the defendant is probably guilty.
28%	Said the defendant is likely guilty, but I would need to be convinced.
67%	Said there is a 50-50 chance that the evidence could go either way.
3%	Said the defendant is likely not guilty, but I would need to be convinced.
0%	Said the defendant is probably not guilty.

<sup>6</sup> Calculated as follows: Percent "responsible" bias (6%) times venire size (30) times percent with this bias who are able to serve (67%) = number of jurors (1.2) who hold "company responsible" bias and are able to serve. Percent "not responsible" bias (17%) times venire size (30) times percent able to serve (35%) = 1.8 jurors who hold company "not responsible" and are able to serve.

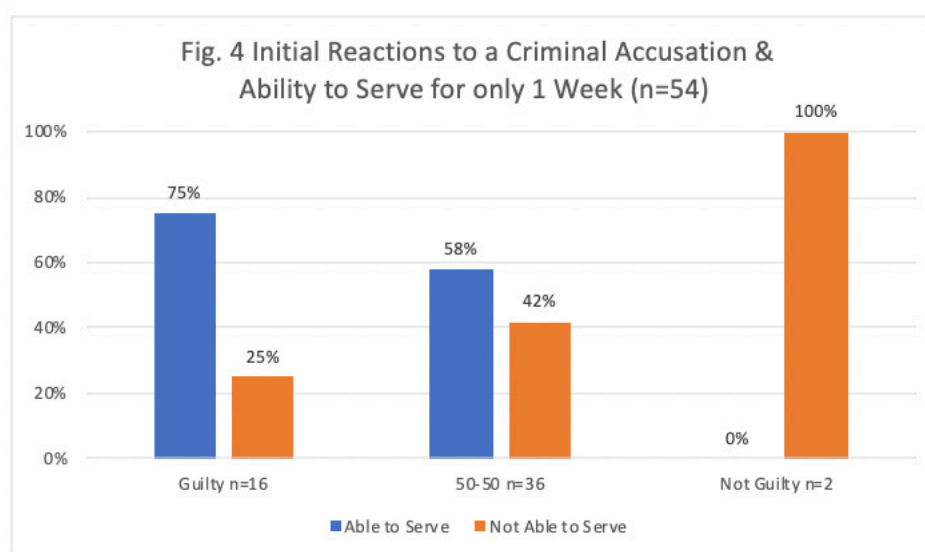
<sup>7</sup> A civil trial involving personal injury was used in the video description in this study and therefore it is unknown based on this data whether a similar percentage of respondents would indicate an ability to serve if the trial had been instead, described as a criminal matter. For purposes of this analysis, it is assumed that the percentages would be approximately similar and that "a bias is a bias," whether for/against a corporation defendant or a criminal defendant. In fact, there was a significant negative correlation between the predisposition to believe a criminal defendant is guilty and a corporation is responsible, suggesting that holding either predisposition might influence how a juror evaluates a case against any defendant.

Half the sample, after the judge's video, said they were unable to serve on a 3-week trial. Looking back at this group's predispositions regarding a criminal trial and as shown in Table 4, for all 54, the percentages were consistent with the sample as a whole. Thus, fully one-third held a potentially prejudicial view of guilt or innocence.

<b>Table 4. In a criminal trial, where a defendant is on trial for murder, before hearing any evidence, what would you tend to think? (n=54)</b>	
<b>1%</b>	<b>Said the defendant is probably guilty.</b>
<b>30%</b>	<b>Said the defendant is likely guilty, but I would need to be convinced.</b>
<b>67%</b>	<b>Said there is a 50-50 chance that the evidence could go either way.</b>
<b>4%</b>	<b>Said the defendant is likely not guilty, but I would need to be convinced.</b>
<b>0%</b>	<b>Said the defendant is probably not guilty.</b>

These 54 respondents had indicated that a 3-week trial was too long for them to serve, so they were asked if they could serve on a 1-week trial, and well over half (n=33, 61%) of them said they would be able to serve on a 1-week trial. Did a bias to believe a criminal defendant is guilty or not guilty relate to an ostensibly separate issue regarding an ability to serve on a trial described as involving a corporate defendant?

