

Summarized Findings

2017 Public Survey I: Public Opinions of Civil Jury Trials

Prepared by: the
ASTC Trial
Consultant
Advisory Group



- in collaboration with -

the Civil Jury
Project at NYU
School of Law



CIVIL JURY PROJECT
at NYU School of Law

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INTRODUCTION

America's 7th Amendment right to a civil jury trial has eroded away for years unbeknownst to the American citizens. It has reached a critical point where less than 1% of civil cases are resolved by a jury.

In its quest to preserve the American people's right to a civil jury trial the American Society of Trial Consultants in conjunction with the Civil Jury Project, is studying these principals. The current study queried nearly 1500 people to investigate some underlying concepts and assumptions important to retaining civil jury trials.

DECLINE

Statistics on civil jury trials have been collected for years. Both federal and state court data reveal a downward trend since 1962. This decline had been documented in various ways; yet they all reach the same conclusion—the civil jury trial is vanishing. Since 1960 the amount of federal cases filed has increased, but the disposal rate by juries decreased from 11% to 2%.¹ In state cases from 1976-2002 cases resolved by a jury fell from 36% to 16%.² Then in 2015 a study found the state court jury trial rate decreased to .1% in 10 urban counties.³

The decline is also evident in data regarding the number of citizens called for jury duty. Federal court encountered a decline of 31% between 2006 and 2016. In 2006, 307,204 people were summoned for jury duty as compared to only 194,211 in 2016. Similarly in 2006, 71,578 people were selected to serve on a jury as compared to 43,697 citizens in 2016—down 39%.⁴

In search of a way to slow or reverse this trend the ASTC Trial Consulting Advisors studied attorneys' current involvement in jury trials, how they view the decline, and their perceived causes among other things.⁵ They found attorneys are concerned about the decline on a bipartisan level. The majority of attorneys surveyed agreed the number of their own cases which proceed to jury trials were too low and the majority of the cases were resolved without a jury.⁶

Regardless of the decline, a Pew Research Center survey in April 2017 revealed two-thirds of U.S. adults considered serving on a jury "is part of what it means to be a good citizen."⁷ Even

¹ Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. Empirical Legal St. 459, 507 (2004)

² Id at 506.

³ 23 Jury System Management in the 21st Century: A Perfect Storm of Fiscal Necessity and Technological Opportunity (2015)

⁴ John Gramlich, Fewer Americans are being called for Federal Jury Duty, Pew Research Center from the Administrative Office of the U.S. Courts, August 24, 2017

⁵ ASTC Consultant Advisors, Summarized Results and Recommendations 2016 Attorney Survey: Declining Civil Jury Trial, NYU Civil Jury Project <http://civiljuryproject.law.nyu.edu/astccjp-surveys/>

⁶ Id.

⁷ Supra 4.

though it may be recognized in the legal community. Pew's findings beg the question of whether the American people understand what is happening.

PUBLIC SURVEY I

In order to preserve and revitalize the civil jury trial, the public may need to get involved. Understanding current public perceptions about it is a critical first step. As trial attorneys and consultants alike know, understanding someone's pre-set attitudes, opinions and frame of reference facilitate effective communication and persuasion. Therefore, Public Survey I is designed to identify and assess a few basic assumptions of public perception of the civil jury trial.

Is the public aware of the decline in civil jury trials and are they upset about the decline? Those were two of the central questions tackled by the ASCT/CJP's Public Survey I. The survey addressed whether citizens understand there is a decline in civil jury trials, how they feel about decline when informed of it, their perceptions of how important the right to a civil jury trial is and whether prior jury service influences those opinions as primary inquiries.

Based on thousands of anecdotal discussions with jury eligible citizens on hundreds of cases the ASTC's Trial Consultant Advisors hypothesized people are not aware of the present crisis—the vanishing jury trial. In addition, this study explored whether the public cares about the decline and hypothesized, when people are informed of the decline many would express a neutral or positive view of the decline instead of a negative view. It would indicate they prefer fewer civil jury trials or at least are not upset about the decline. This study suspected the public's view of how important the right to have a jury decide a lawsuit instead of a judge, arbitrator or mediator might be marginal to moderate. Relationships between these questions and with respondents' background and demographic information were explored. For example, did a relationship exist between prior jury service and other questions such as respondents' awareness of the decline, view of the decline or the importance of the right to a civil jury trial?

These inquiries sought to identify general baseline perceptions or gut reactions with virtually no explanation, descriptions or elaborations. The study did not assess the breadth or depth of knowledge a respondent may have on the issue.

METHODOLOGY

Opinions from 1492 citizens across the country are included in this study. The study consists of 6 tests questions and 13 identifying questions for a total of 19 questions. This study intentionally limits the questioning as a first level inquiry. These questions were refined after pilot testing with over 500 people in the New England area during spring 2017.⁸

Data for the study were collected from May 22, 2017 to May 28, 2017 using mixed methodologies. One third of respondents, approximately 500, participated in person to person interviews and approximately 1000 completed an on-line survey. Fieldwork, a nationwide market research firm, administered all the surveys.

The sole screening criteria to participate in this study required a respondent to be a U.S. Citizen. Respondents participated as part of a convenience sample. The order of the test questions remained constant to obtain feedback about awareness before providing additional or priming information.

