

IMPACT OF THE PANDEMIC ON THE JURY POOL AND JURORS' ATTITUDES AND BEHAVIOR

These are the best of times. These are the worst of times. These are unprecedented times.

Seemingly interminable quarantines and episodic shutdowns have made people fearful and anxious about getting sick, losing jobs, losing loved ones, losing homes, and losing their minds. People are suffering from emotional exhaustion. As in-person and/or virtual jury trials resume, the question becomes, *What impact has the pandemic had on the jury pool, on juror attitudes, and on juror decision-making?* While it is understandable that many fear the pandemic will have a deleterious impact on the ability of defendants to prevail in court, empirical data suggest otherwise. Indeed, based on preliminary analyses, signs are encouraging for defendants. It appears that jurors have grown more skeptical of certain types of cases and claims.

Impact on Jury Pool

The pandemic has created tremendous turmoil in the lives of virtually all Americans, but it has wrought havoc on some communities more than others. This carries certain implications for litigants.

Some jurors are more likely to be “essential workers” and/or to qualify for exemption from jury service due to financial hardship and/or fear of contracting the virus, irrespective of safety precautions taken by the court (e.g., social distancing, mandatory masks, clear acrylic dividers in the courtroom, sanitation stations, etc.). Jurors who experience high anxiety about the virus are more likely to exhibit what psychologists describe as an “external locus of control,” which research shows is more likely to be associated with plaintiff orientation.

“Locus of control” describes the extent to which a person believes they have control over what happens in their lives.ⁱ A person who attributes their successes and/or failures to internal factors, such as personal disposition, individual effort or lack thereof, competence, their own mistakes, etc., is said to have an “internal” locus of control. On the other hand, a person who attributes their successes and/or failures to external factors, such as situational factors, the mistakes of other people, the malicious or negligent conduct of others, sheer luck, etc., is said to have an “external” locus of control. People with an internal locus of control are more likely to perceive themselves as the “captain of their own ship,” whereas people with an external locus of control are more likely to perceive themselves as “flotsam in a torrential sea,” or as subject to victimization by people and/or circumstances.

In the context of juror decision-making, people with an “external locus of control” are typically more victim-orientated and are more likely to attribute the plaintiff’s misfortune to factors beyond their control. These jurors reason the plaintiff was harmed by the conduct, negligence, reckless disregard, and/or malice of others. This is apt to make them more motivated to protect and/or compensate the plaintiff for the resultant harm.

Preliminary research reveals a similar trend in more than two dozen mock trials and surveys in various venues across the nation. Jurors who describe themselves as having been affected “more seriously than others” by the COVID-19 pandemic have consistently been found to be plaintiff-oriented in all types of cases.ⁱⁱ Importantly, this is based on jurors’ *subjective perception* that they have been “more seriously affected than others,” irrespective of what any objective analysis might show; that is, what is paramount is what jurors *believe* about the impediments they face.

IMPACT OF THE PANDEMIC ON THE JURY POOL AND JURORS' ATTITUDES AND BEHAVIOR (CONTINUED)

Impact on Juror Attitudes

Perhaps the most encouraging finding for defendants is that jurors embroiled in a pandemic appear to be more inclined to rely on science to solve cases. Roughly two-thirds of jurors surveyed in venues across the country characterized scientific information as “very important” in making important decisions. Research shows an even higher number of jurors indicating that scientific information is “very important” in deciding a legal case (60-93%) and three-fourths of jurors (75%) saying that if they were serving as a juror in a legal dispute, they would rely on scientific experts instead of their own instincts or experiences.

Not surprisingly, research shows that jurors’ attitudes toward certain occupations and companies that are perceived to be on the “front lines,” fighting the pandemic, are currently ascending. Doctors, nurses, hospitals, and other medical providers are generating the greatest boost in perceptions. Research shows 25-40% of jurors indicating their opinions have grown more positive across two dozen different venues since the start of the pandemic.

Interestingly, jurors’ opinions of trucking companies shipping materials like food and toilet paper all over the country have also improved since the pandemic. In fact, research shows 30-50% of jurors hold a much more favorable opinion of shipping companies, trucking companies, and truck drivers since the pandemic. In contrast, companies perceived to be profiting from the pandemic are triggering jurors’ wrath.

Notably, jurors’ perceptions of corporations generally have not soured as a function of the pandemic, though jurors continue to believe that corporate executives disproportionately benefit at the expense of ordinary folk. This perception is fueled in part by the burgeoning social justice movement, which has underscored inequities in society today.

Roughly one-third to one-half of jurors polled individually in venues across the country indicated that their opinion of the Federal Government has grown more negative since the onset of the pandemic, with the balance saying their opinion of the Federal Government has not changed. Virtually no jurors indicated that their opinion of the Federal Government has grown more positive. This may bode ill for defendants looking to buttress their No Liability position by arguing compliance with regulatory requirements. It’s too soon to tell.

