



About Half: New Data on COVID and Jury Pools

By Dennis Devine and Hillary Abraham

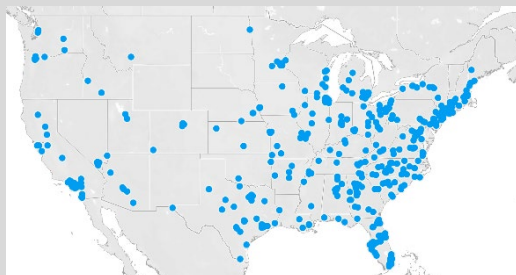
COVID-19 has cast a long shadow over the courts for almost a year. The slow pace of vaccination and emergence of virus variants make it unlikely courtrooms will return to normal any time soon. This includes the conduct of jury trials. But a recent national survey by ThemeVision on the impact of COVID suggests a substantial number of potential jurors—about half—are unwilling and/or unable to serve as jurors in either in-person trials or remote trials.

With a tremendous backlog of cases piling up in both the criminal and civil systems, courts basically have two options. They can resume “in-person” trials in some fashion by implementing protocols that augment the health and safety of trial participants. Or the courts can conduct trials partially or wholly in a “remote” fashion where participants (most notably jurors) view the proceedings and interact via the internet. But which is the better way to go? And how might COVID affect the venire that assembles for your next trial?

ThemeVision recently conducted a national online survey to shed light on these issues.

So what did we learn from our survey of potential jurors? Here we focus on what respondents told us about their general view of jury duty and their willingness and ability to serve as jurors in both remote and in-person trial formats. Let’s take a look at some of the major findings.

ThemeVision’s Nationwide Survey



ThemeVision is a litigation consulting firm that counsels clients on jury decision making and conducts jury research in cases around the country. We obtained a diverse, national sample of responses from 532 U.S. adults (locations shown above). Our questions fell into several buckets:

- (1) Demographics,
- (2) Health-related behaviors and contracting COVID,
- (3) Willingness to serve as a juror for in-person and remote trials,
- (4) Ability to serve as a juror in a remote trial, and
- (5) Verdict leaning tendencies (i.e., pro-defense, pro-plaintiff, or pro-government).

COVID & Jury Duty

Most of our respondents had first-hand or second-hand experience with COVID. Consider the following:



- 13% of our respondents said they had COVID for sure and 8% said they might possibly have had COVID.
- A little more than half said they were moderately or very worried about contracting COVID.
- Only slightly more than half (55%) were planning to get vaccinated for COVID, whereas 18% said maybe.

With respect to jury duty in general, most of our respondents said they were happy or fine with serving (27% and 39%, respectively). The remaining one-third of respondents said they would either prefer not to serve or very much did not want to serve (22% and 12%, respectively).

Most respondents said they would comply with the requirements of the law. We asked in particular about two specific behaviors—responding to a juror qualification questionnaire received in the mail, and appearing at the courthouse in response to a summons. **Figure 1** breaks

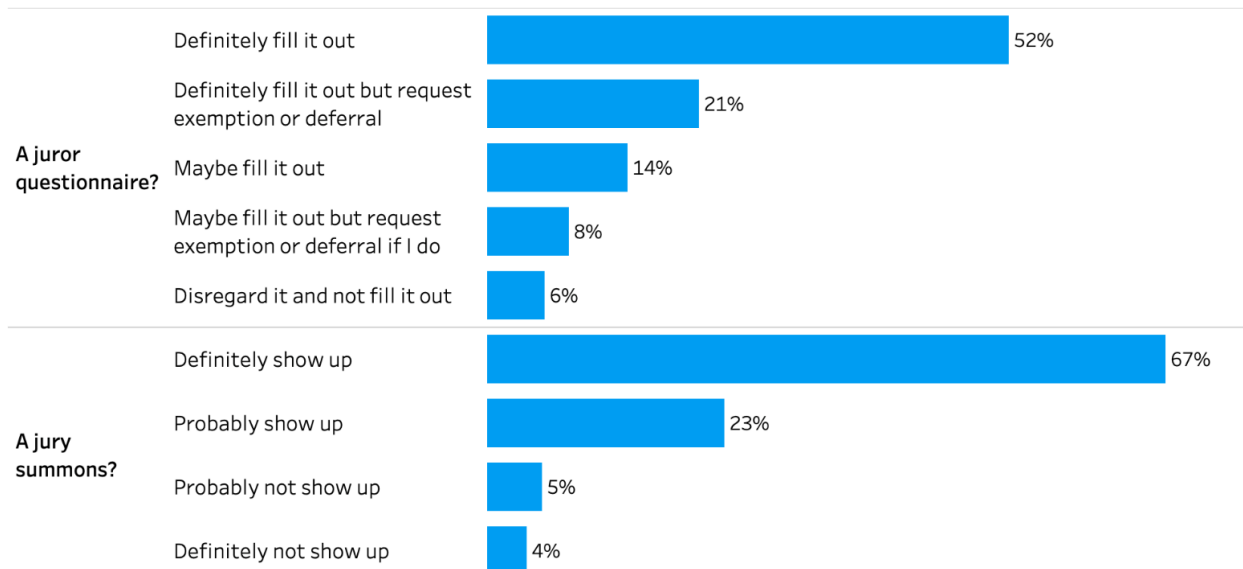
down the responses to these two questions.

