

A microscopic view of several COVID-19 virus particles. The particles are spherical with a textured surface and numerous protruding spike proteins. They are set against a dark blue background with a subtle pattern of lighter blue, cloud-like or cellular structures. The lighting creates a sense of depth, with some particles appearing more prominent than others.

JURY POOLS & SELECTION STRATEGY POST COVID-19

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German, Gallagher & Murtagh

The background of the slide is a photograph of an empty courtroom. The room features dark wood paneling on the walls and ceiling. In the foreground, there are several rows of empty wooden benches. In the center of the room, there is a judge's bench and a witness stand. A large chandelier hangs from the ceiling. The overall atmosphere is somber and quiet.

PREPARING FOR TRIAL POST COVID-19

- The COVID-19 pandemic led to the shutdown of a large portion of our country. The psychological impact of quarantine is wide-ranging, substantial, and can be long-lasting.
- Research suggests impacts could last up to three years.

PREPARING FOR TRIAL POST COVID-19

- Increase in Impatience
 - Less patience for what they perceive as wasted time
- Sympathy
 - Impact of COVID-19 on potential juror likely to have direct correlation to level of sympathy for plaintiff
- Effects of PTSD
 - Significant effect on the attitude of jurors

**WHO WILL SHOW
UP FOR JURY
DUTY?**

Jury Pool Will Look Different



PRE COVID-19

- Venues and judges vary in practice on 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.
- 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.

POST COVID-19

(NEW HARSHIP)

- In a national survey of over three hundred participants conducted by the team at Dispute Dynamics, Inc., found multiple significant differences in those who were and those who were not willing to serve on juries.
- The extent to which someone expressed concern about contracting COVID-19 and the level of precautions they take were significantly related to their ability to serve on a jury. Those not at all concerned or only somewhat concerned were more willing to serve on a jury. Whereas those who reported being very concerned were more likely to also say, they would not report to jury duty due to fears of being in a room with a large group of people.

POST COVID-19 DATA

- National Survey Analysis (National Center for State Courts):
 - 55% of potential jurors face at least one obstacle that makes it dangerous or logistically impossible for them to serve.
 - 47% of potential jurors have someone in their household that has an underlying medical condition making them more vulnerable.
 - 14% are primary caregiver for aging parent or elderly family member.
 - 19% are restricted due to inability to secure reliable child care.

• https://www.ncsc.org/data/assets/pdf_file/0006/41001/NCSC-Juries-Post-Pandemic-World-Survey-Analysis.pdf

POST COVID-19

Activities in a 'Post' Pandemic World						
% Not Comfortable						
Please indicate how comfortable you would personally feel right now doing each of the following on a scale of 0 to 10, where 10 means extremely comfortable and 0 means extremely uncomfortable...						
	Total	Risk Obstacles	No Risk Obstacles	White	Latinx	AfAm
Visiting with a close friend or family member at their home	23%	30%	14%	20%	17%	40%
Going out to the grocery store	27%	34%	20%	27%	22%	34%
Going to a polling place to vote	36%	43%	28%	34%	34%	42%
Going to a government office or public building	44%	49%	37%	42%	33%	57%
Eating out in a restaurant	50%	57%	42%	47%	44%	67%
Reporting to your local courthouse for jury duty if you received a summons requiring you to appear	52%	57%	47%	50%	47%	65%
Reporting to your local courthouse for jury duty	52%	59%	48%	49%	50%	73%
Serving on a jury if selected	54%	59%	48%	51%	49%	66%