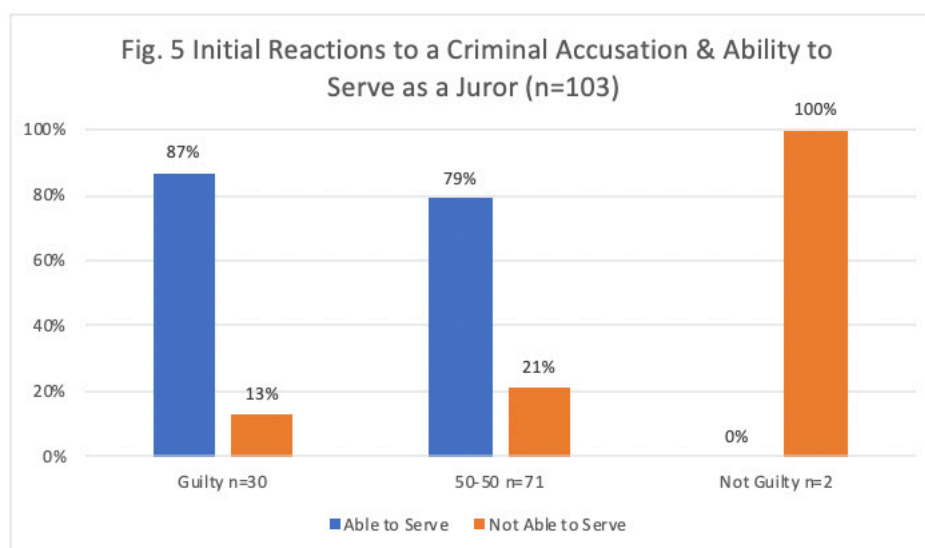
As shown in the chart below (Fig. 4), of those who said they felt a criminal defendant was likely or probably guilty, 75% said they *would be* able to serve on a 1-week trial. Of those who said they felt there was a 50-50 chance the evidence could go either way, only 58% said they *would be* able to serve on a 1-week trial. These differences were statistically significant. The very small 4% who felt the defendant was likely not guilty represents only 2 respondents but neither said they could serve on a 1-week trial.



The potential for jurors with a bias to believe that a criminal defendant is guilty in a venire of 30 is dramatic. Seven jurors among a venire of 30 would be able to serve on a one-week trial *and* would also hold a bias to believe a criminal defendant is guilty.<sup>8</sup>

<sup>8</sup> Calculated the same as previous: Percent guilty bias (30%) times venire size (30) times percent with this bias who are able to serve (75%) = 6.8 jurors who hold guilty bias and are able to serve.

When the entire sample was analyzed, the relationship was not as striking but was nevertheless, statistically significant (Fig. 5).<sup>9</sup>



Even though the judge's video addressed hardship for a civil trial involving a personal injury, preexisting attitudes about presumed guilt or innocence in a criminal trial correlated with ability to serve as a juror. For those who tended to prejudge a criminal as guilty (before the judge's video), a higher percentage said they were able to serve (in response to the judge's video) compared to those who felt that in criminal matters it was a 50-50 proposition.

## REWARDS AND PUNISHMENTS

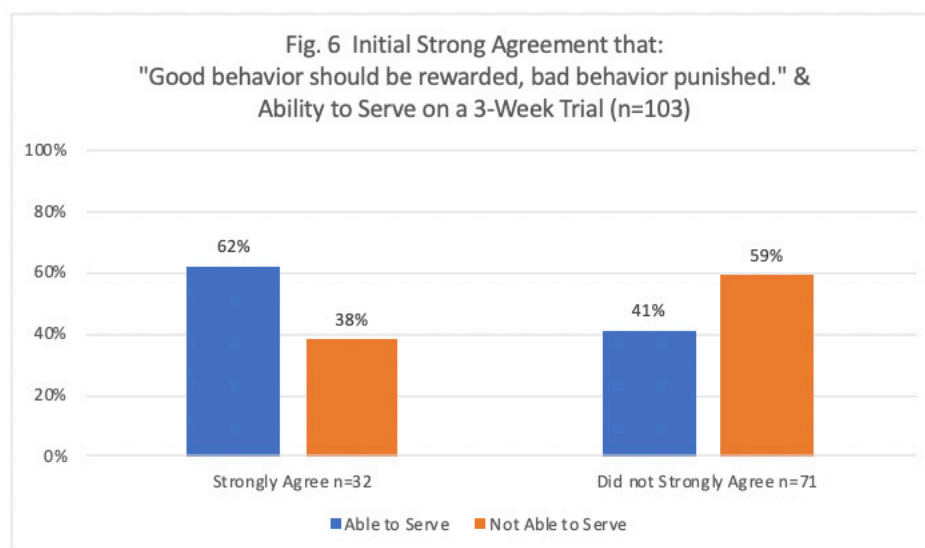
In addition to the predispositions to favor a civil or criminal defendant, an insight into the world views of respondents who said they were or were not able to serve, was captured in their attitudes about rewards and punishments.

Those who "strongly agreed" with the statement, "Good behavior should be rewarded, bad behavior punished," were significantly more likely to say they were able to serve on a 3-week trial than respondents who did not strongly agree with that concept; fully 62% of those who "strongly agreed" were able to serve compared to only 41% of those who did not strongly agree (Fig. 6).<sup>10</sup>

<sup>9</sup> This chart includes everyone who could serve on a 1-week trial plus those who could also serve on a 3-week trial compared to those who could not serve on either.

<sup>10</sup> Additionally, for those respondents who "strongly agreed" with the statement, their ability to serve dramatically increased if they *also* agreed that: "Society should reward only merit." Combining those who agreed with *both* of those value statements, fully 83% indicated an ability to serve on a 3-week trial—a percentage much higher than the baseline percentage of under half as reported in Fig 2.