DEMOGRAPHIC AND BACKGROUND HIGHLIGHTS

The following includes selected summaries of respondent demographics.

- State:
 - 33 States
 - Majority in Massachusetts (37.9%) and Illinois (27.8%)
- Resident Location type:
 - Suburban 67.6%
 - Urban 26.1%
 - Rural 5.9%
- Gender
 - Female 75.5%
 - Male 24.5%
- Race
 - Caucasian 81.3%
 - Black/African American 8.2%
 - Hispanic 4.8%
 - Asian-American 3.3%
 - Multi-racial 1.4%
 - Other 0.9%

⁸ The pilot study surveyed 582 people with the majority living in New Jersey and New York (total of 554). Others resided in 12 additional states. As such the proportion from an urban community was greater than the final study. Yet, most of the demographic factors were comparable between studies.

Public Survey I: Public Opinions of Civil Jury Trials (December 2017)

- Education (highest level of education):
 - High school or less 8.5%
 - Some college 34%
 - College degree 35.8%
 - Post Graduate degree 21.5%

- Political affiliation:
 - Democrat 44.2%
 - Republican 21.4%
 - Other 34.4%

- Political orientation:
 - Liberal 40.6%
 - Conservative 29.5%
 - Other 29.8%

HIGHLIGHTS OF THE SURVEY

The most crucial and pertinent findings from Public Survey I were as follows:

- A large sample size of U.S. Citizens from various demographic backgrounds and areas nationwide.
- **The majority of respondents believed the right to a civil jury trial was important.** Two-thirds of this sample believed the right to a civil jury trial was somewhat to very important.
- **The majority of respondents were unaware the number of jury trials has declined.** Over three-quarters of the sample thought civil jury trials had either stayed the same or gone up.
- **When informed there has been a sharp decline in civil jury trials over the last ten years, more than half of the sample expressed either no opinion or a neutral opinion about the decline.** Less than half of the respondents expressed an opinion about the decline; less than a quarter viewed the decline as negative.
- **Prior jury service had no influence on any of these three opinions.**⁹ In this survey, prior jury service did not appear to drive opinions about the awareness of the decline, a respondent's opinion of the decline, or a belief in the importance of the right to a jury trial.
- **Opinions of the decline aligned with beliefs about who was most appropriate to decide cases.** Those who viewed the decline negatively were more likely to believe jurors were the most appropriate to decide the case. Those who viewed the decline positively were more likely to think either an arbitrator or judge should decide the case.
- **Opinions of the decline were related to a few demographic factors,** including age, region of residence, and type of residence. This data indicated older people, suburban respondents, and/or those living outside the Midwest were more likely to view the decline as a positive development.

⁹ The phrase "served on a jury" was left undefined. Those taking this survey could interpret jury service as simply responding to a summons or as being sworn as a juror, sitting through trial and rendering a verdict.

- **Importance of the right to a civil jury trial was related to both residence and to age.** Urban residents viewed the right to a civil jury trial as more important than suburban residents viewed the right to a civil jury trial. Men viewed the right to a civil jury trial as more important than women viewed the right.
- Beliefs about who is most appropriate to decide civil suits may be affected by prior jury service, but perhaps not in the way previously anticipated. While prior “service on a jury” exhibited no relationship with the belief that jurors are the most appropriate decision-makers; respondents who had participated in jury service were more likely to believe arbitrators were the most appropriate and less likely to believe judges were the most appropriate, compared to those who hadn’t served on a jury.¹⁰

¹⁰ Someone summoned for jury duty but who does not experience opening statements, witness testimony, or other aspects of a full trial may view their “service” differently than someone with greater experience in the process. The difference in attitudes may have been a factor in these findings.

RESULTS

IMPORTANCE

Is the Right to a Civil Jury Trial Important? Yes

The majority of the sample believed the right to a civil jury trial was important. Two-thirds (66%) of this sample responded the right to a civil jury trial is somewhat to very important. The remaining third was split between whether they thought it was unimportant, or were neutral about this topic. Only 17% thought it was unimportant, while about 18% were neutral toward this right.

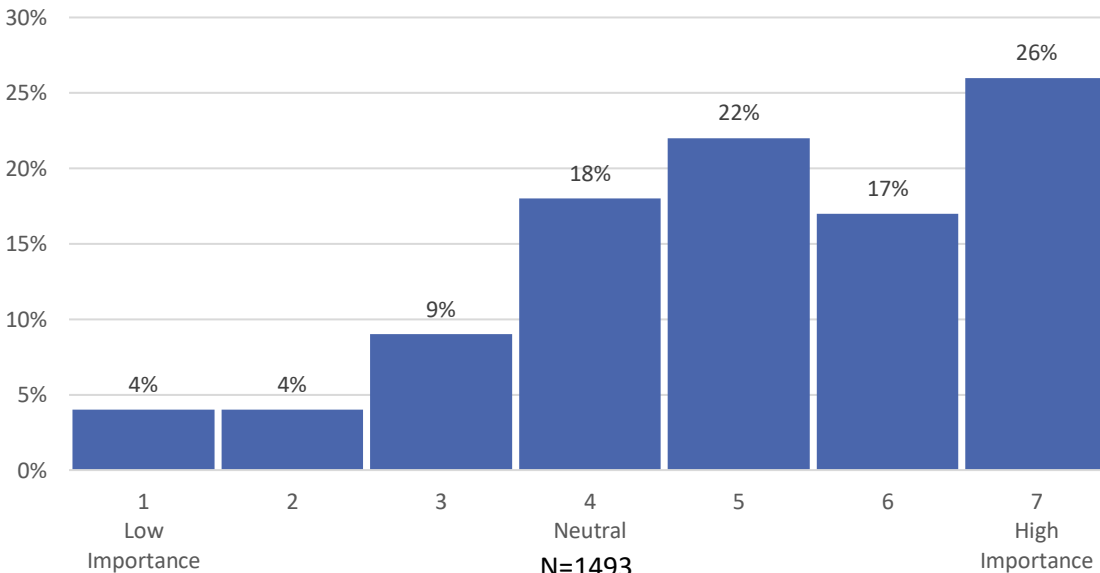
Q5. How important to you is the right to have a jury decide any lawsuit you may be involved in instead of a judge?