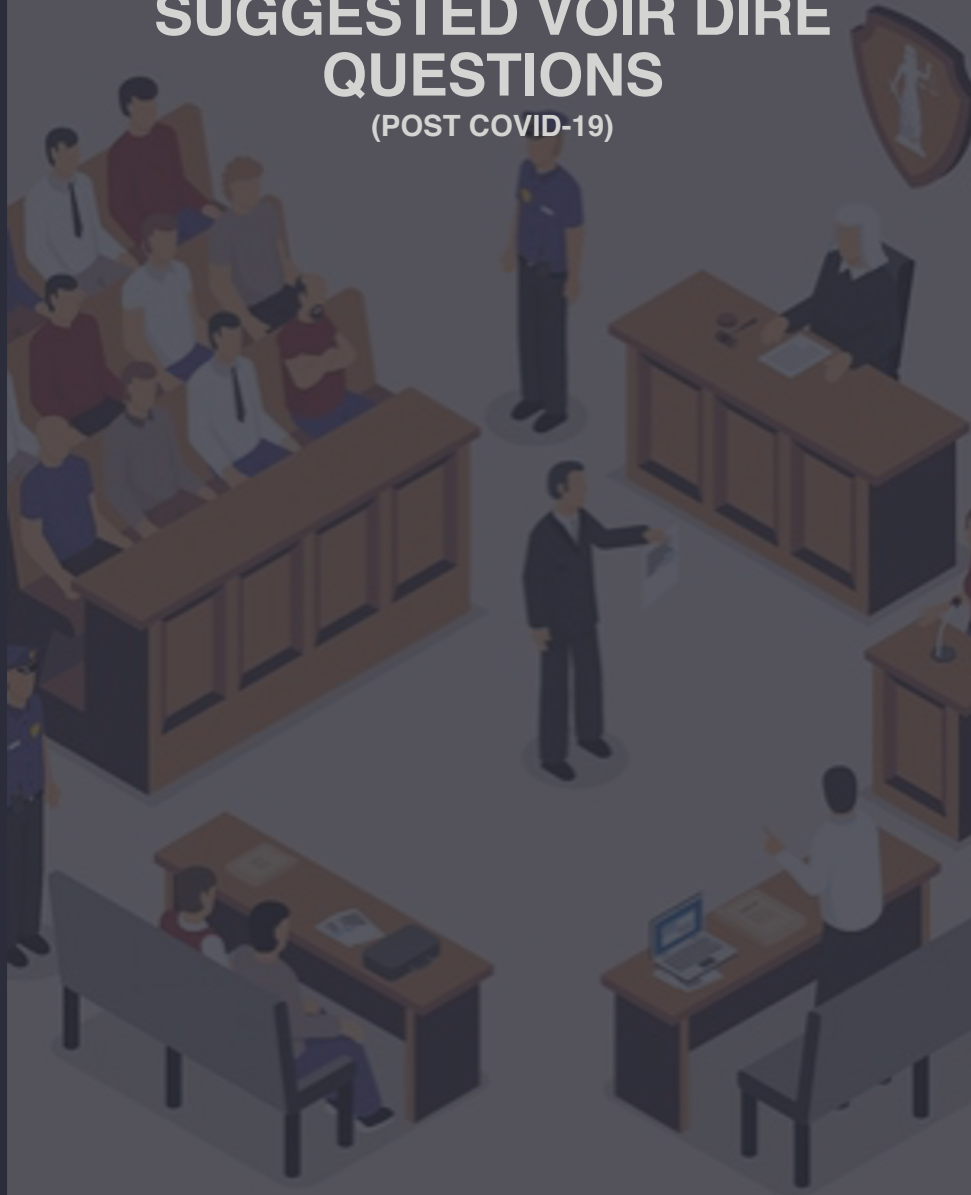
POST COVID-19

Greatest Likelihood of Reporting (80%+)	Younger white men
	Conservative white men
	Non-college educated white men
Medium Likelihood of Reporting (65-75%)	Younger Hispanic men
	Younger white women
	College-educated white men
	Older white men
	Older Hispanic men
	African American men
Least Likelihood of Reporting (45-60%)	Younger Hispanic women
	Younger African American women
	Older white women
	Older Hispanic women
	Older African American women

- https://www.ncsc.org/data/assets/pdf_file/0006/41001/NCSC-Juries-Post-Pandemic-World-Survey-Analysis.pdf

SUGGESTED VOIR DIRE QUESTIONS

(POST COVID-19)



JURY TRIAL

- The United States Centers for Disease Control and Prevention (“CDC”) has said that older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe complications from the novel coronavirus, also known as COVID19. Do you believe you or any member of your immediate household is at higher risk?
- Do you or anyone in your household currently have symptoms of illness, including fever, cough, shortness of breath, congestion, or respiratory problems?
- To the best of your knowledge, have you been exposed to COVID19?
- The Court will be implementing procedures to maintain physical distance and minimize potential exposure to COVID19 in the courtroom. Even with these precautions, do you have ANY concerns related to COVID19 that would affect your ability to pay attention and fully concentrate on the evidence in this case?
 - If you answered Yes to above, do you feel you can set aside your concerns regarding COVID19 and focus your attention on listening to the evidence and deliberating with other jurors?

JURY ATTITUDES IN THE WAKE OF COVID-19



“A jury consists of twelve persons chosen to decide who has the better lawyer.”

JURY ATTITUDES IN THE WAKE OF COVID-19

- The data suggests that those who are willing and able to appear for jury duty tend to hold more pro-defense, pro-corporate attitudes.
- Prior Examples
 - Uptick in hostility towards large corporate defendants after Enron.
 - The Great Recession of 2008-2009 was followed by a dramatic shift in pro plaintiff, high-award verdicts.
- Concern of Infection & Life Disruption
 - Potential jurors who expressed significant concern of COVID-19 infection for themselves or a loved one were generally pro-plaintiff and awarded higher damages.
 - Life disruption also related to damages. The more people felt their lives were personally disrupted, the higher the damages they would award.