Importantly, jurors have grown more skeptical of certain types of cases and claims. Jurors appear less inclined to entertain hyperbole from angry plaintiff lawyers issuing ad hominem attacks. The emotional exhaustion stemming from the pandemic has caused jurors to take a more “no nonsense” approach to cases. Jurors appear increasingly irritated with lawyers perceived to be emotionally manipulative. Furthermore, jurors who are worried about the nation’s economy, the stability of their jobs, and the health of loved ones appear to have trouble connecting to plaintiffs complaining about emotional distress and/or loss of enjoyment of life. Simply put, jurors today appear to be more critical of plaintiffs’ non-economic damages claims in individual tort cases.

The emotional tax exacted by the pandemic seems to leave little surplus energy for more arcane aspects of law; thus far, jurors seem to demonstrate a more tepid response to some business disputes and claims of lost profits.

IMPACT OF THE PANDEMIC ON THE JURY POOL AND JURORS' ATTITUDES AND BEHAVIOR (CONTINUED)

Impact on Jurors' Behavior – The Virtual Trial

R&D was involved with one virtual product liability trial in California that resulted in a defense verdict. In that case, the plaintiff, a janitor at a car dealership, alleged that exposure to brake dust at work caused his peritoneal mesothelioma. Post-trial jury interviews revealed that jurors paid close attention to the scientific experts refuting the plaintiff's claim that there was a causal association between exposure to brake dust and peritoneal mesothelioma. Jurors appear to have closely examined and weighed heavily the epidemiological evidence showing that full-time mechanics are not at increased risk of peritoneal mesothelioma. Jurors ultimately reasoned that the plaintiff's mesothelioma was not a result of his exposure at work. Jurors appear to have attended more carefully to the scientific testimony in this case, as compared to similar cases in the past, and they seem to have remembered and retained the scientific evidence somewhat better, as well. Jurors returned a defense verdict after careful consideration of the epidemiological evidence and causation analysis. The great majority of jurors described the virtual deliberations as very orderly and civil, perhaps facilitating the group's careful sifting of the evidence.

R&D has done multiple virtual mock jury exercises since the onset of the pandemic and has found a similar trend with jurors online giving closer examination to evidence and showing greater respect to others during deliberations. This may be a positive outcome of the social justice movement that has gripped the nation. Jurors in virtual trial settings appear to take a more egalitarian approach to deliberations and exhibit more overt attempts to be inclusive, consider different opinions and perspectives, give others a chance to speak and be heard, etc. This trend toward inclusivity and voicing diverse opinions bodes well for jury verdicts.

Indeed, the social justice movement unfolding across the nation appears to have made jurors more solicitous of differing opinions and more open to re-examining their own perspectives and conclusions. This, in turn, is likely to engender a more thorough examination of evidence and more accurate decisions. Why?

Groups expressing diverse opinions are less susceptible to "groupthink," a psychological phenomenon that can result in faulty, ineffective, or incorrect and dangerous decisions—all of which are made in effort to reach consensus. When "groupthink"ⁱⁱⁱ takes hold, demographic, interpersonal, social, and/or cultural forces operate to squelch independent thinking among group members. In the face of group pressure toward conformity and cohesion, people are apt to ignore important facts, discount risks, and overlook warnings and are more likely to abandon critical analysis, reality testing, and moral judgment. The result is that a group of people begins to effectively think with one brain, and that one brain can make bad decisions as the group ignores unpopular opinions.

IMPACT OF THE PANDEMIC ON THE JURY POOL AND JURORS' ATTITUDES AND BEHAVIOR (CONTINUED)

Virtual jury research exercises conducted recently illustrate the unexpected benefits of jurors' increased sensitivity to the positions of others and greater decorum in discussions. For example, in three recent studies, each with three deliberation groups (i.e., nine jury panels in total), only one juror demonstrated an inclination to run roughshod over others in the group. Deliberations during in-person jury exercises can be raucous, but in the virtual context, jurors are compelled to raise their hands to speak and take turns in expressing opinions, and they are unable to engage the person next to them in a side-conversation.

All in all, the pandemic has wrought havoc in every realm, but there may be some unexpected benefits for defendants.

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ⁱ Rotter, Julian B (1966). "Generalized expectancies for internal versus external control of reinforcement". *Psychological Monographs: General and Applied*. **80** (1): 1–28.

ⁱⁱ Data collected between June 2020 and October 2020 (total 559 jurors in 16 venues).

ⁱⁱⁱ Janis, Irving L. (1982). *Groupthink: Psychological Studies of Policy Decisions and Fiascoes*. Second Edition. New York: Houghton Mifflin.