### IT'S NOT THE HEAT, IT'S THE HUMIDITY

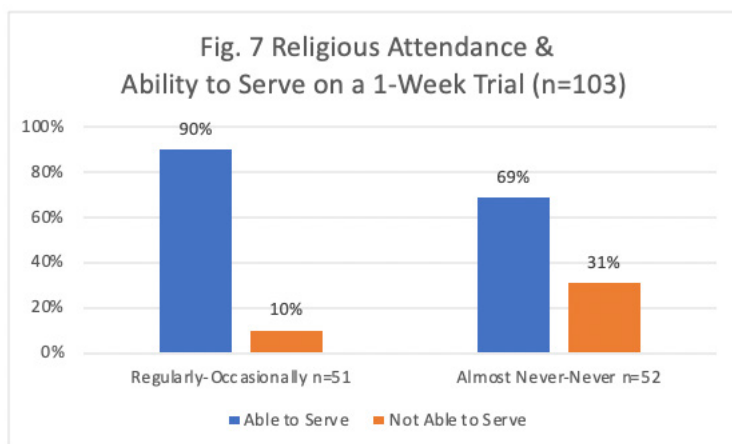
These views, or values, reflect positions regarding rewards and punishments—concepts that are seminal to decisions jurors are asked to make during a trial. While the statements themselves do not reveal authoritarian or libertarian belief systems, the intensity of agreement or disagreement with the statements does. While there is always a spread, or distribution, of ideas surrounding those statements prevalent in our society, the underlying premise for a fair and impartial jury is that there is a fair and balanced representation on the jury of those beliefs. The current research suggests otherwise. It suggests that potential jurors on a lengthy trial are to a great extent individuals who hold strong and perhaps immutable beliefs about the value of rewards and punishments.

### DEMOGRAPHICS

Attitudes, as outlined above, were related to willingness or ability to serve as a juror. While differences in attitudes hold the most obvious threat to an equitable representation in the venire, several demographic characteristics were also related to a respondent's ability to serve.

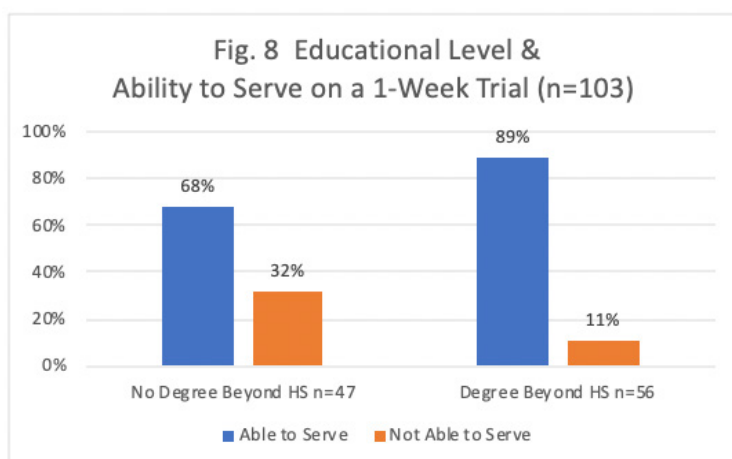
### RELIGIOUS ATTENDANCE

Religious observance was significantly related to ability to serve on a 1-week trial. For those who indicated they "never" or "almost never" attended religious services (n=52), 31% were not able to serve on a 1-week trial. For the rest who attended services more often (n=51), only 10% were not able to serve (Fig. 7). These results suggest that individuals who adhere to more organized religious observances are more often able and willing to serve, while the converse is true for those who do not adhere to formal or organized religious observances.



