

Judicial Council's Code of Civil Procedure Section 367.9 Working Group (367.9 Working Group)

Summary of Materials from Working Group Meeting on August 10, 2022

August 16, 2022

Presented/Provided Item	Source	Description
<i>Insights and recommendations regarding remote court appearances for low-income DV survivors</i>	Presented and provided by Ms. Alyson Messenger, Managing Staff Attorney, Jenesse Center, Incorporated	Full PowerPoint presentation delivered by Ms. Messenger during the meeting.
<i>Positives, Perils & Pitfalls: Remote Proceedings in Juvenile Court</i>	Presented and provided by Mr. Michael Fermin, Chief Assistant District Attorney, San Bernardino County District Attorney's Office; Ms. Leslie Starr Heimov, Executive Director, Children's Law Center Los Angeles; and Ms. Laura Arnold, Deputy Public Defender, Santa Barbara County Public Defender's Office	Full PowerPoint presentation delivered by Mr. Fermin, Ms. Heimov, and Ms. Arnold during the meeting.
<i>Advantages of Remote Proceedings in Juvenile</i>	Presented and provided by Hon. Danielle Douglas, Judge of the Superior Court, County of Contra Costa	Full PowerPoint presentation delivered by Judge Douglas during the meeting.
<i>Data and Findings: Unlawful Detainer and Small Claims Cases</i>	Presented and provided by Mr. Darrel Parker, Court Executive Officer, Santa Barbara County Superior Court; Hon. Rupert Byrdsong, Judge of the Superior Court, County of Los Angeles; and Ms. Lorin Kline, Director of Advocacy, Legal Aid Association of California (on behalf of Ms. Salena Copeland, Legal Aid Association of California)	Full PowerPoint presentation delivered by the Unlawful Detainer/Small Claims (UD/SC) civil case type group during the meeting.
Attachment A: <i>Unlawful Detainer cases open-ended survey responses</i>	Provided by the UD/SC case type group	An eight-page document containing the full list of questions and responses from the survey conducted by the UD/SC case type group.

Presented/Provided Item	Source	Description
Attachment B: <i>Small Claims cases open ended survey responses</i>	Provided by the UD/SC case type group	A three-page document containing the full list of questions and responses from the survey conducted by the UD/SC case type group.
<i>Court Reporters Board</i>	Presented and provided by Ms. Yvonne Fenner, Executive Officer, Court Reporters Board of California and Ms. Robin Sunkees, Court Reporters Board of California	Full PowerPoint presentation delivered by Ms. Fenner and Ms. Sunkees during the meeting.

**CCP 367.9 Working Group
insights and
recommendations re:
remote court appearances
for low-income DV survivors**





Hello!

*I am **Alyson Messenger***

I work with low-income survivors of domestic abuse at the Jenesse Center and have been tasked to gather feedback about remote appearances from the statewide DV field.

You can find me at amessenger@jenesse.org

Founded in 1980, Jenesse Center is a nonprofit domestic violence intervention and prevention organization with a resolute mission: to restore, and provide trauma informed, culturally responsive, holistic, comprehensive services to survivors and families impacted by domestic and sexual violence, and to advance prevention modalities to sustain healthy and safe communities free of violence.

Jenesse Center serves the most vulnerable populations in South Los Angeles and beyond utilizing an evidence based approach that is designed to help victims transition from crisis to safety, stability, and self-reliance.

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Solicitation Topic Requests

Appropriate Usage

What case types and proceeding types are best suited for remote appearances?

Service and Access Guidelines

How can court users receive the best possible procedural and technical guidance to use the remote appearance option?

Protocols for Understanding Options

How can we ensure court users fully understand their options for remote appearance?

Accuracy of Records

Do any existing laws require changes to protect the accuracy of the official verbatim record, particularly with remote appearances?

Court Reporter Availability

Are there sufficient resources and workforce capacity to provide the best resources and services to remote appearance users?

