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Jurors in a Post-Pandemic World: What Litigators Need to Know



VINSON & COMPANY

EXPERTS IN COURTROOM PERSUASION &
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Experts in Courtroom Persuasion & Jury Selection Models Since 1976



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Jurors in a Post-Pandemic World

Less than two months ago, courts across the country were conducting business as usual. Jury trials, a vital component of the justice system, were proceeding as planned. And thousands of U.S. citizens, in response to a summons they had received for jury duty, were doing their part as jurors or prospective jurors.

Then the coronavirus brought everything to a screeching halt.

One would be hard-pressed to identify any institution that has not been severely impacted by this pandemic. Our economic, political, cultural, and social lives have been challenged like no other time in recent history. And it's fair to wonder if, when, and how things will return to the way they were.

At some point, a peak will be reached. A curve will flatten. The worst will pass. And a recovery will ensue. Every industry, every business, every individual is attempting – formally or informally – to predict what recovery will look like and how the environment in which they operate will be different from the one they knew.

For litigators who try legal disputes to juries, these considerations likely manifest in a variety of pressing questions. How has the pandemic impacted jurors' feelings, beliefs, and attitudes that are relevant to their clients and their clients' legal issues? How will claims of physical harm or financial loss be perceived in a post-pandemic world that has recently been buffeted by waves of illness, death, layoffs, and punishing levels of unemployment?

For each case, the answers to questions such as these are likely to differ. But there is a more fundamental issue that will affect all involved in a trial by jury – regardless of the parties, the claims or counsel. And the issue is this: In a post-pandemic world, who is most likely to respond to a jury summons? What might a prospective jury pool look like? And how might it be different from the population of jury-eligible individuals overall?

In this, the first of a series of studies Vinson & Company has undertaken, we offer some preliminary answers to these questions. And over the course of the next several weeks and months, we will be adding to this knowledge base with updated findings, tracking and measuring the trajectory of responses over time, and developing a better understanding of the new environment counsel and their clients will face in taking a dispute to trial.

METHODOLOGY

Using our nationwide database of surrogate jurors, we surveyed 100 individuals¹ between April 4 and April 8, 2020. The survey was broadly organized into two sections. The first section included a battery of questions relating to: 1) respondents' thoughts, feelings, and opinions about the coronavirus pandemic; 2) their personal experiences with the pandemic and the consequences of the pandemic; 3) their behaviors since the pandemic began; 4) their anticipated future behaviors once the pandemic ends; and 5) their perceptions of various institutions, industries, and entities.

The second section of the survey included a brief video presentation of an actor, playing the role of a judge, explaining the importance of jury duty and factors that would constitute a reasonable request to be excused from jury duty due to hardship. After watching this video, respondents were asked about their willingness and ability to serve as jurors if asked to do so for a three week trial.

On average, it took respondents approximately 15 minutes to complete the survey.

JURORS IN THE FUTURE: ARE THEY WILLING?

What people say and what they do are often inconsistent. And a survey that seeks to determine how people will behave tomorrow based on what they say today must take this into account. In attempting to determine the characteristics of those most likely to show up for jury duty in the future, we looked at three measures. First, we asked respondents what they would do if they were to receive a jury duty summons once the courts are open again. Nearly three-quarters (71%) said they would go to court in response to the summons and participate in the jury process; 28% said they would go to court and request to be excused for hardship; only one individual said they would ignore the summons.

Can this data be believed? We think so², particularly if past behavior is a decent predictor of future conduct. As it turns out, 82% of our sample had, in the past, received a summons for jury duty. And of that group, 63% stated that they went to court in response to the jury duty summons and did not request to be excused from serving due to hardship. So while some of our survey respondents may have been just offering the socially desirable response to our question as to what they would do in the future, the overall results on this point are not terribly out of line with past behaviors.

¹ The demographic characteristic of our sample can be found in Appendix A.

² We would, however, be hesitant to predict that only 1% of jury summonses are ignored. It is almost certain that a more substantial proportion of respondents have, at some point, ignored a jury duty summons, and there seems to be some evidence for that from this study. Because, while respondents in this survey may have been loath to admit doing so, a hearty 15% thought that "most people" will ignore a future jury duty summons once the courts are open again. This psychological projection is believed to occur when people deny certain negative qualities they have or undesirable behaviors they have engaged in, but are willing to attribute them to others. This is a topic that we have explored before in the context of examining whether jurors abide by instructions given to them by the court. Our findings on that issue can be found here: <https://vinsoncompany.com/jurors-really-trial>

JURORS IN THE FUTURE: WILL THEY BE ABLE TO SERVE?