N=1493

The average importance rating for the jury being the decision-maker in a lawsuit was somewhat high at 5.08; with 1 indicating low importance and 7 indicating high importance. This distribution was skewed toward high importance.

Q5. Importance of Right to Jury Trial



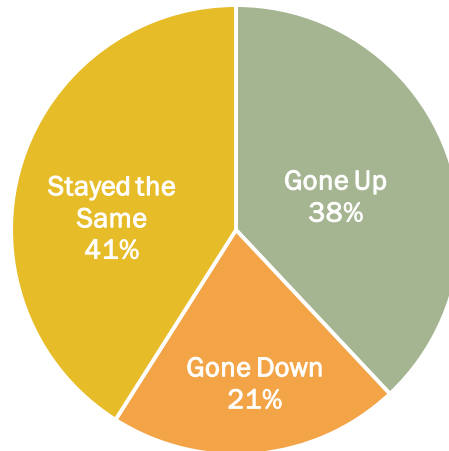
DECLINE

Are people AWARE there is a decline in civil jury trials? No.

A simple frequency analysis supported the notion that the **respondents were largely unaware of the decline**. Only 21% of this sample recognized the number of jury trials had declined over the years.

Around a fifth of this sample recognized the number of jury trials had declined over the years. Twice as many (41%) people believed the number of jury trials stayed the same over time, while over a third (38%) of respondents thought the number had actually increased.

Q2. Do you think that the number of civil trials being decided by juries has...



N=1492

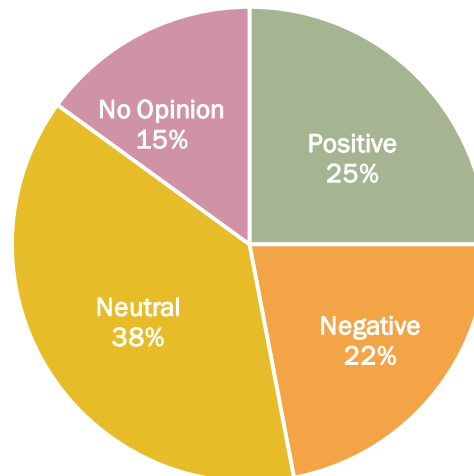
Are people UPSET by the decline in civil jury trials? No.

When informed there has been a sharp decline in civil jury trials over the last ten years, **less than a quarter of the sample viewed this decline as a negative development**, confirming the hypothesis.

A simple frequency analysis showed the sample was split in terms of their opinion about the decline. About half (53%) of the respondents indicated that they had “no opinion” or were “neutral” in reference to the decline.

Furthermore, more people expressed a positive opinion about the decline than a negative opinion. Only 22% responded they had a negative opinion of the decline; 25% had a positive

Q3. In the past 10 years, there has been a sharp decline nationwide in the number of jury trials taking place. What is your opinion about the decline?



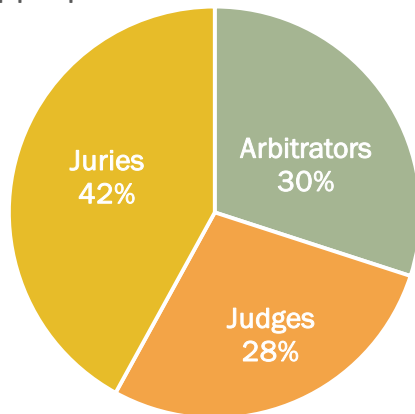
N=1495

opinion of the decline, 38% were neutral about the decline, and 15% had no opinion of the decline.

MOST APPROPRIATE DECISION MAKER

Who is most appropriate to decide civil disputes? Slight preference for juries.

Q4. Who do you think is most appropriate to decide civil disputes?



N=1495

A simple frequency analysis showed the sample was split in terms of their opinions about who is most appropriate to decide civil disputes.

- More respondents (**42%**) replied that a **jury is the most appropriate** decision-maker than other options.
- Just under one-third of the sample (30%) believed arbitrators should decide civil disputes.
- Whereas slightly less, 28% of the sample believed that judges should decide civil disputes.