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Context

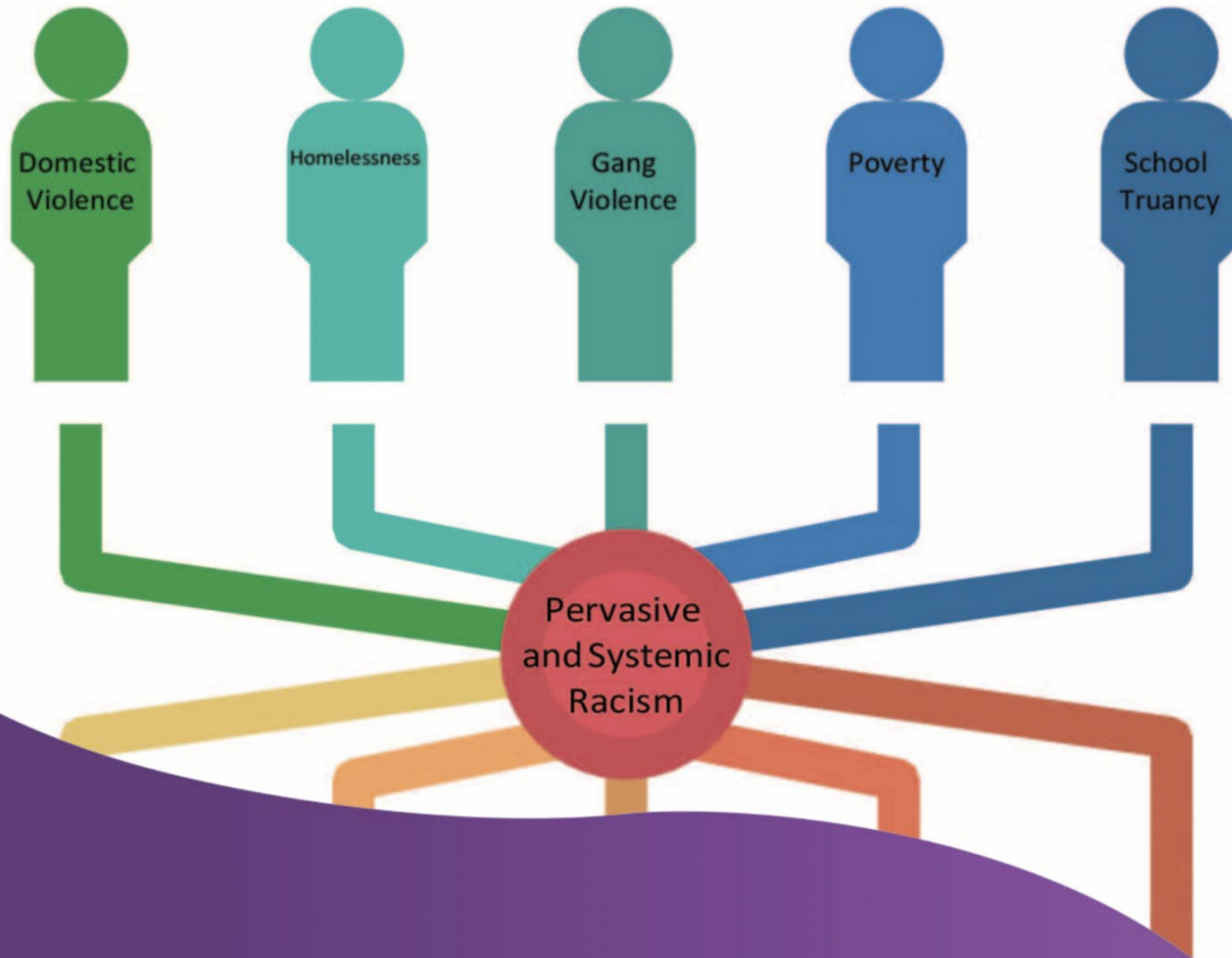
the population we represent and the development of remote appearances



We represent low-income DV survivors.
They may experience:

- Poverty
- Homelessness
- Lack formal education
- Low levels of literacy
- Undocumented immigration status
- Lack of access to technology

Understanding these dynamics is critical to making policy recommendations.



Domestic violence does not exist in a vacuum for many of our clients. They are often coping with issues that intersect with their racial identities and socio-economic status. Sometimes legal processes actually add to their stress and present as barriers to their safety, recovery, and healing.



