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from THE NATIONAL CENTER FOR STATE COURTS



Will jurors come back to courthouses?

While America continues to grapple with the effects of COVID-19, courts are working to return to “new normal” operations. Of chief concern is the courts’ ability to recruit representative jury pools while protecting public health. The coronavirus appears to disproportionately affect people of color. Elderly people are at very high risk for severe illness or fatality. And many people are simply afraid to leave home, let alone come to a courthouse. Recruiting jurors in the coming months will not just require courts to *make* facilities safe, but also to *convince* people that facilities are safe — two hefty tasks indeed.

A recent national poll conducted by the National Center for State Courts asked 1,000 registered voters how they feel about the reopening of court systems and buildings. The poll found widespread concern about the safety of reporting to courthouses, with

respondents feeling more or less concerned depending on their gender, age, and ethnicity. And while respondents are open to using technology to minimize in-person interactions, they are not sure that remote systems can deliver fair and impartial proceedings.

COURTS IN GENERAL

The good news? Respondents continue to express confidence in state courts:

- 70 percent of respondents indicated they had confidence in their state court system, the same percentage as the eight-year average but down slightly from 2018 (76 percent).
- 64 percent indicated that if they had business with the courts and could do it online, they would be likely to do so — up dramatically from 43 percent in 2014.
- When asked specifically about rules they would like to see regarding the wearing

of masks, 67 percent of those polled favored mask requirements; 13 percent preferred no rules whatsoever.

DIGITAL DIVIDE

- The vast majority of potential jurors — 85 percent — say they have internet service at home; 95 percent said they have a cell phone. Only 2 percent had no internet service.
- Age is a factor in access: Just 70 percent of seniors (ages 65+) have internet access at home, and less than two-thirds of seniors (64 percent) have home broadband access.
- 86 percent of seniors have cell phones, but only 64 percent own smartphones. And the older a potential juror was, the less likely they were to have internet access or internet-connected devices.
- Cell phone and internet broadband plans also could prove problematic; just 58 percent of respondents — and 43 percent of seniors — have unlimited data or minutes.

Many respondents said they are getting more familiar with video conferencing technology, but demographics affect the numbers here, too. Regular use of such 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 seniors (just 30 percent).

JURY DUTY

Respondents also were asked several questions to gauge interest in and availability for jury service as the pandemic wears on:

- 23 percent of respondents indicated they were more comfortable with

67% favored mask requirements in courts

44% preferred remote jury service

55% reported at least one obstacle to reporting for jury service

71% said they would likely show up for service if summoned

61% would be concerned about the fairness of a remote trial if they were a party in the case

in-person jury service than remote, 44 percent favored remote, and the remaining 32 percent expressed no difference in opinion.

- 55 percent of respondents cited at least one obstacle to reporting for jury service if called, such as inability to secure childcare (19 percent), a household member with an underlying health condition (47 percent), and serving as a primary caregiver to an elderly person (14 percent).
- Those obstacles were more prevalent for women: Just 41 percent of men under age 50 face one of the three obstacles identified above,

but 52 percent of women under 50 do. For those age 50 and older, the numbers increase to 57 percent for men and 65 percent for women.

- People were asked on a scale of 1 to 10 how comfortable they would personally feel, right now, to engage in certain activities, with 0 being very uncomfortable and 10 being very comfortable. Fifty-two percent scored reporting for jury duty at their local courthouse between 0-5 (with an overall average of 5.5), 54 percent scored serving on a jury if selected between 0-5 (5.1 average overall). This stands in marked contrast to respondents' comfort in going to the grocery store (7.3), going to a polling place to vote (6.3), and going to a government office (6.1).
- Even so, 71 percent of respondents said they would likely show up for jury duty if summoned — up from 66 percent. Demographic differences emerge here as well: White males were most likely to serve, and Hispanic and African American women were least likely to serve.
- Overall, 72 percent said they would be willing to report for jury duty using video conferencing tools, and 64 percent said they would be willing to use video conferencing tools to serve as a member of a jury.
- 61 percent said they would be 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 said they would be very concerned.