About **three-quarters of our sample said they would definitely fill out and return a juror questionnaire.** But about one in five of these said they would request a deferral or exemption when doing so. About the same number said they might fill out the questionnaire, and a portion of these also said they would request deferral or exemption if they did respond. A mere 6% said they would disregard the questionnaire and not return it.

Anticipated compliance was also high with respect to reporting for jury duty. **Two-thirds said they definitely would show up if summoned, and another quarter said they probably would.** The most frequent projected reason for failing to appear was concern over COVID—but only 28% chose this option from a list of potential reasons.

Our respondents were thus fairly optimistic about following the dictates of jury duty.

Figure 1: What would you do if you received...





But many surveys inquiring about socially desirable or otherwise “correct” behavior produce an excessively rosy outlook. In other words, anticipated compliance rates with respect to responding and appearing are almost certainly higher than they would be in actuality. So these numbers serve as something of a benchmark ceiling with respect to how prospective jurors might behave.

Willingness and Ability to Serve

Two prerequisites to actually serving as a juror are willingness and ability to serve. We asked about both of these things separately.

Only about half of our respondents said they would probably or definitely be willing to serve as a juror in the near future. Surprisingly, trial format didn’t matter much—52% said they would probably or definitely be willing to serve from home in a remote trial, and 49% said they would probably or definitely be willing to serve in person. For both trial formats, another quarter or so of respondents said they maybe would be willing to serve (28% for remote trials, 22% for in-person trials).

Interestingly, we got essentially the same numbers when we asked about willingness

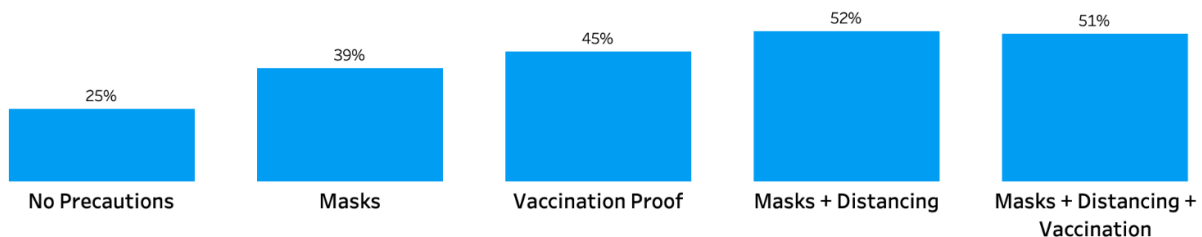
to serve in a trial one year from now. For both trial formats, the percentage who said they were willing to serve was just a few percentage points higher for the future. Respondents appear to have considerable uncertainty about what the future holds for serving as a juror.

But courtroom protocols likely affect willingness to serve. We also asked about willingness to serve in person in several specific trial contexts that vary on a continuum of health and safety precautions. **Figure 2** below breaks down the responses to several specific scenarios.

For a trial involving no special precautions (i.e., the typical pre-pandemic trial), only 25% said they were probably or definitely willing to serve. Requiring masks and social distancing increased that percentage to 52%. Adding proof of vaccination had no impact beyond masks and social distancing. These numbers suggest courtroom health and safety procedures are likely to have a significant impact on the willingness of community members to appear for in-person trials.