The impact of DV is felt most strongly in those communities hardest hit by poverty and racism, where residents have fewer resources to escape violence.



80%

of mothers with children who are homeless have experienced domestic violence

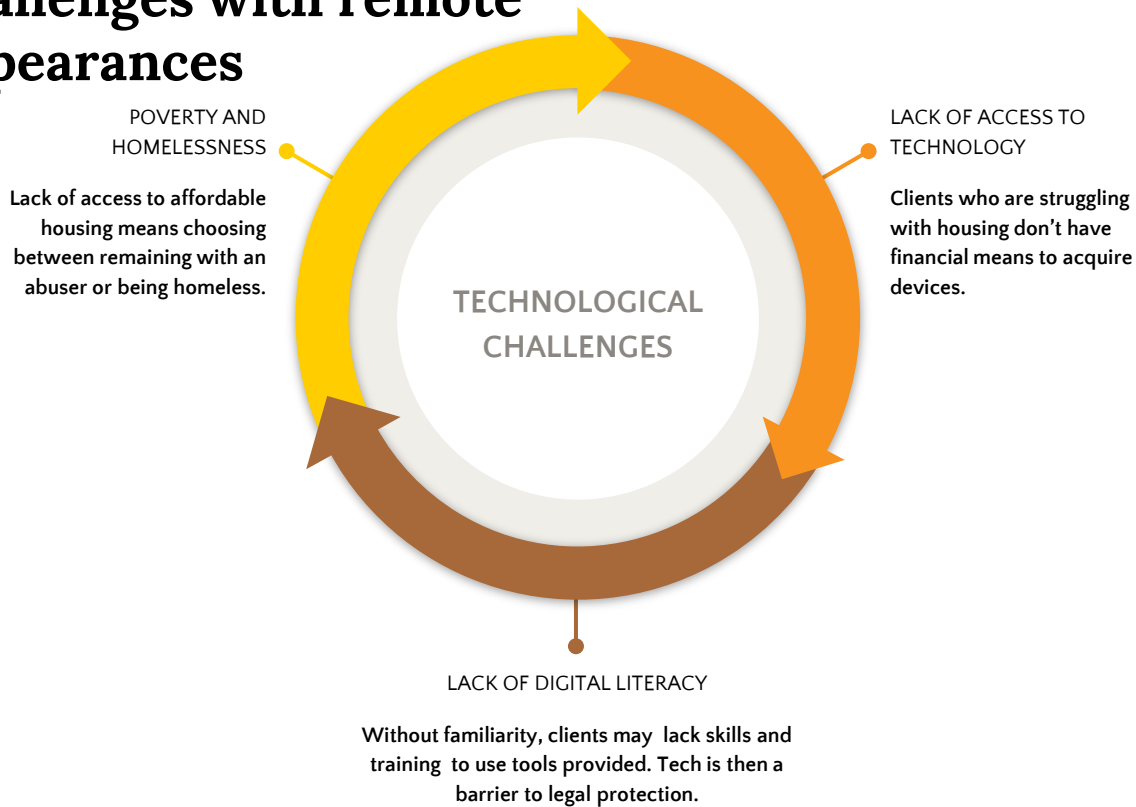
up to 57%

report being homeless as a direct and immediate result of being abused





As a result of these **dynamics** our clients have particular challenges with remote appearances





Development of Remote Appearances

**March 2020:
All hearings
halt due to
COVID-19**

**Late 2020:
Remote
appearances
become an
option**

**To present:
Remote
hearings
remain an
option**

2

Remote Appearances Feedback Survey

Feedback from service providers

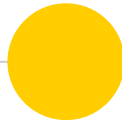
received around
20 responses

from more than
10 organizations

across
all regions of the state



The providers from whom we received
feedback serve clients from
communities where poverty is
rampant, unemployment is high,
educational attainment is low, and
housing is unaffordable.