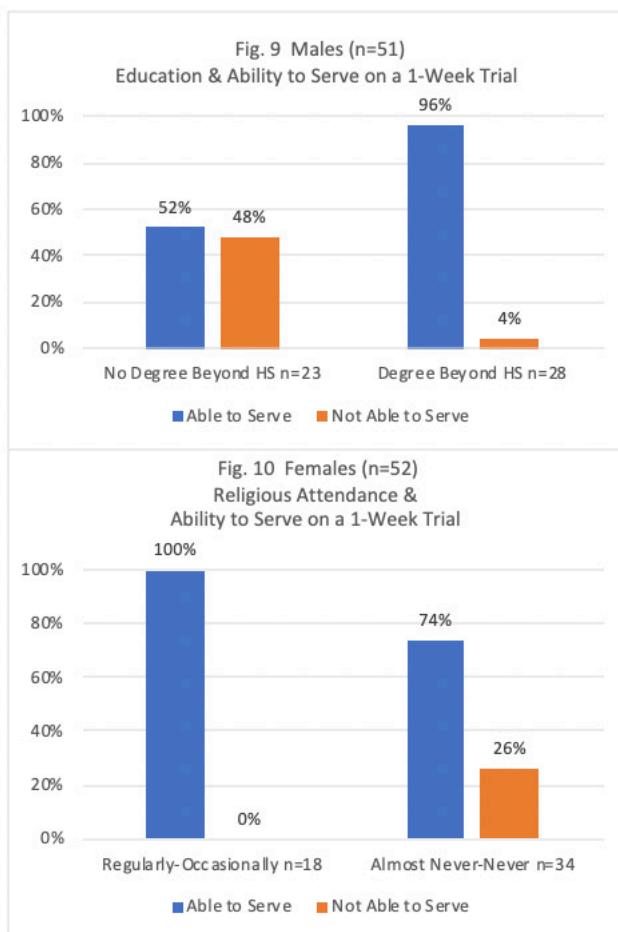
### EDUCATION LEVEL

Respondents who held a degree beyond high school (e.g. associate, technical, college, or graduate) were significantly more likely to be able to serve on a 1-week trial than those without a degree, as shown in Fig. 8. Many factors are likely at play here aside from education (e.g., intelligence, finances, or work status).



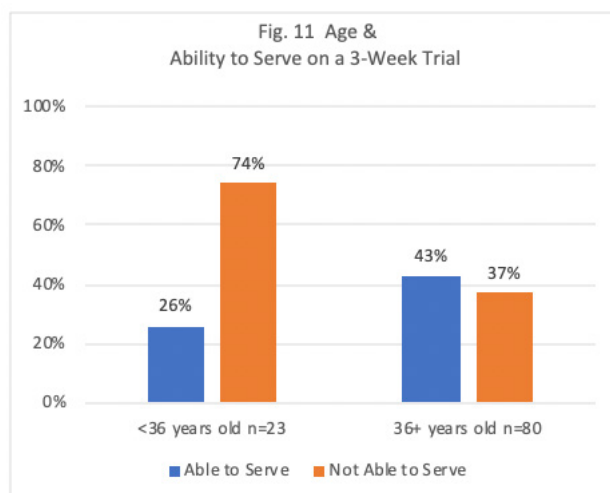
### GENDER, EDUCATION & RELIGIOUS ATTENDANCE

The difference between the ability of males' and females' ability to serve on a 1-week trial was not statistically significant: 77% of males could serve, while 83% of females could serve. But the factors that were related to ability to serve were different for males and females. For males, education was the important factor, with 96% of males with a degree beyond high school able to serve, while only 52% of males without were able to serve (Fig. 9). For females, religious attendance was a more important factor than education (Fig. 10). Of females who had regular or occasional religious attendance, 100% were able to serve.



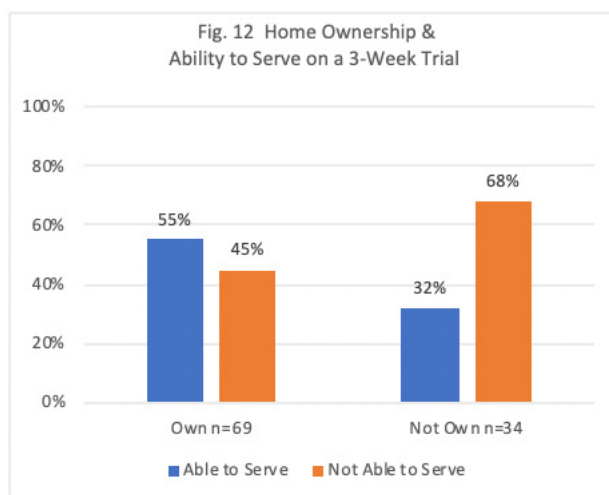
### AGE & ABILITY TO SERVE ON A 3-WEEK TRIAL

Younger respondents in the current survey were no less likely to be able to serve on a 1-week trial than older ones. However, when asked to serve on a 3-week trial, younger respondents expressed significantly greater reluctance. Those who were under 36 years of age were significantly less likely to say they could serve on a 3-week trial compared to those of all other age groups (Fig. 11). Fully 74% of those under 36 years of age said they were not able to serve.



## HOME OWNERSHIP & ABILITY TO SERVE ON A 3-WEEK TRIAL

Like age, there was no significant relationship between home ownership and ability to serve on a 1-week trial. Home ownership—a question that is typically asked on jury questionnaires—was, however, related to ability to serve on a lengthy trial; of those who did not own their own home, 68% were not able to serve on a 3-week trial, while of those who owned their home, only 45% could not serve (Fig. 12). Both age and home ownership were related to ability to serve on lengthy trials. Because there is a correlation between age and home ownership, with younger persons less likely to own a home, the relationship was admittedly confounded. However, home ownership, more than age, continued to emerge as importantly related to ability to serve.<sup>11</sup>



## LATENT ATTITUDES AND DEMOGRAPHICS—DECISIONS ABOUT HARDSHIP

The current study has demonstrated that there are attitudes as well as some demographic characteristics that are related to a willingness to serve as a juror. The attitudes appear to be subtle and are ones that are unlikely to be revealed later during a voir dire examination for cause.