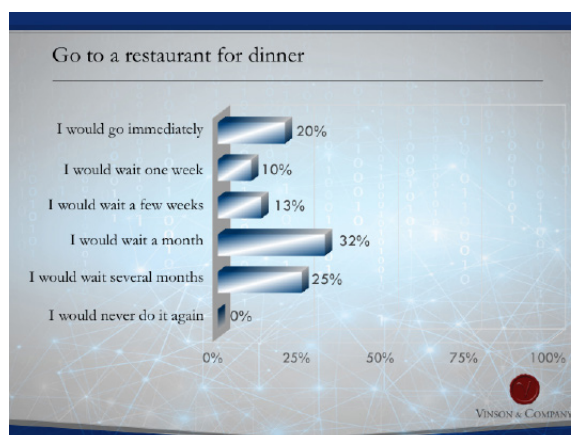
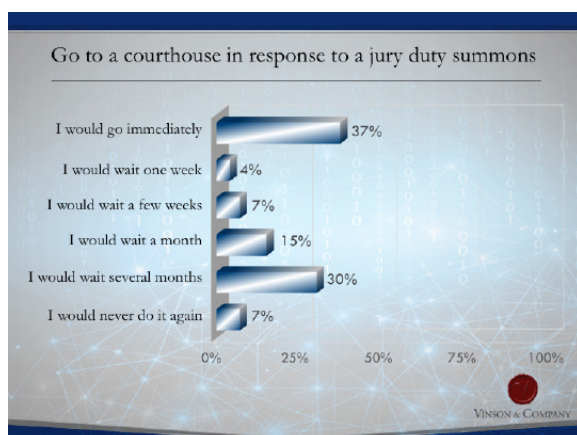
That being said, a willingness to participate in jury duty is one thing. Being able to do so for several weeks is another. So, a second measure we looked at was response to a question about being able to serve on a three week trial. This question was asked of respondents after they had watched a video presentation of an actor, playing the role of a judge, discussing the importance of jury duty in a democratic society, and making a strong appeal to patriotism and societal responsibility.³ In response, 61% of respondents said that they could serve as jurors for three weeks while 39% said they would have a hardship.⁴ These results were similar to those we obtained in a prior study we conducted in November 2019 on jury participation and hardship requests.⁵

JURORS IN THE FUTURE: WHEN WILL THEY SHOW?

A final measure we took into account, in addition to respondents' willingness and ability to serve on a jury, was timing. Specifically, we wanted to know when respondents would show up in response to a jury duty summons. As part of our survey, we asked respondents to do the following:

Imagine a scenario at some point in the future when the coronavirus pandemic has passed, public officials have lifted all shelter-in-place orders, and healthcare experts agree that large gatherings can resume.

We then asked them how soon after these events they would be willing to engage in various activities. The results can be seen in the charts that follow.

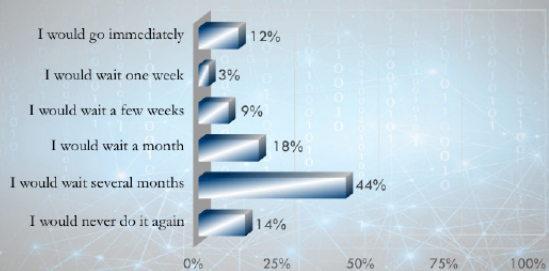


³ This was based upon trial transcripts of hardship speeches made by judges in real trials.

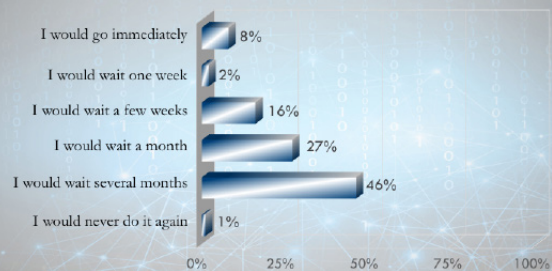
⁴ If, how, and to what extent these percentages shift over time, as economic conditions resulting from the coronavirus worsen or improve, will be interesting to track going forward.