Survey participants

- Jenesse Center, Inc.
- Community Legal Aid Socal
- NEWS: Nurturing Empowerment Worth & Safety
- DV Survivor Advocates
- Domestic Abuse Center
- California Partnership to End Domestic Violence
- DV Survivors
- California Protective Parents Association
- Peace Over Violence
- California Lawyers Executive Committee for Family Law
- Los Angeles Center for Law and Justice
- SOJOURN
- Family Violence Appellate Project

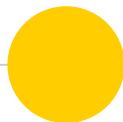


Our **survey** helped us gather:

- Benefits of remote appearances
- Challenges of remote appearances
- Proposed improvements to remote appearances
- Proposed amendments to policies regarding remote appearances

Benefits

The benefits of remote appearances





Clients like remote appearances

Client well-being

One respondent said that at least 90% of clients prefer the remote option because of well-being benefits.

Safety

Appearing remotely prevents safety issues that clients encounter when they show up in person.

Accessibility

Remote appearances can be cost-saving and time-saving for litigants, witnesses, and counsel.



Client well-being

CONFIDENCE

Clients experience improved performance and clearer storytelling without the presence of triggering symptoms



HEALTH

Increases the client's well-being to not have to see the abuser



Clients feel safer and less anxious, enabling them to better present their legal case

BETTER PERFORMANCE



Remote appearances can be less intimidating and fear producing

DECREASED STRESS





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Jimena Vasquez

*Directing Attorney at
the Los Angeles Center
for Law and Justice*

**Providing the option of remote
appearances is trauma-informed.**

“Some survivors want to go in person and have the judge hear their story, and some want to testify safely and comfortably from their homes. Giving them that choice has been empowering.”