RELATIONSHIPS

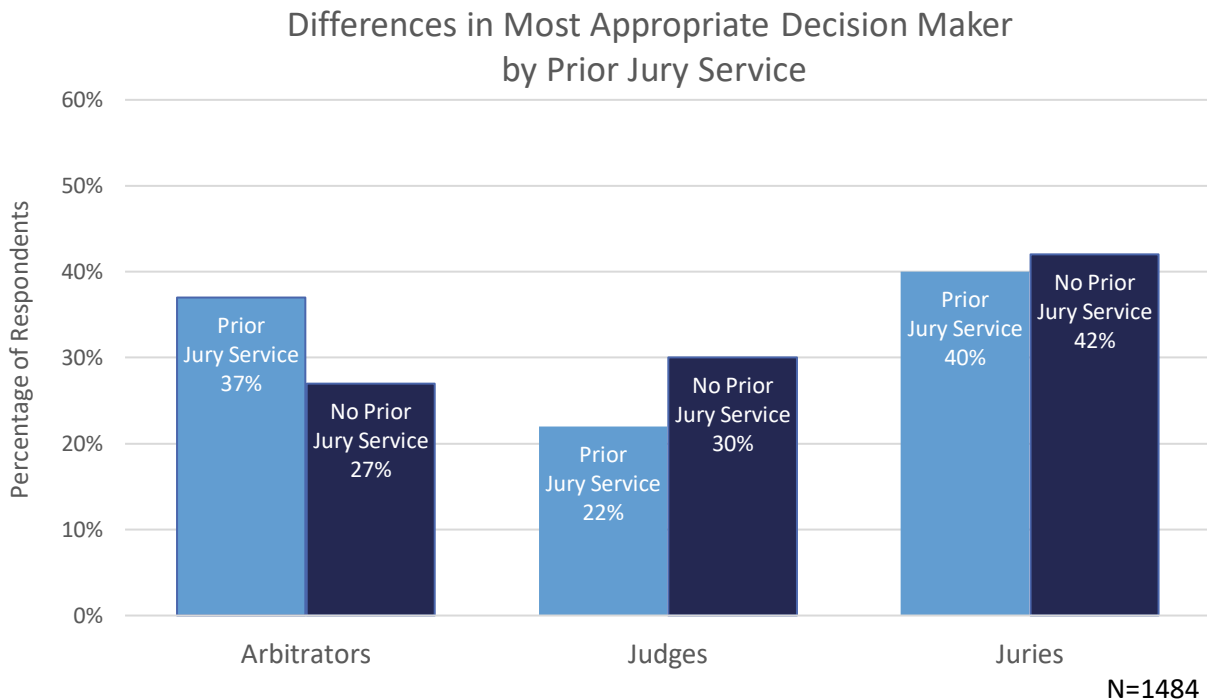
Are opinions related to prior jury service? Generally, no.

Over two thirds (68%) of this sample indicated they had served on a jury of some kind which included civil, criminal or grand juries. There was no statistical evidence in this survey to suggest that prior jury service affected the awareness of decline, a respondent's opinion of the decline, or a belief in importance of the right to a jury trial.

Beliefs about who is most appropriate to decide civil suits may be affected by prior jury service, but perhaps not in the way previously anticipated. This data suggested that jury service may not be a driving force behind beliefs and attitudes on the importance of retaining a civil jury trial option, contrary to what was generally suspected.

Is prior jury service related to who is an appropriate decision maker? Yes, but in unexpected ways.

While prior service on a jury exhibited no relationship with the belief that jurors are the most appropriate decision-makers; as shown in the chart below, respondents who had participated in jury service were more likely to believe arbitrators were the most appropriate¹¹, and less likely to believe judges were the most appropriate¹², compared to those who hadn't served on a jury.



Are opinions of the decline related to other factors? Some.

As shown in the chart below, those who viewed the decline as negative were more likely to choose juries, more than judges or arbitrators, as the most appropriate fact finders to decide civil disputes¹³. As such, opinions of the decline aligned with beliefs about who was more appropriate to decide cases¹⁴.

¹¹ MANOVA Results: Overall, there was a statistically significant difference in choice of fact finder based on a participant's prior jury service, $F(2, 1481) = 9.18, p < .001$; Wilk's $\Lambda = 0.988$, partial $\eta^2 = .012$ (small effect).

Arbitrators $F(1, 1482) = 15.01; p < .001$, partial $\eta^2 = .010$ (small effect)

¹² Judges $F(1, 1482) = 10.55; p < .01$, partial $\eta^2 = .007$ (very small effect).