⁵ That study can be found here: <https://vinsoncompany.com/what-influences-jurors-hardship-requests/>

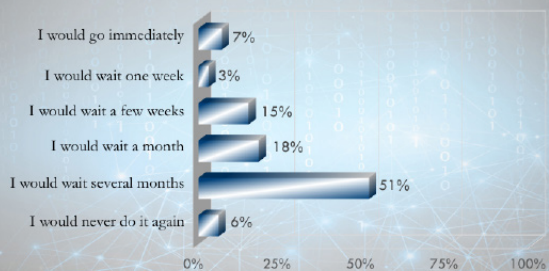
Take public transportation



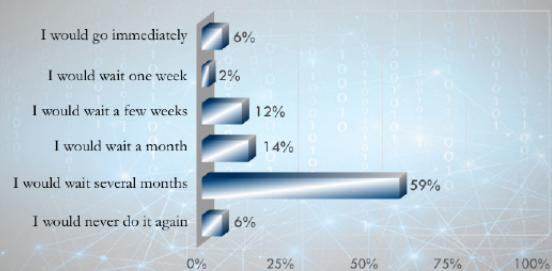
Go to a movie theater



Go to a professional sporting event



Go to a concert



Travel on an airplane



Travel on a cruise ship



As we can see, responding to a jury duty summons is the activity respondents said they would return to most quickly. This could be due, in part, to feelings of civic responsibility. Or it could be due to concerns about the repercussions for not doing one's civic duty. Still, it should be noted that nearly 60% of respondents would delay appearing in court for a few weeks or more after being assured that the pandemic has passed.

When we combine our three measures – willingness to participate in the jury process, ability to serve on a lengthy trial, and readiness to respond to a summons when called⁶ – we find that less than a third (29%) of the jury-eligible respondents in this survey meet the necessary criteria to be considered likely prospective jurors.

The question now is: Who are they? And what might a hardship-qualified jury pool look like in the future?

JURORS IN THE FUTURE: WHO WILL THEY BE?

With our current sample of respondents now classified as “likely” or “unlikely” to be part of a future jury pool, we sought to determine if there were other ways in which these groups differed to a statistically significant degree. The results are telling and consistent. As a group, those most likely to appear in court as prospective jurors:

- Are less concerned about exposure to second-hand smoke
- Are less concerned about exposure to chemicals of any kind, including household chemicals
- Are less likely to consider the coronavirus a “very serious” problem
- Are less likely to have changed their behaviors since the coronavirus pandemic began⁷
- Are less likely to report feeling very isolated since the coronavirus pandemic began
- Are more willing to re-engage in activities sooner rather than later⁸
- Have participated in jury duty previously
- Are not at all worried about showing up for jury duty with a large number of other people
- Are less likely to describe their financial situation since the pandemic began as “fair” or “poor”
- Are less likely to have negative views of the Federal Government and Donald Trump
- Are more likely to be conservative
- Are more likely to be male

⁶ Defined here as responding immediately to a summons once the pandemic has officially passed.

⁷ They are less likely to have bought extra food since the pandemic began, less likely to have bought extra gloves and masks, and less likely to have cancelled plans with friends.

⁸ This includes going to professional sporting events, concerts, movie theaters; going to a restaurant for dinner; taking public transportation or traveling on an airplane. No one, however, is in a hurry to take a cruise any time soon.

In addition to the above, the data reveal a clear trend suggesting that those who have experienced severe symptoms they believe were due to the coronavirus, or have family members who have experienced severe symptoms they believe were due to the coronavirus, are unlikely to participate in the jury process in the near future. These trends were not statistically significant, but that was likely due to the relatively small sample size of this survey and the small proportion of respondents in this survey who say they had experienced such symptoms themselves (4%) or had family members who had experienced such symptoms (5%).

THE CORONAVIRUS AND HARDSHIP REQUESTS

Health concerns related to potential exposure to the coronavirus are also likely to become a recurring theme in jurors' requests to be excused from jury duty due to hardship. A comparison we performed with the survey data highlights this point. Earlier, we noted that 82% of respondents had received a jury duty summons one or more times in the past. Among those individuals, 27% had made a request to be excused due to a hardship. The top three reasons for those requests included health or medical issues (28% of hardship requests); caregiver responsibilities (23% of hardship requests); and financial concerns (18% of hardship requests). Looking to the future, 28% of respondents said that if summoned once the courts are open again, they would request to be excused for hardship. However, the primary reason respondents said they would give now is health-related (57% of future hardship requests).

Is it possible that respondents' circumstances have changed and they now have more pre-existing health issues than they did in the past? It's unlikely. In the course of this survey, respondents were asked to describe their physical health – both prior to the start of the coronavirus pandemic and since the pandemic began. Prior to the pandemic, 74% of respondents described their health as "good" or "excellent." Since the pandemic began, an almost identical 71% of respondents said their health is "good" or "excellent."