Similarly, the Court might assume that a venire would be comprised of a sample representative of age, gender, education, and religious attendance within the community; yet, this survey suggests otherwise. It suggests that factors other than financial needs, caretaking responsibility, or medical necessities may be at play when jurors decide whether or not they can serve on a trial—not necessarily causal factors but factors that would contribute to a non-representative final make-up of a jury panel.

## A JUDGE'S HARDSHIP APPEAL MATTERS

Decisions made by the court in response to a juror's hardship request is certainly one variable that has an effect on the make-up of the jury panel and ultimately the make-up of the jury. But there is another variable within a judge's purview that may have an effect on the make-up of the panel. It involves a judge's initial appeal to the venire regarding jury service—in other words how a judge describes a hardship, the hardship process, and how a judge explains the obligations citizens have to serve.

<sup>11</sup> Half of those under 36 years of age did not own a home, and almost one-third of those over 35 years of age did not own a home. Income also further complicated these findings with lower income groups significantly less able to serve on even a 1-week trial.

“But wait, if someone believes they have a hardship, then they are going to request it regardless of the speech given by a judge, right?” Perhaps it is not that simple. Perhaps *how* the judge introduces the concept of hardship to the venire actually influences the percentage of citizens who request a hardship.

<sup>12</sup>

## PROCEDURE TWO: TWO VERSIONS OF THE JUDGE’S HARDSHIP SPEECH

The sample of 103 had actually heard two different hardship appeals by the actor who played the judge.<sup>13</sup> Results for the aggregate of all 103 respondents have been discussed above. The following portion of this paper describes the effects of two qualitatively different hardship appeals made by a judge. While the overall content of the two different appeals was similar, and both were 6 minutes long, the two versions differed in the tone of the appeal made. As shown in Table 5, half the sample was randomly assigned to hear the judge give a speech defined as a “Basic Appeal” while the other half heard a speech defined as a “Stars & Stripes Appeal.”

Table 5. Respondents’ Task	
Questionnaire (same as procedure one)	3 minutes
Judge Hardship Speech	
Basic Appeal (half heard this speech)	6 minutes
Stars & Stripes Appeal (half heard this speech)	6 minutes
Ability to Serve Questions (same as procedure one)	2 minutes

## DIFFERENCE—BASIC v. STARS & STRIPES APPEAL

The “Basic” appeal video described the requirements for jury duty, the expectations made by the court regarding a juror’s participation in the process, as well as what defined a hardship. The “Stars & Stripes” appeal took a different approach and emphasized the importance of jury duty in our democratic society and its value to citizens. Both versions were realistic and based upon trial transcripts of hardship speeches made by judges in real trials.<sup>14</sup>

## BOTTOM LINE—BASIC APPEAL v. STARS & STRIPES APPEAL

Respondents who watched the Stars & Stripes Appeal video said they would be able to serve on a 1-week trial or on a 3-week trial at a higher percentage than those who watched the Basic Appeal video.

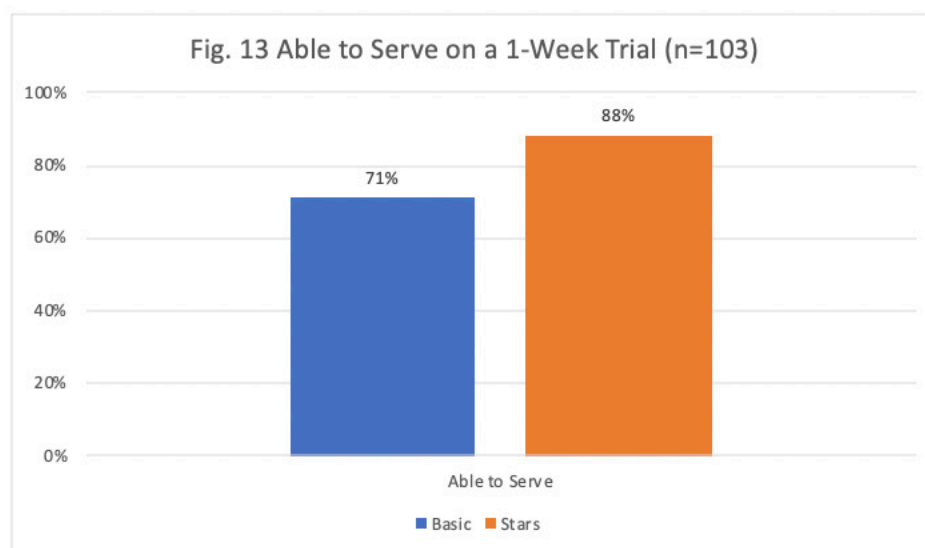
## DETAILS

As shown in the chart below (Fig. 13), willingness to serve on a 1-week trial was influenced by the appeal of the judge’s speech. For respondents who were given the Basic Appeal speech (n=52) regarding jury service, 71% said they were able to serve on a 1-week trial. For those who were given the Stars & Stripes Appeal speech (n=51), 88% said they were able to serve on a 1-week trial. The difference of 17% was statistically significant ( $p < .03$ ).