REMOTE PROCEEDINGS

- If given a choice potential jurors prefer remote proceedings.
- Many of the same groups expressing the strongest preference for remote proceedings are those who express the greatest health concerns including African Americans (32 points) and older women (29 points).
- Interestingly, 61% responded that they would be concerned about their ability to receive a fair and impartial trial if tried remotely rather than in person.

KNOWN PITFALLS

Juror Irregularities Mar Asbestos Zoom Trials, Defendants Say
By Daniel Singal

Law360 is providing free access to its coronavirus coverage to make sure all members of the legal community have accurate information in this time of uncertainty and change. Use the form below to sign up for any of our daily newsletters. Signing up for any of our section newsletters will opt you in to the daily Coronavirus briefing.

Sign up for our Transportation newsletter
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Law360 (August 18, 2020, 11:14 PM EDT) — Taking a pair of asbestos trials online in California state court has led to jurors working during opening statements and improperly making noise with a plaintiff, according to Honeywell and another company on trial over claims they respectively caused a former customer's and Navy admiral's mesothelioma.

Defendant Metabolt Insulation LLC has filed multiple motions for a mistrial in the case brought by retired Rear Adm. Ronald Wilgenbusch, first in late July when Alameda County Superior Court Judge Brad Seligman moved the trial — which had been proceeding in person — onto Zoom after one of the jurors came down with a fever.

Metabolt argued two days after that move that Judge Seligman's plan to excuse that juror and shift to a remote trial midstream was "unfair and untenable," but the judge disagreed, denying the motion and proceeding with trying the case via the videoconference platform.

Last week Metabolt again moved for a mistrial, arguing that while the parties' attorneys and the judge were in a Zoom "breakout room," Wilgenbusch got into a friendly discussion with two jurors after noticing one had a virtual background of a courtroom setup.

Because the trial video is not being recorded, Metabolt said it assigned a paralegal to observe the jurors throughout, and this paralegal reported seeing the two jurors talk Wilgenbusch through the process of adding the custom background on Zoom, drawing "sushi" and "AMMs" from other jurors when displaying a background of the Golden Gate Bridge.

Citing quotes from the best-selling self-help book "How to Win Friends and Influence People," Metabolt argued that by adding for and receiving help from the two jurors, Wilgenbusch "intentionally and subtly created juror empathy," thus incurably biasing those jurors in his favor.

On Monday, Metabolt also filed a motion urging Judge Seligman to reverse his position that the trial can't be recorded. Metabolt argued that a full recording needs to be kept to preserve a record of incidents like Wilgenbusch's conversation, adding that just making it known that the proceedings are being recorded would likely help keep things on track.

Both of these motions are still pending, according to the court docket, and the trial was continuing with witness testimony as of Tuesday afternoon.

Wilgenbusch alleges that he was exposed to asbestos during the installation and removal of Metabolt-supplied insulation on several Navy ships.

Attached Documents
Motion for Mistrial
Notice of Irregularities

Useful Tools & Links
Add to Briefcase
Save to PDF & Print
Rights Reports
Editorial Contacts

Related Sections
Legal Industry
Law Firms
Dispute Resolution
Legal Practice
Companies
Honeywell International Inc.

Law360 RISING STARS 2020
Law360 Names Top Attorneys Under 40
More than 100 attorneys were named Rising Stars for 2020, and more than 175 attorneys under 40 whose legal accomplishments transcended their age.

Top 10 trending in Aerospace & Defense
1. New Service, Orion Indirect Overhaul
2. Space: NASA's Artemis Mission
3. Ex-FBI Airtel: Pleads Guilty to Altering Email in Austin Probe
4. Capt. in 'Taiwan' Scandal Charged With Drunk Driving
5. Training With Chinese: Taiwan Says U.S. Unilateral Requirements
6. Weighing The Virtual Courtroom Option In Civil Cases

JUROR IRREGULARITIES MAR ASBESTOS ZOOM TRIALS, DEFENDANTS SAY



Litigation Coverage

Home / Special reports / litigation coverage / The Trends / Special reports / litigation coverage / The Trends

Breaking News / Special reports / litigation coverage / Breaking News / The Players / Special reports / litigation coverage / The Players

Key Cases / Special reports / litigation coverage / Key Cases / Commentary / Special reports / litigation coverage / Commentary

Major Recoveries / Special reports / litigation coverage / Major Recoveries / Global Litigation / Special reports / litigation coverage / Global Litigation

Mistrial Motion Says Jurors Worked Out, Checked Stove, During Virtual Voir Dire in Asbestos Case

News (L360)

"One gentleman walked out of the screen because something was on, a burner in the kitchen, and he had to take it, so his house didn't burn down," said defense attorney Edward Hugo, who filed the mistrial motion in an asbestos trial to open Tuesday. "Other people are herding literally pets, children. This is not conducive to jury selection."