When asked whether the implementation of protective measures would make them comfortable reporting ►

We want to hear from you!

ARTICLE SUBMISSIONS

Judicature explores all aspects of the administration of justice, courts, and judging. We publish articles based on empirical research as well as articles based on fact and opinion from members of the bench, the bar, and the academy. Submission guidelines may be found on our website: judicature.duke.edu.

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THE STORIED THIRD BRANCH

The Storied Third Branch invites judges to write a tribute to another judge who has, through example or mentorship, served as an inspiration to colleagues on and off the bench. See details at judicature.duke.edu.

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to their local courthouse for jury duty, 70 percent or more responded positively to:

- everyone (employees and public) wearing masks (70 percent);
- social distancing being enforced (70 percent);
- temperature checks (74 percent); and
- coronavirus testing (76 percent).

TEXAS

In an effort to address differing views by state, the same survey was administered to a statistically significant sampling of Texas residents. The results were similar:

- 69 percent expressed confidence in their courts (vs. 70 percent nationally);
- 68 percent of those polled favored masks being required for courts (vs. 67 percent).

KEY MESSAGES FOR COURTS

Overall, there were three main takeaways from the survey. First, people are looking for

alternatives to reporting to the courthouse. This is not new; jurors have expressed this desire for several years, driven in large part by technological capabilities. Second, the composition of the jury pool is likely to be an even greater challenge during the pandemic, particularly when it comes to elderly jurors. And third, while people are willing to serve on juries in-person and remotely, they are not confident that a remote trial can be as fair as an in-person one.

– **WILLIAM RAFTERY** blogs about state courts and legislation at gaveltogavel.us.

NOTE: Complete findings and a webinar conducted by the survey group, GBAO Strategies, which included questions from court stakeholders on the findings, are available at www.ncsc.org/pandemicsurvey. The poll of 1,000 registered voters was conducted using telephone interviews and online surveys June 8–11, 2020. Findings are considered accurate within +/- 3 percent, 19 times out of 20. The survey was developed with input from an advisory body of judges, court professionals, and NCSC staff.

Judicature announces new editorial board for 2020-21 term

Judge **DON WILLETT** of the U.S.

Court of Appeals for the Fifth Circuit has been named chair of *Judicature's* editorial board for the 2020–21 editorial term.

A 2016 graduate of Duke Law's Master of Judicial Studies program, Willett served as editor in chief of *Judicature's* Spring 2017 edition.

Willett succeeds **DAVID ICHEL**, who served as the board's inaugural chair. In addition to establishing *Judicature's* editorial board, Ichel has been a strong advocate for the journal. Last year he helped to engage nearly 45 law firms in providing the funds needed to expand *Judicature's* distribution among state court judges. Ichel will continue to serve as a member of the editorial board for the coming term.

NATHAN HECHT, chief justice of the Texas Supreme Court, and **PATRICIA TIMMONS-GOODSON**, former chief justice of the North Carolina



Supreme Court, are stepping down from the board after completing their one-year terms. **ROBERT BRUTINEL**, chief justice of the Arizona Supreme Court, and Judge **BERNICE DONALD** of the U.S. Court of Appeals for the Sixth Circuit (both 2018 graduates of Duke's Master of Judicial Studies program) will join the board for the 2020–21 term.

All other members of the 2019–20 editorial board (listed on page 3) have generously agreed to serve a second term.

David F. Levi, director of the Bolch Judicial Institute and *Judicature's* publisher, thanked incoming and outgoing board members for their service. "We are fortunate to be able to call on the expertise and guidance of such distinguished judges, scholars, and lawyers as we work to ensure that *Judicature* continues to be a vital forum for exploring the many challenges facing our judiciary and legal system."