Clearly, then, it's not existing health issues but concern about developing a health issue that will likely drive prospective jurors to avoid jury duty or request to be excused from it. Consider, too, the responses given by some who chose to elaborate on the basis for the hardship request they would make:

"I am at high risk for serious illness or death due to COVID-19 and therefore should avoid crowds until a vaccine or effective treatment is available."

"I am extremely worried about a COVID-19 rebound. I'm deeply ambivalent about being in close proximity to large numbers of people for an extended period of time. Although jury duty would also interfere with my work schedule, I'm mainly concerned about exposure to airborne pathogens."

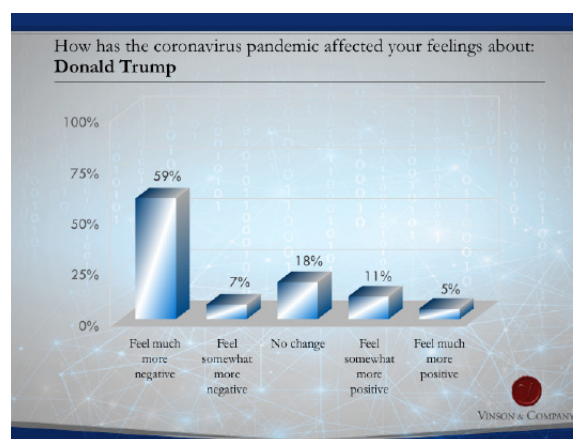
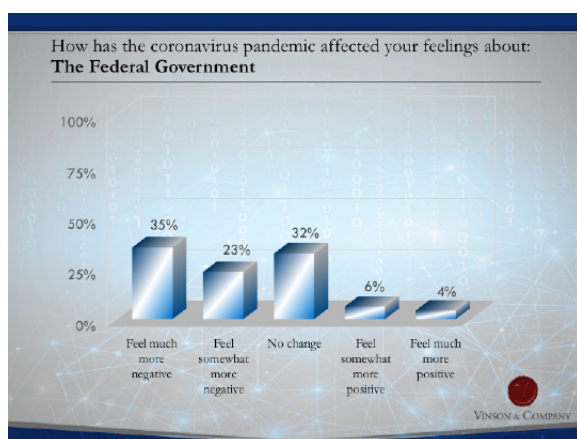
"Would prefer to avoid crowded places."

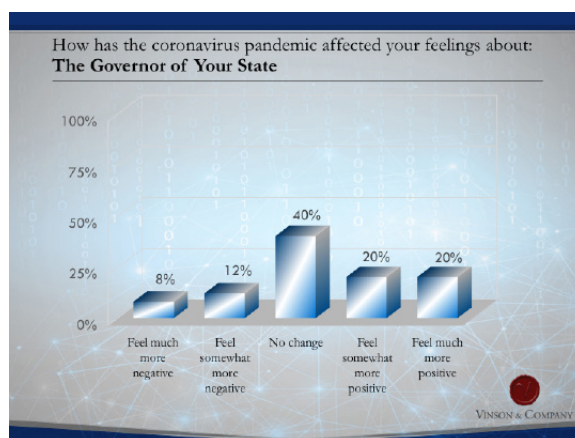
The degree to which future health concerns have become top of mind is evident not only in what respondents said, but also in what they did not say when articulating reasons for their hardship. Only 7% of future hardship requests were related to financial concerns. And this is in spite of the fact that the proportion of respondents who would describe their financial situation as “fair” or “poor” has risen from 43% prior to the pandemic to 59% since the pandemic began. Surely this would support the assumption that financial difficulties are becoming more prevalent and are more likely to emerge as a reason for prospective jurors to seek dismissal from jury duty for hardship in the future. The fact that financial concerns seem to have almost been forgotten demonstrates just how consumed people are with the potential health risks they perceive will exist well into the future.

FINAL THOUGHTS: HOW MUCH WILL ACTUALLY CHANGE?

The results from this first, preliminary study suggest – not surprisingly – that the coronavirus will have an impact on the composition of future jury panels. But unlike the virus itself, the impact is likely to be selective as those who will be summoned for jury duty in the future will either opt-in to participating in the process or will opt-out by not responding to their summons or by seeking to be excused due to hardship. This is how it has always been. But the results from this study provide a baseline, one that may be unique to this moment in time, as to how many jury-eligible individuals are likely to opt in to jury service and how many will opt out. It has also identified clear differences in the characteristics and profiles of these two groups.