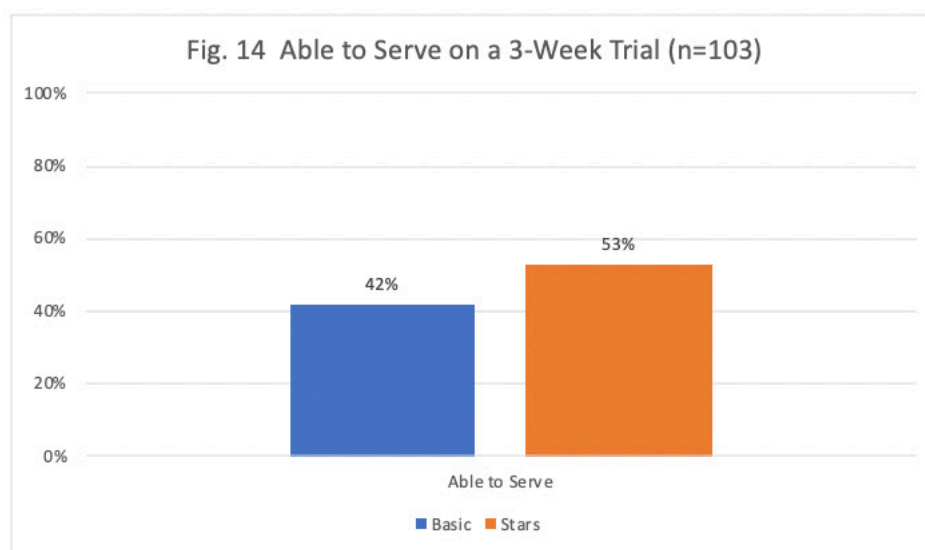
<sup>12</sup> An assumption is made in this survey that if someone indicates they *are* able to serve on a trial, they would not request hardship and if someone indicates they are *not* able to serve, they would likely request hardship.

<sup>13</sup> The design was random assignment to all conditions via computer programming.

<sup>14</sup> The content of each speech is contained in Appendix A.



Willingness to serve on a 3-week trial was only somewhat influenced by the appeal of the judge's speech as shown in the chart below (Fig. 14). Overall, for those who were given the Basic Appeal speech, 42% said they were able to serve on a 3-week trial, while those given the Stars & Stripes Appeal speech, 53% said they were able to serve. The difference of 11%, while in the predicted direction, was not statistically significant.



### THREE WEEKS IS A LONG TIME

Most jurors, it seems, are able to juggle a trial schedule that lasts for 1 week, but not a 3-week trial spanning almost a month of jurors' time. Fully 40% of respondents in the current survey indicated they had at least once in the past asked to be excused from jury duty.<sup>15</sup> The reasons for their hardship requests fell into the following four categories as listed in Table 6 below.

<sup>15</sup> The same percentage in both Appeal groups had asked at least once in the past to be excused from jury service.



Table 6. Survey's Hardship Excusal Reasons	
<b>36%</b>	<b>Caretaking Responsibilities</b>
<b>28%</b>	<b>Medical Reasons</b>
<b>19%</b>	<b>Financial Reasons</b>
<b>17%</b>	<b>Other Reasons</b>

Certainly, as confirmed in this survey, the type of appeal made by the judge will have an influence on some prospective jurors' willingness to serve, but the length of a trial also served to mitigate the influence of the judge's appeal. In other words, hardship requests for 3-week trials may be less mutable and perhaps more legitimate or expressed more strenuously than those made for 1-week trials.

## FRAMING—HOW THE QUESTION IS ASKED

### FRAMING—HOW HARDSHIP IS ASKED

In addition to the appeal of the judge's speech (Basic Appeal versus Stars & Stripes Appeal), might there be other factors aside from jurors' perceptions of their own hardship that would influence whether jurors request hardship? In other words, does changing a word here or there in the framing of the judge's question to the venire influence the number of prospective jurors requesting hardship?

### WHO CAN SERVE? WHO CANNOT SERVE?

Asking for those who "can" serve versus those who "cannot" serve on the surface would seem to glean the same information, and judges have, in fact, framed the question both ways. But does it make a difference? Do prospective jurors react differently if the question is framed slightly differently (i.e. who "can" serve (**inclusive** framing), versus who "cannot" serve (**exclusive** framing))? The only difference between these two framing conditions is a single word: "can" versus "cannot."

To test these two framing conditions, the sample of 103 was not only randomly assigned to one of two appeal conditions, but also respondents in each appeal condition were randomly assigned to one of two framing conditions, as shown in the design and percentage results in Table 7 below.

Table 7		
Appeal & Framing of Speech	% Able to Serve Only 1-week <sup>16</sup>	% Able to Serve 3-weeks
<b>Basic Appeal Inclusive (n=28)</b>	<b>64%</b>	<b>50%</b>
<b>Basic Appeal Exclusive (n=24)</b>	<b>38%</b>	<b>33%</b>
<b>Stars &amp; Stripes Appeal Inclusive (n=27)</b>	<b>77%</b>	<b>52%</b>
<b>Stars &amp; Stripes Appeal Exclusive (n=24)</b>	<b>73%</b>	<b>54%</b>

<sup>16</sup> These percentages represent those who could only serve for 1 week. The significant relationship also holds when the 1-week and 3-week are combined.