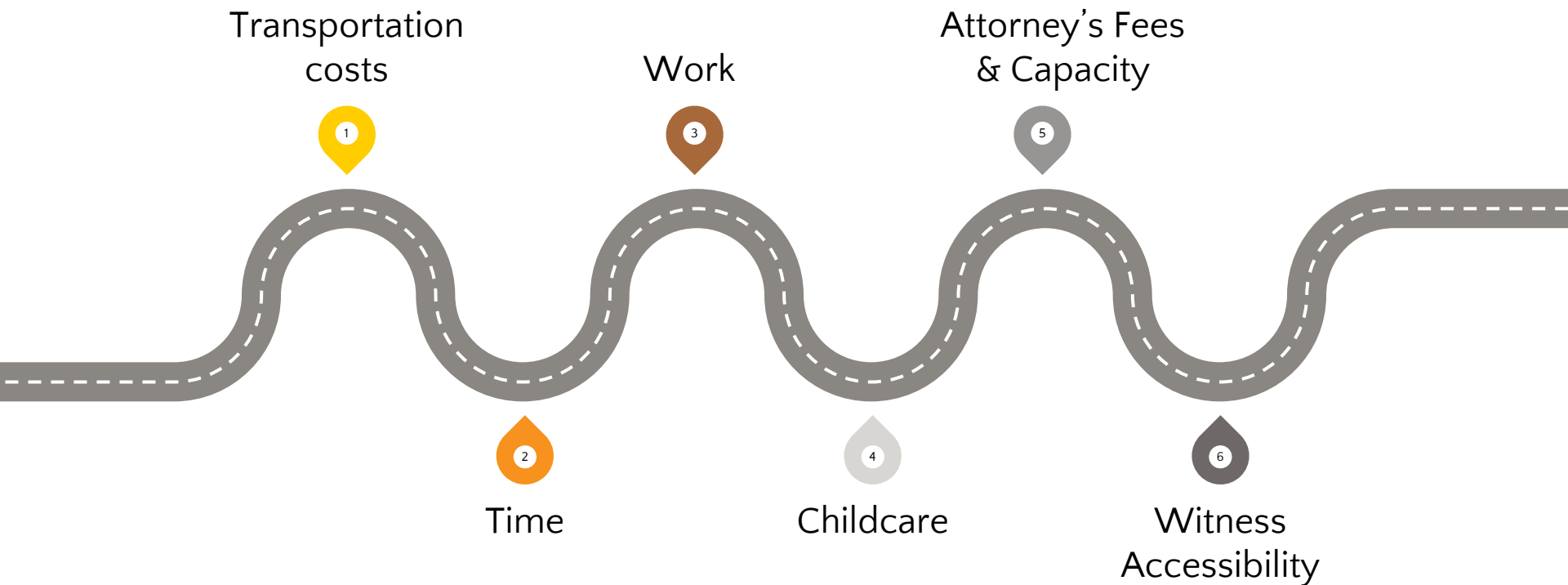
Safety

- Avoids physical threats and intimidations that can take place at the court
- Ensures the abuser cannot follow the client from the court to a confidential location
- Bailiffs do not always offer protection or escort clients out when they appear in person





Accessibility





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Kate Forrest

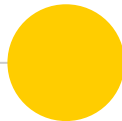
*Staff Attorney at
Jenesse Center, Inc.*

The attorney perspective.

“A day in court means an attorney’s time is exclusively dedicated to one client’s matter, including travel time. If I am appearing remotely, I can serve other clients that same day from the office.”

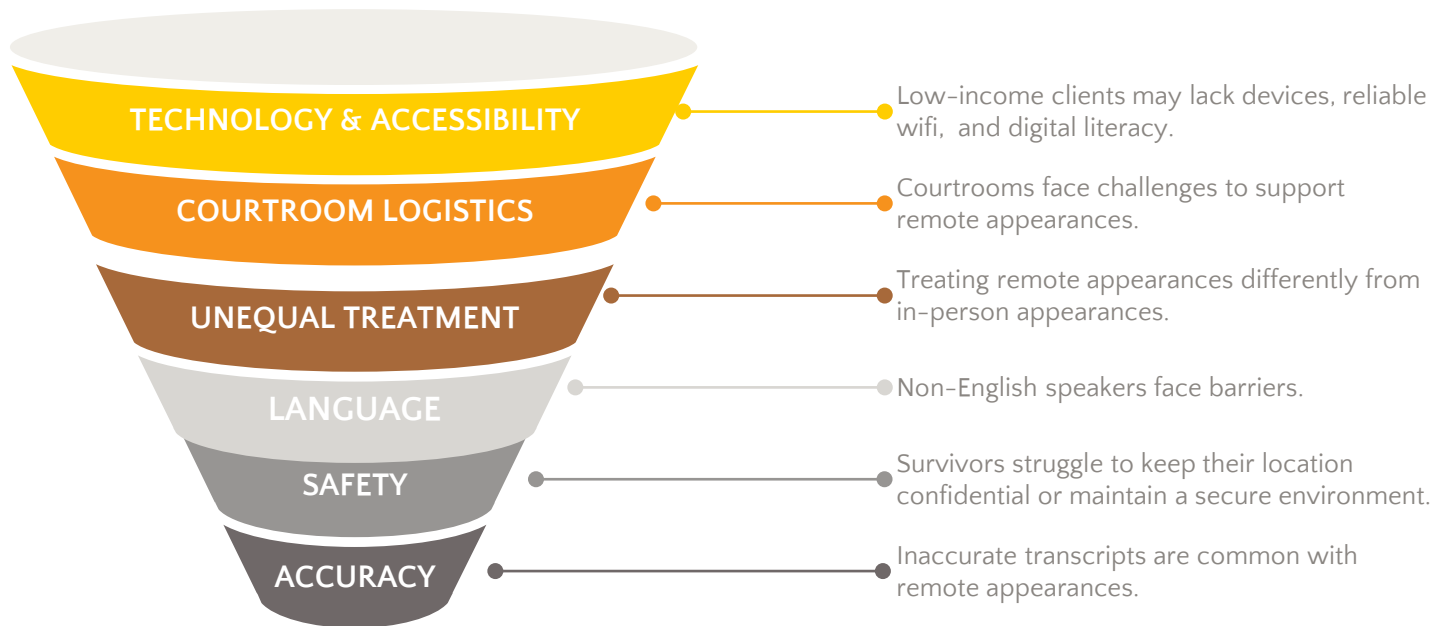
Challenges

Barriers to remote appearances





Most Identified Barriers





Accessibility & Technology

Access to Proper Environment

1. In remote appearances for family law proceedings, litigants will often be asked sensitive questions. Answering these questions requires a **quiet, private, calm space** for an extensive period of time. Many low-income survivors live in **communal living situations, with roommates or children** in the same room.
2. Publicly accessible devices, like computers at the library, are not located in environments suited to provide such emotional testimony.