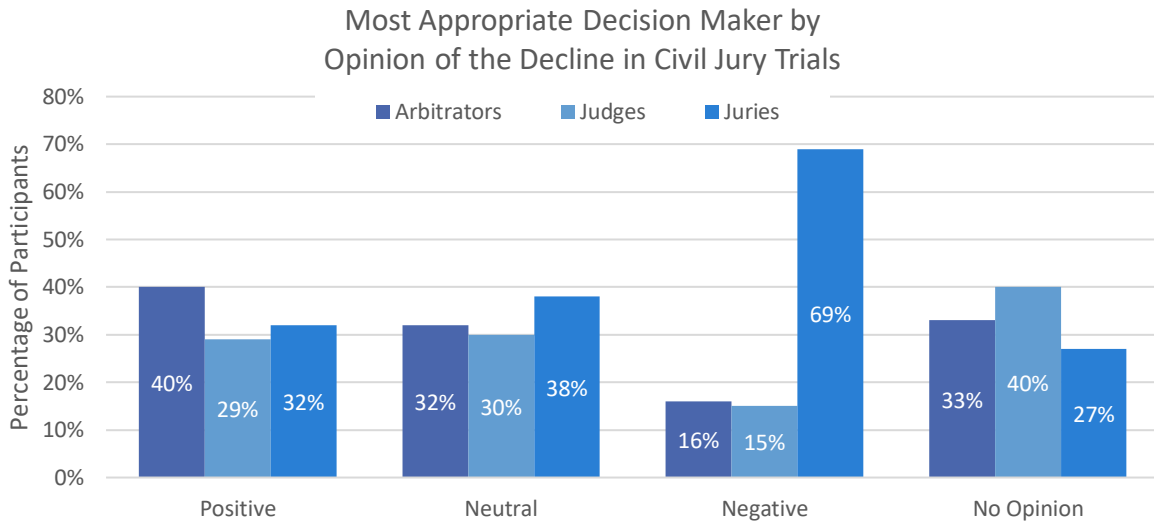
¹³ Arbitrator $F(3, 1485) = 16.77; p < .001$, partial $\eta^2 = .033$ (small effect).

Judges $F(3, 1485) = 15.90; p < .001$, partial $\eta^2 = .031$ (small effect).

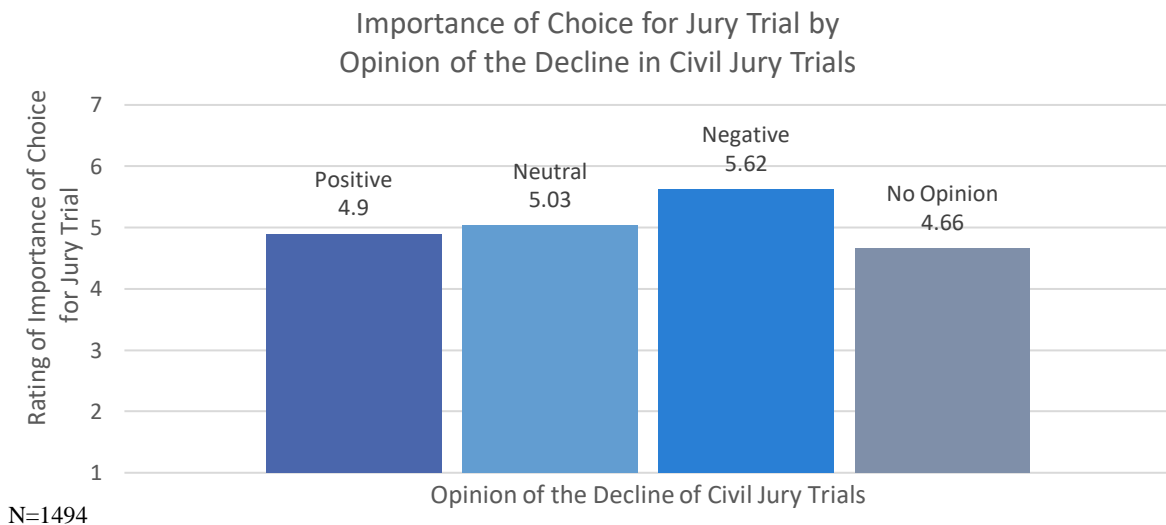
Juries $F(3, 1485) = 51.82; p < .001$, partial $\eta^2 = .095$ (medium to large effect).

¹⁴ MANOVA; Overall, there was a statistically significant difference in choice of fact finder based on a participant's opinion of the decline, $F(6, 2968) = 26.75, p < .001$; Wilk's $\Lambda = 0.900$, partial $\eta^2 = .051$ (small to medium effect).

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Having a positive or negative opinion of the decline was a factor in participants’ ratings of the importance for right to jury trials¹⁵. Those with a positive opinion of the decline rate the importance of having the choice of a jury trial lower than those who had positive or neutral opinions about the decline. The chart below shows that participants with a negative opinion of the decline placed higher importance on having the choice to have a jury than those with positive, neutral, or no opinions of the decline.



Opinions of the decline were related to some demographic factors¹⁶, including age, region of residence, and type of residence. This data indicated that older people, suburban respondents,

