



## Who Will Show Up for Jury Duty?

At the beginning of the jury selection process, the judge screens jurors for hardship. He or she typically asks if there is any reason a juror is unable to serve on the jury. The judge listens to those reasons and decides whether there is a true hardship and the juror should be excused.

Judges vary in how strict they are in making hardship determinations. Many judges excuse jurors who work in jobs that pay hourly and for whom jury service would result in a significant loss of income should they be unable to work. Judges also typically consider issues of childcare, excusing jurors who have young children in their care with no access to alternative coverage for that childcare. Beyond that, however, judges use their discretion in deciding what qualifies as a legitimate hardship that warrants the dismissal of a juror from their jury duty.

### Fear: A New Juror Hardship?

Now comes the coronavirus. Jury trials have ceased and dates for their return have been set, moved, reset and moved again. Eventually, juries will return. Courts will determine how to change the jury selection process in light of the coronavirus and social distancing. They will also need to decide how to handle a new potential hardship, fear of the coronavirus.

Will the jury pool look different? We may see differences in the jurors willing to show up as compared to those who are unable or unwilling to serve. In other words, we may see differences in who claims fear of coronavirus as a hardship or simply fails to appear out of such fear.

The data is in and it supports this hunch. In a national survey of over three hundred participants conducted by the team at Dispute Dynamics, Inc., we found multiple significant differences in those who were and those who were not willing to serve on juries. The survey included demographic questions as well as questions related to participants' experiences with COVID-19. The survey also included attitudinal questions related to litigation and corporations.

Finally, we included a question based on an April 29, 2020 Law360.com article that considered how the courts could "ease the public back to jury service" following the restart. The question we included was based on the article's suggestion for a hardship questionnaire to accompany the jury summons. This final question on the survey asked the following:

*One of the core foundations of our freedom and democracy are trials by jury. Assuming the courts are re-opened, and you are called for jury duty, could you make the necessary sacrifice to assist the Court and serve as a potential juror? (please choose the answer which best describes your situation)*

Participants chose one of the following options (percentage who chose that answer is indicated in parentheses):

*Yes (48%)*

*No, I am currently ill and have tested positive for coronavirus (2%)*

*No, I am currently ill and I am concerned that I may test positive for coronavirus<sup>[SEP]</sup>(3%)*

*No, I am caring for a family member or loved one who has tested positive for coronavirus (2%)*

*No, I am afraid to be in a room with a large group of people<sup>[SEP]</sup>(27%)*

*No, I have a financial hardship that will make it impossible for me to serve as a juror (6%)*

*No (other reason; 12%)*

We included some of the reasons jurors traditionally claim as hardship, such as financial hardship, but the specific option of, “No, I am afraid to be in a room with a large group of people” is unique and of specific interest in these times.

To test the theory that those who answer “Yes” and those who answer “No, I am afraid to be in a room with a large group of people” were different, we compared these two groups in terms of their demographics, experiences, and attitudes gauged by the survey. The resulting pool of 241 participants answering with either of these two choices consisted of 64% who said yes, they could return for jury duty and 36% who said they could not due to fear. Those who said they were willing and able to serve differed from those who said they could not out of fear, in several notable ways.

Which jurors are more likely to claim hardship based on fear?

Overall, we see significant differences in racial/ethnic groups being afraid to attend jury duty for fear of being in a large group setting. These differences were primarily driven by Asian respondents who were more likely to report being afraid of being in a room with a large group of people and White respondents who were more willing to serve on juries when courts start trying cases again.

***Assuming the courts are re-opened, and you are called for jury duty, could you make the necessary sacrifice to assist the Court and serve as a potential juror?***

	<i>Yes</i>	<i>No, I am afraid to be in a room with a large group of people</i>
<b><i>Race/Ethnicity</i></b>		
<i>African American (8%)</i>	58%	42%
<i>Hispanic (12%)</i>	50%	42%
<i>Asian (10%)</i>	41%	59%
<i>Native American (2%)</i>	20%	80%
<i>White (non-Hispanic; 66%)</i>	72%	28%
<i>Other (2%)</i>	20%	80%

## Experiences

The experiences with COVID-19 have varied widely. Everyone has experienced some form of life disruption, be it physical or financial. However, some have not only been disrupted but have been devastated in those same ways. People have lost loved ones, jobs, homes, and savings.