Accessibility and Technology

Access to Devices

1. Many low-income clients **don't have any devices** to pursue remote appearances.
2. For clients that only have a mobile device, it's challenging to access remote appearance platforms on **small screens**.
3. **Tech support** access is impossible because many mobile devices don't have capacity to run a streaming program and make a call simultaneously.
4. Clients requiring an interpreter may benefit from **two devices**, but often do not have access to both a phone and a computer.
5. Video conferencing requires **high-speed internet**, which many litigants don't have access to. This leads to connectivity issues.



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Kate Forrest

*Staff Attorney at
Jenesse Center, Inc.*

“It can be terrifying for a litigant to get disconnected during a hearing, worried that their case will be dismissed if they cannot quickly reconnect. **Being overwhelmed by technical problems adds to the stress of the court proceeding** and can interfere with a litigant’s ability to present their case, which is the most common reason my clients decline to use the remote option.”



Logistical Problems

Instructions and Guidance

1. Even clients who are well-versed in tech find the instructions unclear and complex.
2. Downloading a platform is a barrier to some.
3. The location of the link in the reminder email is hard to find.

Incompatible Circumstances

1. Cross examinations and evidentiary hearings are challenging when there is a mix of in-person and remote litigants.
2. Clients don't understand that they have to continue requesting to appear remotely for subsequent hearings.



Logistical Problems

Courtroom Technology

1. There have been multiple instances where people who are remotely appearing have been **stuck in the waiting room**, with no assistant or meeting host admitting them.
2. Not all courtroom staff are **technologically fluent**, particularly when there are system updates.
3. Remote litigants are unable to **present evidence** over the virtual platform.



Logistical Problems

Uniformity

1. Each courtroom seems to have their own procedures regarding **timing of admission** of remote participants, whether participants are placed in a virtual **waiting room or on hold** until their case is called, etc.
2. Some courtrooms are **set up** with one video while others have two — one for the judge and one for counsel table.
3. Inconsistent procedures make the process of **preparing litigants for a hearing by setting expectations** challenging.



The Judicial System treats those who remotely appear differently than those who appear in-person.

Public Access

Even though courtrooms are generally open to public, only those with an active role in the hearing can attend remotely.

Authenticity Questioned

Some have found that Judges “don’t take requests as seriously” from litigants who appear remotely. Others think emotional testimony is harder to discern from a virtual platform. Sometimes remote litigants are treated adversely.

Support Persons

Some advocates have had trouble joining remote proceedings as a survivor’s support person (permitted under Family Code 6303) to a virtual hearing.



Language Barriers

INSTRUCTION AND ENROLLMENT

All instruction pages to sign up and log in to the virtual interface are presented in English only.



The video run-through that explains the process of using the virtual platform is only provided in English.

VIDEO RUNTHROUGH



NO TESTING INTERFACE

Attorneys cannot access the gallery without registering for a particular hearing, so they cannot see the interface to guide clients.



Interpreters must call the client on a separate line and interpreter services often add a disconnect.

INTERPRETER TESTIMONY





Interpreter Disconnects

Separating Non-English Speaking Litigants from Courtroom

Non-English speaking remote litigants are often told to disconnect or at a minimum mute themselves and the interpreter calls them directly. While simultaneous translation saves the scarce resource of court time, having the litigant muted causes the court to **lose the impact of the tone of voice** and **emotional cues** that influence how testimony comes across and is assessed for credibility.

When legal relief may depend on proving whether someone placed you in fear for your safety, it is a **disadvantage to not be able to convey your fear** in your own voice. When this occurs, the client is also **unable to follow along with the proceedings**.



Safety

For survivors in hiding, there may be privacy concerns if an abuser can identify the surroundings of a survivor appearing in a friend or family member's home. **Not all platforms have allowed blurred backgrounds** to keep locations confidential.