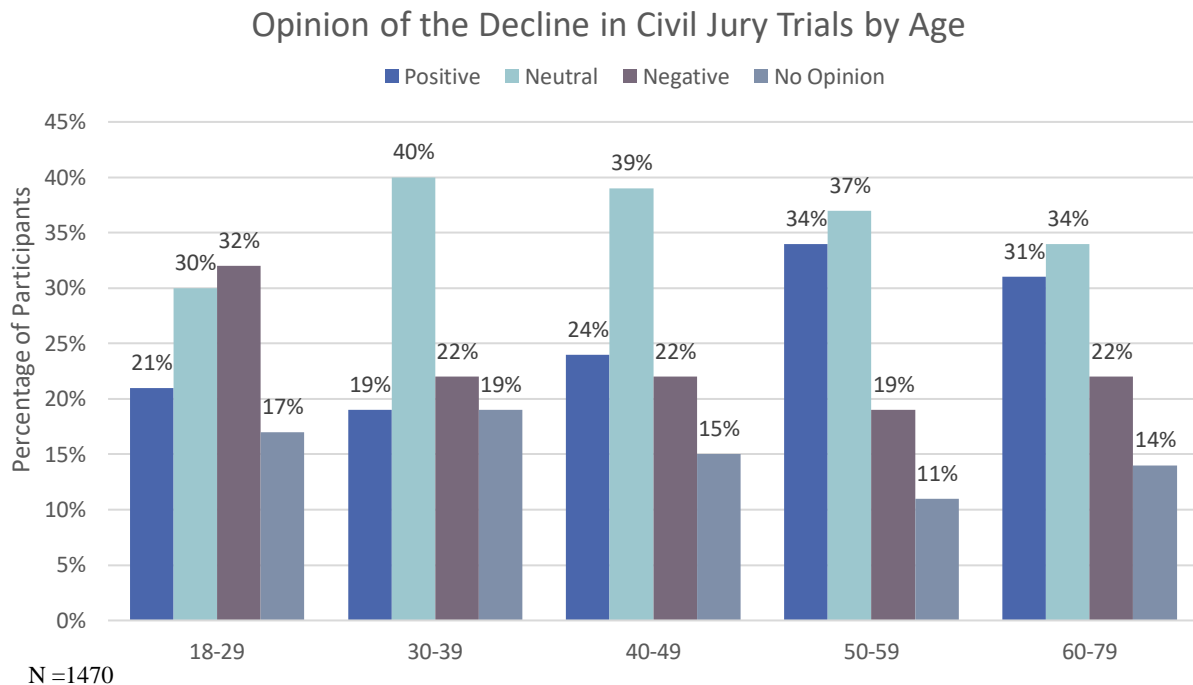
¹⁵ ANOVA: Overall, there was a statistically significant difference in ratings of importance based on a participant’s opinion of the decline, $F(3, 1491) = 18.86, p < .001; \eta^2 = .037$ (small to medium effect)

¹⁶ Id. Because this was a convenience sample, there were issues with overrepresentation of some groups; most notably, 46% of the sample identified as suburban white women. It is imperative to consider this when attempting to generalize these results to the population.

Public Survey I: Public Opinions of Civil Jury Trials (December 2017)

and/or those living outside of the Midwest were more likely to view the decline as a positive development.

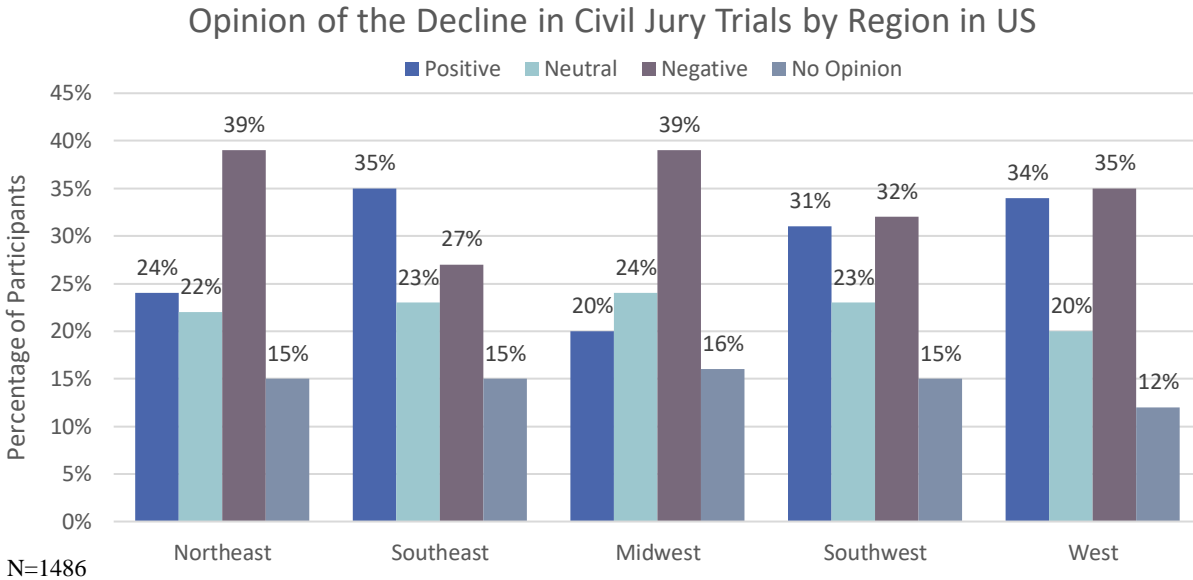
- Older respondents were more likely to view the decline positively than younger respondents, with about a third of individuals over the age of 50 viewing the decline positively and a similar percentage of individuals under the age of 50 viewing the decline negatively¹⁷.