By Amanda Brenstad | author@coffcohen.com | July 26, 2020 at 14:34 PM

**Special Report
Litigation Coverage (1)**

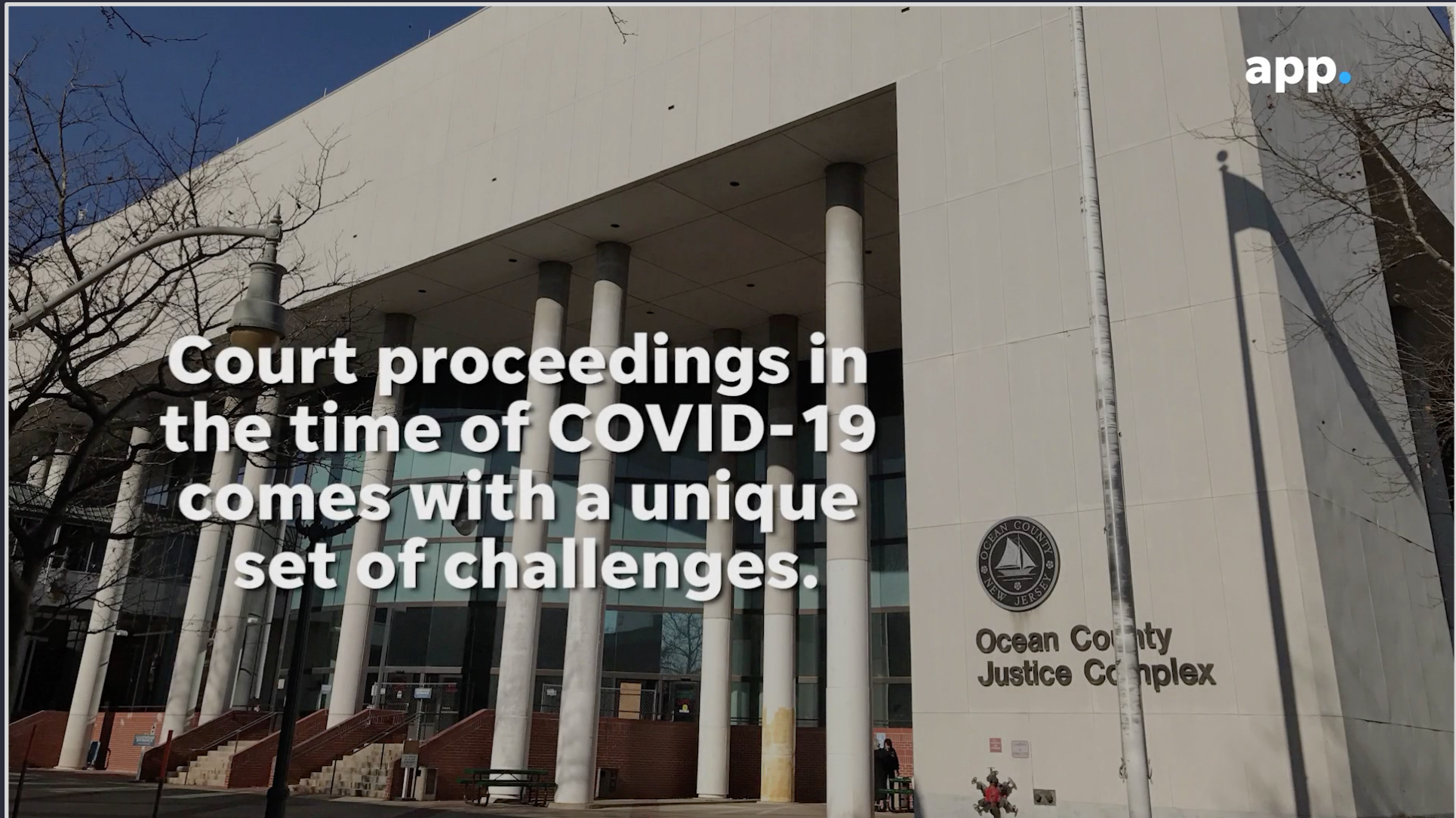
NEWS
Judge Yells Asbestos Trial, Citing 'Frightening Frequency' at COVID-19 Cases
@www.law.com/2020/07/24/judge

MISTRIAL MOTION SAYS JURORS WORKED OUT, CHECKED STOVE, DURING VIRTUAL VOIR DIRE IN ASBESTOS CASE

Trial By Zoom



Trial By Zoom



CONCLUSION

No matter where you practice, jury trials will remain. COVID has impacted the way jurors see the world and how we need to assess them during jury selection. The information available to us in making these assessments will continue to emerge. We must remain vigilant in monitoring and tracking this information to prepare the best defense for our clients.

Questions?