Almost all of our respondents indicated they had the technological capability to serve as a juror in a remote trial. Nearly everyone (89%) reported having a

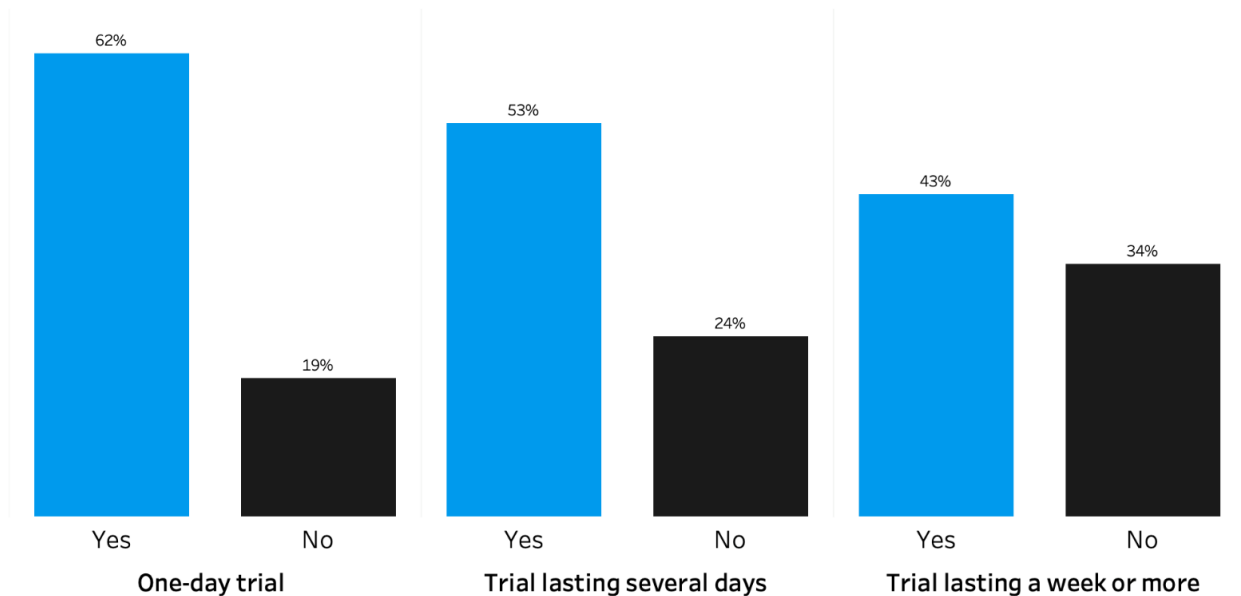
Figure 2: Would you be willing to serve on a jury under the following conditions?



Note: This figure shows the frequency of respondents who selected “Definitely Yes” or “Probably Yes” to various scenarios for willingness to serve. Other response options included “Maybe,” “Probably Not,” and “Definitely Not.”



Figure 3: Would your personal circumstances allow you to serve as a "remote" juror for a...



Note: "Yes" column refers to those who selected "Definitely Yes" or "Probably Yes" to the prompt. Likewise, "No" column refers to those who selected "Definitely No" or "Probably No." A middle response option "Maybe" has been omitted for figure clarity; response frequency for this option is 19%, 23%, and 23%, respectively.

smartphone and stable wi-fi or unlimited monthly data. Fewer but still most said they had access to a laptop with a webcam and a reliable internet connection (71%).

But the above only pertains to technological hardware. Being able to serve as a remote juror is affected by more than that. Indeed, when asked to take all of their personal circumstances into account, only 44% of our respondents said they probably or definitely could serve as a juror in a remote trial lasting a week or more (see **Figure 3** above).



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He is the author of *Jury Decision Making: The State of the Science (2012)*, a book that summarizes and integrates the scientific research on juries.

The Shrunken Venire

In general, about half of our respondents were probably or definitely willing to serve as a juror in either type of trial. When capability to serve is factored in, these numbers drop further. What is the impact of so many individuals failing to appear in the pool of potential jurors? Is either side advantaged by differential rates of attrition from this pool? That is the subject of Part II of this article, coming soon....



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