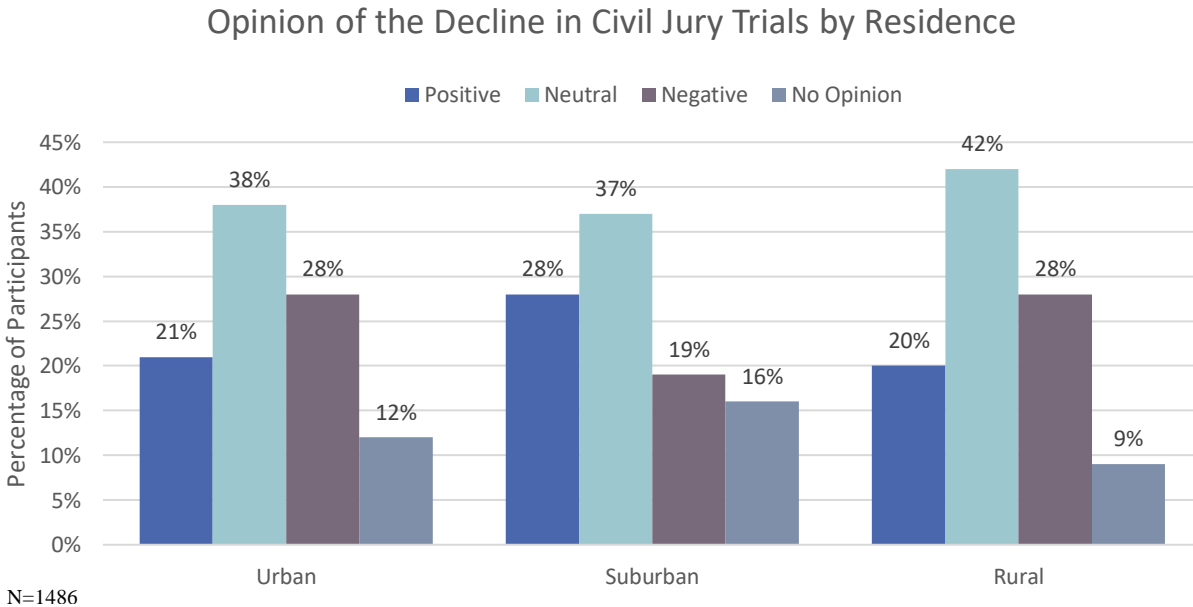
¹⁷ MANOVA: Overall, there was a statistically significant difference in opinion of the decline based on a participant's age, $F(12, 3873) = 3.11$, $p < .001$; Wilk's $\Lambda = 0.975$, partial $\eta^2 = .008$ (very small effect). Positive $F(4, 1466) = 5.77$, $p < .001$; partial $\eta^2 = .016$ (small effect). No Opinion $F(4, 1466) = 2.42$, $p < .05$; partial $\eta^2 = .007$ (very small effect)

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- Respondents from the Midwest were least likely to view the decline positively, as compared to all other regions of the United States¹⁸.



- Respondents living in the suburbs were more likely to view the decline positively than rural or urban residents¹⁹.



¹⁸ MANOVA; Overall, there was a statistically significant difference in opinion of the decline based on a participant's region, $F(12, 3913) = 1.78, p < .05$; Wilk's $\Lambda = 0.986$, partial $\eta^2 = .005$ (very small effect).

¹⁹ MANOVA; Overall, there was a statistically significant difference in opinion of decline based on a participant's residence, $F(6, 2964) = 3.89, p < .001$; Wilk's $\Lambda = 0.984$, partial $\eta^2 = .008$ (small effect)

Positive $F(2, 1484) = 3.88; p < .05$, partial $\eta^2 = .005$ (very small effect).

Negative $F(2, 1484) = 7.715; p < .001$, partial $\eta^2 = .010$ (small effect)

Are there relationships between how important the right to a civil jury is and other questions or identifying information? Some.

Respondents answered two questions about the right to a jury trial:

How important to you is the right to have a jury decide any lawsuit you may be involved in instead of a judge, arbitrator, or mediator? (Q5)

How important to you is it to protect the right to a civil jury trial which is guaranteed by the 7th Amendment of the US Constitution? (Q6)

The correlation between these two items (Q5 & Q6) was a medium to strong effect, $r = .557$, $p < .001$. However, one would expect the correlation to be higher ($r > .70$) if the two items were measuring the same construct (i.e., the importance of the right to a jury trial). This suggests that, couching the argument in terms of a constitutional right might result in different responses as it is emphasizing the importance of the jury trial in a more imperative manner than other approaches to the issue.

Respondents viewed the “right to have a jury decide any lawsuit you may be involved in instead of a judge, arbitrator or mediator” (Q5) as somewhat high with the average importance rating being a 5.08 on a 1-7 point scale with 1 indicating low importance and 7 indicating high importance.

A couple of demographic variables reflected noteworthy relationships with how important participants viewed the right to a civil jury trial (Q5).²⁰

- Urban residents ($M = 5.37$) viewed the right to a civil jury trial as more important than suburban residents ($M = 4.96$) viewed the right to a civil jury trial²¹.
- Men ($M = 5.29$) viewed the right to a civil jury trial as more important than women ($M = 5.01$) viewed the right²².