Will the pandemic change prospective jurors’ beliefs and attitudes? Or will it serve to sharpen and reveal them? Consider what respondents told us about how the pandemic has affected their feelings about the Federal Government, Donald Trump, and the governors of the states in which they reside.





As can be seen in the charts above, feelings about the Federal Government and Donald Trump have become more negative; feelings about state governors have become more positive. This would seem to track with much of what is being portrayed in the media – a federal government that has been criticized for a bumbling response to this pandemic, juxtaposed with a handful of governors across the country whose early decisions to lock down their states are now being lauded. But a closer analysis of the data tells us something interesting about who is doing the criticizing and who is doing the lauding. Spoiler alert: It's probably who you think.

While 78% of liberals (and 53% of moderates) say that their feelings about the Federal Government have become more negative during the pandemic, most conservatives say their feelings haven't changed (47%) or have become more positive (27%). The contrast is even more extreme when it comes to feelings about Donald Trump. Eighty-six percent (86%) of liberals and 63% of moderates say that their feelings about Donald Trump have become more negative during the pandemic. Yet 60% of conservatives say their feelings about Donald Trump have become more positive and 13% say their feelings about him haven't changed.

Feelings about state governors tell a similar story. Because we used a nationwide sample for this study, the question "How has the coronavirus pandemic affected your feelings about the governor of your state?" does not measure the same thing for all respondents as all respondents don't have the same governor. The aggregate data, therefore, is messy and may not have much meaning in and of itself. But one way to clean it up and extract meaning from it is to analyze the responses given for those governors who are Republicans and those who are Democrats.⁹ And when we do that, what we see is that conservative respondents who live in a state with a Republican governor are likely to have developed more positive feelings toward their governor since the coronavirus pandemic hit. Liberals living in those same states, however, are likely to say their feelings about their Republican governors have become more negative. On the other hand, liberals living in a state with a governor who is a Democrat are likely to have developed more positive feelings toward that individual since the pandemic. Conservatives, though, are unlikely to share those positive sentiments.

⁹ Nearly half of the respondents in this survey (44%) live in a state with a Republican governor; 56% live in a state where the governor is a Democrat.

Returning to the question we posed earlier, will the pandemic change prospective jurors' beliefs and attitudes? If it does, on which topics and in what direction will change occur? These are important issues that bear monitoring. But as we consider the fact that the coronavirus pandemic has changed almost every facet of daily life, we ought to keep our minds open to the possibility that not even a pandemic can change that which we already believe.

APPENDIX A

RESPONDENT CHARACTERISTICS

Fifty-one percent (51%) of respondents in this survey were male; 49% were female.

Nineteen percent of the sample (19%) was between the ages of 18 and 35; more than half (59%) were between the ages of 36 and 60; and the remainder were over the age of 60.

Forty-seven percent (47%) of respondents in this survey were Caucasian; 18% were Hispanic; 22% were African-American; and 11% were Asian.

Fifty-five percent (55%) of respondents had attained a four-year college degree or higher level of formal education.

The median household income level was between \$61,000 and \$70,000.

Sixty-two percent (62%) of respondents were employed full-time, 7% part-time and the remainder was unemployed (5%), homemakers (6%), retired (17%), or disabled (3%).

Almost two-thirds (64%) of respondents owned their home.

In terms of political ideology, thirty-six percent (36%) of respondents in this survey identified themselves as liberal; 49% identified themselves as moderate; and 15% identified themselves as conservative.

About THE COMPANY



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Experts in Courtroom Persuasion & Jury Persuasion since 1976

Vinson & Company is a jury research and trial strategy consulting firm that corporations, law firms, and government entities retain when the stakes are high and the consequences of losing are unacceptable. We are experts at identifying and testing effective trial themes, predicting juror behavior, and assisting with visual presentation strategies for the courtroom. We have been retained to assist clients with civil and criminal jury trials in both Federal and State courts throughout the United States, U.S. territories, and in some foreign jurisdictions. With over 35 years of experience, we have been involved in virtually every type of litigation. Our record for helping clients achieve successful results is well recognized by the law firms and corporations with whom we have worked over the years.

Vinson & Company maintains a full-time professional staff trained at the country's leading schools and universities. Our Ph.D. specialists offer expertise in Psychology, Sociology, Social Psychology, Developmental Psychology, Psychometrics, Statistics, Mathematics, Communication Sciences, and Research Design.

Our jury research programs are based upon sophisticated social science research methodologies and decades of practical courtroom experience. We pioneered the field of jury research and have advanced the field with proprietary tools and unique research designs.

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