



The Impact of Covid-19 on Jury Selection: Virtual Jury Selection and its Commitment to Fair Trials by Jury

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Abstract

After jury selection interviews were moved online as a result of Covid-19, a requirement to even be considered for the jury included a stable internet connection. This research paper investigates how Covid-19 may have caused a difference in jury makeup and could impact the verdicts given in court, as well as how this might impact different groups when they are being tried without a diverse group of people who can offer new perspectives to the case at hand so that every defendant will have the right to a fair and speedy trial with a jury of their peers.

Keywords: *Jury Duty; Jury Selection; Covid-19; Legal System*

Introduction

After jury selection interviews were moved online as a result of Covid-19, a requirement to even be considered for the jury included a stable internet connection; however, many people in the United States are unable to afford stable internet 24/7. While jury duty itself remains in-person in court, having jury selection interviews virtually excludes many people without such commodities from interviewing for jury duty, and therefore from sitting on a jury.

One status quo of sitting on a jury post-pandemic, then, is the ability to afford a stable internet, turning jury duty into a status of wealth and socioeconomic class as well. By excluding those without stable internet, the U.S. legal system cannot ensure the balanced representation of different perspectives, perhaps leading to the defendant being unable to receive a trial by their peers, something the U.S. strives to work towards.

By conducting this research, I want to discover how this difference in jury makeup could impact the verdicts given in court, as well as how this might impact different groups when they are being tried without a diverse group of people who can offer new perspectives to the case at hand so that every defendant will have the right to a fair and speedy trial with a jury of their peers.

First, this report will detail the procedure used to conduct research regarding virtual jury selection and its impacts. Second, it will provide a summary of what jury selection looked like prior to the Covid-19 pandemic. Then, the report will dive into virtual jury selection and its new requirements, as well as any accommodations, courts offered jurors. The paper will then investigate whether or not there existed prejudice or bias within the select cases analyzed in the report in order to conclude whether or not virtual jury selection caused bias during the sentencing. Lastly, the report will go over how courts are recovering from Covid-19, as well as the general impacts of virtual jury selection.

Procedure

The Formulation of the Idea

To first begin this research project, I applied through my school's Welles Award program. This program grants students money to pursue a personal project the following summer. Through writing the application for this grant, I did preliminary research on Covid-19 and its impacts on the legal system. While I had known before that many trials were moved online, I found out through conversation that jury selection had also become virtual, which led to the question of whether or not virtual jury selection would be fair from a socioeconomic perspective. I also did research on news articles, books, and research articles that I could use to garner information in order to narrow my research scope. Through the process of completing my Welles Award application, I was able to develop a rough layout of what this project would consist of: first, a research report about my findings; second, depending on the results of my research, either

developing a prototype to avoid biased jury selection in the future or analyzing why there was no bias in virtual jury selection.

Reading

To begin my research, I read *The Search for Truth: An Introduction to the Jury Trial Process* by Cornelius P. Callahan, *Jury Selection Handbook: The Nuts and Bolts of Effective Jury Selection (Lawyering Series Coursebook)* by Ronald H. Clark, and *Winning at Jury Selection: A Handbook of Practical Jury-Focused Techniques & Strategies* by Angela Dodge to get a preliminary understanding of what jury selection and jury trial are, and how both processes work. I also researched articles on JSTOR regarding jury selection, reading works like "Jury Voir Dire: Getting the Most Out of Jury Selection" by James W. McElhaney and "The Conduct of Voir Dire: A Psychological Analysis" by Valerie P. Hans. After understanding more about the technicalities of jury selection, I searched news articles using keywords such as virtual jury selection, Covid-19 impact, legal system, and jury selection articles after 2020. From this, I found articles regarding recent virtual jury cases, which offered a wide array of opinions, ranging from claims that virtual selection causes unfair juries to virtual juries creating more attentive and fair trials.

Interviews

After reading secondary articles, I scoped out potential interviewees based on their role in the courtroom. I looked for people who were involved in jury selection, such as Letitia Davis. I also drafted interview questions for the interviewees that I chose to reach out to. However, given that the legal field demands much from its employees, I was not expecting to hear back from them, nor did I hear back from many of them. However, contrary to my beliefs, the Jury Manager for Mercer County's Superior Court did kindly respond to my interview questions, which gave me more insight into the nature of jury selection.

In addition to reading secondary articles and attempting to interview people, I also researched criminal cases that occurred after March 2020 to see the full extent of virtually selected jury cases. In this research, I found New Jersey Court opinions on trial cases through Rutgers Law School's New Jersey Law Research Guide website.