Question 6 was a leading question that framed the importance of a jury trial within the context of the United States Constitution. Participants were asked if they wanted to protect something that they were just informed they have a right to have. The framing of this question undoubtedly biases responses toward the high importance side, and this is reflected in the skew of the distribution (e.g., the mean score was 6.08 and the median was 7 (ceiling value of the scale)). Despite the limitations for its utility in these analyses, it may be instructive when it comes to publicly emphasizing the importance of the jury trial.

²⁰ Because this was a convenience sample, there were issues with overrepresentation of some groups; most notably, 46% of the sample identified as suburban white women. It is imperative to consider this when attempting to generalize these results to the population.

²¹ ANOVA: Overall, there was a statistically significant difference in ratings of importance for choice of a jury trial based on a participant’s residence, $F(2, 1483) = 8.66$, $p < .001$; partial $\eta^2 = .012$ (small effect).

²² ANOVA: Overall, there was a statistically significant difference in ratings of importance for choice of a jury trial based on a participant’s gender, $F(1, 1483) = 8.15$, $p < .01$; partial $\eta^2 = .005$ (very small effect)

DISCUSSION

“The opposite of love is not hate, it's indifference. The opposite of art is not ugliness, it's indifference. The opposite of faith is not heresy, it's indifference. And the opposite of life is not death, it's indifference.”

– **Elie Wiesel**

Apathy about an issue can prove a greater challenge than addressing those in opposition. This study resulted in a critical and informative finding; after people were informed about the sharp decline in civil trials over the last 10 years, the majority of them expressed a neutral opinion or no opinion about the decline. They appeared not to care either way. Even respondents who held a positive opinion of the decline of the civil jury trial took a position on the issue. If our goal is to engage the public and to stimulate citizens to take steps to retain that right, addressing those who are indifferent or apathetic may require a specific approach.

Even though many people did not express having an opinion about the decline, many of our respondents considered the right to a civil jury trial quite important. Therefore, an important opportunity exists for public education and development of interest. Framing the decline as threatening a fundamental right, so important it was included in our Bill of Rights in US Constitution, may aid in eliciting increased interest and encourage people to take a position against the decline. The cure for apathy may be educating citizens about the Constitutional context of the issue, or at least it could be a beneficial first step.

Interestingly, some of the relationships discussed here go against our expectations. At the outset of this study, we expected prior jury service would increase the likelihood that respondents believed juries, not judges or arbitrators, are the most appropriate decision makers for civil cases. This expectation was not supported by the data we collected. It seemed logical someone who participated in the process (past jurors) would believe they were the most appropriate decision-maker for civil jury trials. It was not the case here.

Other unexpected results included the relationships involving political affiliation and political orientation. Each were expected to relate to respondents' view of the decline. Democrats or those with liberal orientations were expected to view the decline as negative. Republicans or those with conservative orientations were expected to view the decline as positive. None of those expected relationships were supported by the statistical analyses. Future research may choose to study the relationships between political affiliation or orientation and perceptions of the civil jury trial.

LIMITATIONS

The results of the survey highlighted some of the methodological limitations such as question framing, undefined terminology, having a convenience sample, and large sample size effects.

This study was designed as first-level research to investigate and explore general awareness and opinions of the declining civil jury trial. It attempted to address a few underlying assumptions

necessary to revitalize the civil jury trial. As an initial study, a convenience sample was chosen for accessibility and cost efficiency²³. As often occurs with convenience samples, the demographic makeup did not match that of the general population. Over-one third of the sample came from Massachusetts and nearly a third came from Illinois. The Southeastern states are markedly underrepresented. Furthermore, three-quarters of the study identified as female. In terms of political party and political orientation, Democrats and liberals were each overrepresented in this sample with the presence of 40% or more in each category (out of three options for each category).

An additional methodological concern is the ambiguity surrounding the definition of jury service. Future research should carefully define jury service (i.e., they were selected to serve on the jury, observed the trial, and deliberated with other jurors) instead of leaving it open to interpretation by the respondent.

A large sample size provides many benefits, but also has limitations in interpreting the data. Having a sample as large as the one in this study can make small, yet statistically significant results appear much larger. We reported effect sizes where appropriate in order to mitigate the statistical influence of the large sample size. Nevertheless, with a sample size of nearly 1500 respondents, we obtained a catalog of opinions.

CONCLUSION

An understanding of any lay public opinion is invaluable in the quest for greater interest in the decline of the civil jury trial. This survey identified that many of the respondents held a neutral opinion or no opinion about the decline. Awareness of this apathy benefits those who seek to protect the civil jury trial. Getting someone to care requires a different approach than shifting someone's opinion.

Information from this study suggests that additional exploration of the public's opinion of the decline in civil jury trials is warranted. In depth research with a representative sample and a broader set of survey questions could illuminate the public's apathy about the decline while gathering further information. Additional research could also incorporate more information about the decline, giving citizens an understanding of how the decline might affect their lives. It is possible members of the public do not understand the implications of eliminating civil jury trials and if they did understand, their perceptions might shift. The organizations involved in this project are well educated about the state of the decline. People within the NYU Law School Civil Jury Project, and ASTC hold strong beliefs about saving the right to a civil jury trial and protecting our 7th Amendment. It is our hope that by informing the public of why the 7th Amendment is a right worth saving, they will take action to protect that right.

²³ Respondents entered a lottery for incentives. All others involved provided pro-bono services.