Framing resulted in no significant influence for those who heard the Stars & Stripes Appeal. Approximately the same percentages (77% v. 73% for 1-week and 52% v. 54% for 3-weeks) in both Stars & Stripes framing conditions said they could serve. In other words, when respondents heard the Stars & Stripes Appeal, they were not influenced by the way the question was framed, suggesting that the content of the speech was more important than the wording of the question.

Responses to framing in the Basic Appeal condition, on the other hand, generated quite different percentages for hardship requests; framing made a difference. For those who heard the Basic Appeal with the **exclusive** framing, only 33% of the sample said they would be able to serve on a 3-week trial and 38% said they would be able to serve on a 1-week trial. Contrast this to when the question was framed **inclusively**, where 50% were able to serve on a 3-week trial, and 64% were able to serve on a 1-week trial. The exclusively-framed question in the Basic Appeal generated a lower percentage of respondents able to serve than when the question was framed inclusively.

### APPEAL BOTTOM LINE

The current survey suggests that a strong patriotic speech by a judge prior to hardships will have an effect on jurors' willingness to contribute more of their time to a trial than a speech that provides only the basic parameters for serving and for being excused. The more the judge provides an "out" for jurors, the more willing they will be to take it. The more the judge appeals to a sense of duty and sacrifice, the more willing jurors are to volunteer their time.

### FRAMING BOTTOM LINE

Framing acts in a subtly suggestive and influential way, but only when the appeal is a Basic one—keeping in mind the only difference between the Inclusive and Exclusive framing is a single word spoken once in the video: "can" versus "cannot." How the question is asked—its framing—seems to have no effect, however, when the Stars & Stripes Appeal is made.

### APPEAL & FRAMING BOTTOM-LINE

The bottom-line results from this survey suggest that when a judge makes a Basic Appeal in the speech to jurors to do their civic duty and frames the question as Exclusive (cannot) serve, it will result in more prospective jurors asking for hardship.

### EXPECTANCY EFFECT AND DEMAND CHARACTERISTICS

For decades, psychologists have confirmed that an experimenter can exert influence on respondents by subtly suggesting the "correct" response through wording, inflection, or body language. A judge is a person of great authority in the courtroom and is in a position to elicit a certain amount of compliance. A demand characteristic would very likely be operating when a judge makes an appeal to jurors. Jurors' compliance may be influenced as a function of the type of appeal or the framing of the question. While this survey was somewhat contrived, and respondents did not believe they were involved in a trial, the effects of Appeal and Framing were shown to be impactful.

## SUMMARY

The results of this survey suggest that there are factors beyond finances, medical issues, or caretaking responsibilities that influence or correlate with whether a prospective juror will request to be excused for hardship. Factors that emerged in the current survey include not only a juror's intrinsic characteristics such as demographics and latent attitudes but also factors beyond intrinsic characteristics, specifically the nature of the judge's appeal to the venire about hardship, and how the judge frames the question about an ability to serve. These findings suggest that the final jury pool may be even less representative of the general population than the court has heretofore presumed, and the results provide clues about the subtle factors that sway a venire's composition.

## APPENDIX A

### SCRIPTS USED BY ACTOR PLAYING THE JUDGE

#### ALL GET THIS INTRODUCTION

Thank you for taking the time to help us with our survey. We are interested in how citizens decide whether or not they are able or not able to be available for jury duty. Some jury trials are short and some are longer. Some jury trials are interesting to some people and not to others. Some people who are summoned for jury duty have other commitments and obligations that might interfere with being a juror at any given time. Those are the topics we are interested in and appreciate your help in doing so. This is not a jury summons. Based upon your answers to this survey, you will not be contacted by the court to appear for jury duty and your answers will be kept strictly confidential and used only for our own research purposes.

Do you understand that this is not a jury summons and that the information you provide will not be shared with the court? (pause for question response)

To begin, I will tell you a bit about what the obligations of a juror are, just as a judge would, and then I will ask you some questions and get your reactions. When citizens arrive at the courthouse, the judge gives a short speech outlining some of the responsibilities and obligations of jurors. This is one such speech, so imagine if you will that you have arrived at the courthouse and are waiting with a group of others to possibly be a juror in a trial:

Good day. We appreciate your time here. I know it's an inconvenience to your lives, whether inconvenience for work or for personal reasons. But I have to tell you, the attorneys, the parties, and the court system are most grateful for your help here today. This is going to be a civil trial, specifically what we call a products liability action. It was brought by the plaintiff who claims that her father suffered and died of a type of cancer called malignant mesothelioma that was caused by his exposure to products that contained asbestos, including, among, others, products manufactured and sold by the defendants. The plaintiff is asking for monetary damages for her father's suffering and her loss of his guidance. The defendants deny that their product was the cause of the plaintiff's father's mesothelioma. So that is just a bit about the type of case this is.