After gathering enough data and information, I began writing the research report, as I had proposed I would do in my Welles Award grant.

Before Covid-19

Before the pandemic of Covid-19 arrived, jury selection occurred within a courtroom, usually over a span of many days. After being randomly chosen for jury selection, a potential juror must travel to the courtroom and answer a series of questions, known as voir dire. The judge, counsel, and related parties can then question the potential jurors to weed out hints of bias, as well as ensure that there is a diverse jury for the trial. Jurors who know people involved in the case, who have private information on the case, or are strongly prejudiced against one side of the case will be excused by the judge. Counsel may also exclude certain groups of jurors. Once the voir dire process is finished, jurors will be selected for jury duty. Then, a group of those selected jurors will sit in on the trial and watch the trial proceedings. In criminal cases, the jurors will be

asked to decide whether the defendant is guilty beyond a reasonable doubt—if any doubt remains, the jurors are instructed to find the defendant not guilty. In civil cases, jurors are only required to find the proof to be more true than not.

Covid-19

Once Covid-19 hit and shut down many aspects of life, including the legal aspect, society had to devise new virtual means of continuing through life. Thus, jury service was also transitioned online in order to prevent the spread of the virus. Even then, courts had to first devise a system in which jury service could fully function virtually—until June 2020, jury service was paused. After June 2020, the first virtual grand jury session was held, where “grand jurors joining from home to hear[d] cases being presented by prosecutors, who also appeared virtually, and witnesses that were called to testify also joined remotely,” the Jury Manager of Mercer County's Superior Court noted.

There were several new guidelines that the courts needed to work through to ensure a fair trial, however. For example, jurors were still held to the same level of conduct they were held to in in-person trials: on the Zoom screen, their heads and shoulders had to be visible at all times, and they were expected to be dressed appropriately—“as if they were coming into a courthouse in person,” the Virtual Petit Juror Guidelines state.

Jury Selection Process during Covid-19

The process that the courts settled on involved many electronic correspondences through email and text messages, as well as an adeptness for technology. Firstly, selected potential jurors are emailed voir dire questions that will be used during jury selection, as well as the Zoom link for jury selection. Then, jurors join the Zoom early in the morning, when staff will check them in. Next, the jury manager for the court conducts jury orientation and goes over the guidelines for virtual jury duty. The manager will also answer questions that jurors may have, such as how to receive a letter of attendance. Next, the judge, counsel, and related parties join the Zoom and conduct jury selection using prepared questions. If a juror needs to be side barred, which would

Resemble being pulled aside for a private conversation between the juror and the attorney or judge for in-person jury selection, the manager moves the jurors and all other parties into a breakout room to ensure privacy. After the jurors are selected, they are sent a Zoom link, as well as a test link to ensure that on trial day, everything goes smoothly.

With this process, potential jurors also had to have access to a stable connection to the internet in order to be considered for jury service. In order to still ensure fair jury selection, however, New Jersey courts will “lend [potential jurors] a tablet with Zoom and built-in Wifi so that they can participate, as no one should be excluded from serving on a jury because they don’t have the equipment,” the Jury Manager shared, “The Judiciary makes every effort to include everyone regardless of their ability to use technology, familiarity with Zoom, or inability to secure a device. We have worked with jurors that have not ever had an email address, walking them through the process step by step, and they were able to successfully participate in jury service.”

Jury Selection in the Present-Day

In the present day, the courts have slowly reopened. While jury selection still happens online, the trial itself occurs in the courtroom, with social distancing and masking regulations in place. Moreover, jurors are also able to join virtually, with there being a screen in the courtroom for them to appear on.

Conclusion

After conducting research and analyzing virtual court case, I concluded that there have been no blatant pattern of discrimination resulting from virtual jury service. This is largely due to the consideration of the legal community in ensuring that people of different socioeconomic groups are able to participate in jury service fairly, whether it be providing tablets and internet for potential jurors or teaching them how to navigate virtual communications.

However, the pandemic has lasted for a little less than three years, which means that the full results of virtual jury selection and service will only be realized further in the future. This is

an ongoing, evolving situation, and therefore, the choices made now may carry unforeseeable consequences in the future. Thus, it is important to continue to monitor the state of jury selection and its processes, and further research in this field can lend to sitting in on voir dire or trial processes and continuing to research jury selection as it adapts.

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