Not surprisingly, the extent to which someone expressed concern about contracting COVID-19 and the level of precautions they take were significantly related to the question about ability to serve on a jury. Those not at all concerned and somewhat concerned were more willing to serve on a jury and those who reported being very concerned were more likely to also say they would not be able to report to jury duty due to fears of being in a room with a large group of people.

***Assuming the courts are re-opened, and you are called for jury duty, could you make the necessary sacrifice to assist the Court and serve as a potential juror?***

	<i>Yes</i>	<i>No, I am afraid to be in a room with a large group of people</i>
<b><i>How concerned are you about catching the coronavirus?</i></b>		
<i>Not at all concerned (12%)</i>	93%	7%
<i>Somewhat concerned (43%)</i>	71%	29%
<i>Concerned (26%)</i>	57%	43%
<i>Very concerned (19%)</i>	40%	60%

A similar pattern emerged related to participants who wear masks. The less a participant wears a mask, the more likely they are to say they are willing and able to serve on a jury.

***Assuming the courts are re-opened, and you are called for jury duty, could you make the necessary sacrifice to assist the Court and serve as a potential juror?***

	<i>Yes</i>	<i>No, I am afraid to be in a room with a large group of people</i>
<b><i>How often do you wear a mask outside?</i></b>		
<i>Never (9%)</i>	82%	18%
<i>Rarely (7%)</i>	70%	30%
<i>Sometimes (15%)</i>	72%	28%
<i>Often (34%)</i>	65%	35%
<i>Always (35%)</i>	54%	46%

Our survey asked a few questions about participants' work situations. We found a significant relationship between work status and the question about jury duty. This relationship was driven

by those who are not currently employed who were significantly more likely to say they could not serve on a jury due to fear of being in a room with a large group of people.

<b><i>Work Situation</i></b>	<b><i>Assuming the courts are re-opened, and you are called for jury duty, could you make the necessary sacrifice to assist the Court and serve as a potential juror?</i></b>	
	<i>Yes</i>	<i>No, I am afraid to be in a room with a large group of people</i>
<i>Work at an office/on-site (26%)</i>	68%	32%
<i>Mostly work from home (10%)</i>	71%	19%
<i>Exclusively work from home (26%)</i>	73%	27%
<i>Not working (38%)</i>	53%	47%

#### Attitudes

Perhaps of greatest interest were the attitudinal differences between those willing and able to appear for jury duty and those who said they were not willing or able due to fear of being in a room with a large group of people. In large part, the data suggests that those who are willing and able to appear for jury duty tend to hold more pro-defense, pro-corporate attitudes than those afraid to appear to jury duty due to coronavirus.

To summarize the findings, participants who indicated they were willing and able to appear for jury duty were more likely than those who were afraid to appear for jury duty in the following ways:

- *Strongly disagree that an important function of juries in America is to send messages to corporations to improve their behavior (80% of these participants said Yes to jury duty)*
- *Strongly agree that the media is blowing the current situation with the coronavirus pandemic way out of proportion (64% of these participants said Yes to jury duty)*
- *Strongly disagree that people of color are being hit harder when companies make staffing cuts due to the coronavirus (86% of these participants said Yes to jury duty)*
- *Strongly disagree that discrimination on the basis of race, gender and age has gotten worse during the coronavirus pandemic (81% of these participants said Yes to jury duty)*
- *Disagree that too many corporations have put profits over safety during the coronavirus pandemic (79% of these participants said Yes to jury duty)*

## Hardship and Representation

Many have expressed concerns about representativeness of juries long before the coronavirus pandemic. Some of these concerns focused directly on what the hardship process does to the jury pool as those who work hourly jobs or have childcare concerns are screened out of the pool more often than those who are paid by their employers during jury service.

Adding another type of hardship, the fear of being in a room with a large group of people during this pandemic, may create yet another hurdle to jury representativeness by furthering the differences in who can serve on a jury.

Courts will no doubt be implementing health and safety measures for cleaning, masking and social distancing. It will also be important for courts to communicate to potential jurors the measures being taken to ensure the safety and health of jurors once they return. Providing assurances will be key.

That said, some people might still have legitimate fears due to compromised health issues. The courts can screen jurors based on such objective health risks without formalized subjective opportunities to self-screen based on generalized fear.

Fear will still keep some prospective jurors away, and preliminary data suggests these jurors are different from those who are willing and able to serve in a post-coronavirus world.

***Dispute Dynamics, Inc. conducted this survey nationally the week of May 4<sup>th</sup>, 2020.  
Dispute Dynamics, Inc. is a national trial-consulting firm with offices on both coasts.***

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