#### HALF WILL GET THIS BASIC VERSION

I don't know if you are aware, but our Federal Constitution and State Constitution guarantees everyone in a civil or criminal matter a right to a trial by a jury of one's peers. All across the country, in courthouses there are trials taking place and those trials may need citizens such as yourselves to serve as a juror. We appreciate your time here and we hope that you find your time here well served and that you find this to be an interesting case. If nothing else, by answering a jury summons, prospective jurors have at least informed all of us that they can follow the law, because a jury summons is a summons that requires citizens to report to the courthouse. Failure to report for jury duty when summoned could result in certain consequences, such as contempt of court and other things. But you have reported and have shown you can follow the law and I commend you for taking that step.

First, I'd like to tell you the qualifications for jury service. A juror must be 18 years of age or older, a citizen of the United States, able to read and understand the English language, have not been convicted of any indictable offense in any state or federal court and not have any physical or mental disability which would prevent a person from properly serving as a juror. However, if you need an accommodation, the judiciary will provide reasonable accommodations consistent with the American With Disabilities Act. As long as you meet those qualifications you are eligible for jury duty on this case. Now, I understand that service on a jury is sometimes inconvenient and I do appreciate that and understand that many of you have other obligations in your lives which means that service on a jury might constitute a great hardship on either you or your family. If it might become a hardship on you or your family, I can excuse a juror or postpone their time of service to a later date. One example of extreme hardship is if you are not paid for jury duty, therefore making it a serious financial hardship on you or your family. Often self-employed people fall into that category as do hourly workers, in other words people who do not get paid if they do not work. We do not want to cause you extreme financial harm. If you are concerned with regard to your employment for financial or other reasons, please let the court know. Also, another form of hardship is, if you have caretaking responsibilities for another person such as a child or an elderly parent, that might be a real hardship. If you have a paid non-refundable business trip or vacation planned over the time we will have this trial that might be a hardship. If you are a full-time student and it interferes with your classes or exams, that might also be a hardship. Those are all potential reasons why you may not be able to serve on this jury and might be excused from your jury duty at this time.

#### **HALF WILL GET THIS STARS & STRIPES VERSION**

Many people think jury service is a real burden and but the fact is, serving on a jury is probably one of the most important things a citizen can do. Service on a jury allows you the opportunity to be part of the judicial system by which the legal affairs and liberties of your fellow men and women are determined and protected under our very unique form of government. You are being asked to perform one of the highest duties of citizenship, and that is to sit in judgment on facts, which will resolve a legal dispute. Without jurors, our justice system could function. We really don't ask a lot of our citizens in this fine country. We are all supposed to pay taxes and we all have the right to vote. Surprisingly, many people don't even take the time to exercise their right to vote. I was just watching on the news this week, where in some countries, many people don't even have the right to work and they get vouchers for their food, and they can't vote or assemble peacefully. They don't serve on juries. For anyone who has lived under a dictatorship like they have in Nicaragua, for example, you know there is no justice like we have here. What they call justice is they come in the night and take you away, no jury trial, no judge trial, no justice. That is the way the justice system works in many other countries and how fortunate we are in this country with the Bill of Rights. We talk about the Bill of Rights and how many rights we have such as the right of free speech and the right to assemble. And judges sometimes visit the schools and we play this game with the fourth graders, we pretend that we take away all the rights in the Bill of Rights but they can choose three to keep. Their first choice is usually the right to bear arms. But none of them will ever choose the right to peaceful assembly or right to trial by jury. So you can bear arms, but you can't assemble, you can't speak or you can't have a jury trial. So when jurors come in here, it reminds me how fortunate we are and how unique our country is. One of those rights is we have men and women, who for over 200 years, have died and fought to protect our country and our rights. You may have family members somewhere either in this country or another country trying to protect us all from ISIS and all of the other things that we worry about. So what else do we ask our citizens to do? We ask that they keep our constitution strong by sitting on a jury.

So whether or not you are happy to serve as a juror, I want to tell you that jury duty is a badge of citizenship. It is cornerstone of our system of justice and you are a vital part of the system and I want to thank you either way.

### **ALL GET THIS INQUIRY REGARDING ABILITY TO SERVE**

This trial is projected to take no longer than 3 weeks. Court is in session from Monday through Friday from 9AM until 5PM with an hour for lunch and we take a morning and afternoon break for 15 minutes each.

What I'd like to do is to determine if you should be excused from jury service for what the law calls a hardship or extreme inconvenience. You already are probably thinking, how can I possibly commit three weeks of my time away from my jobs, my family, school or any other matter that is important to you. So this will be the opportunity for you to tell me whether you CAN/CANNOT (Randomly assigned within the Basic/Stars & Stripes Speech Versions) do so.



## About THE COMPANY



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