Safety

There are concerns that an adverse party could find a way to be in the same room as the litigant **forcing testimony against the litigant's own interests.**

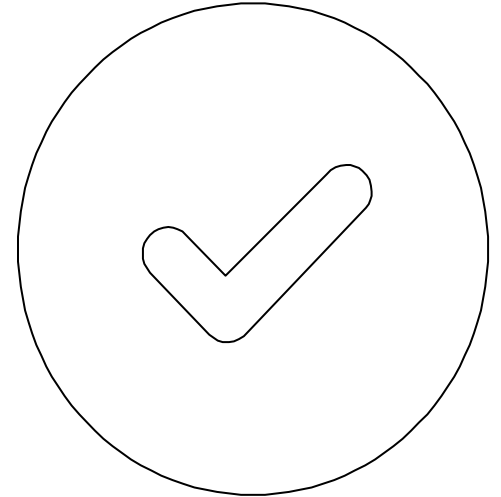
Take this viral incident from March 2021:





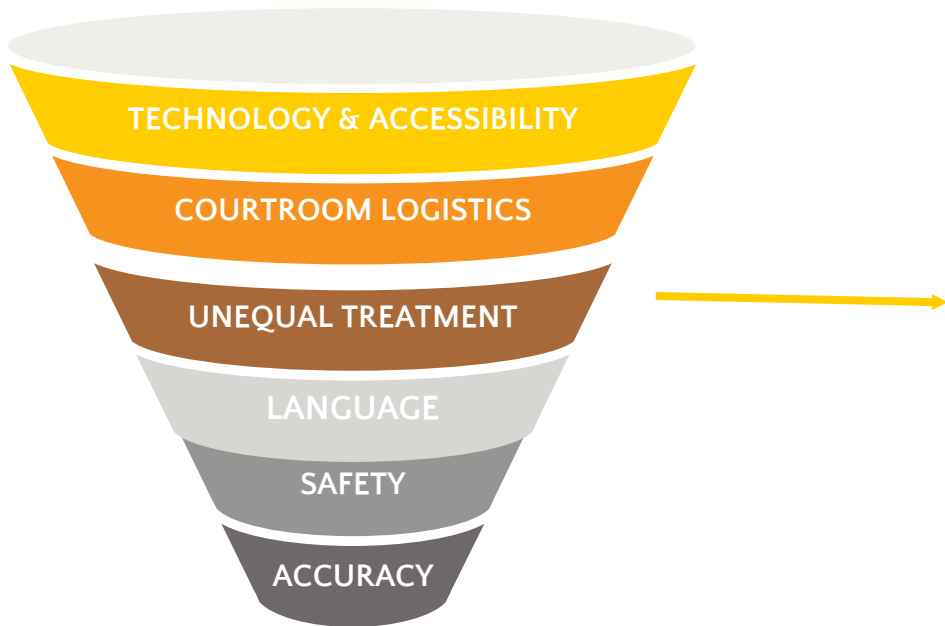
Accuracy

- Nearly every provider expressed frustration with inadequate/inaccurate transcriptions. One respondent said, “Every mother I know entrapped in family court has mentioned this.”
- A lack of audio recordings means that court reporters are in **high demand amid a mass shortage** of employees.
- Statistics from the 2019 Court Reporter Exam show that there are fewer schools to provide training and low pass rates for new reporters, contributing to **reporter scarcity**.





All of these issues can lead to delay of judgments

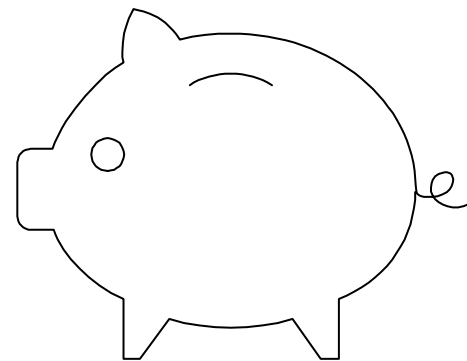


In one instance, a judge used a perceived technology issue to **delay a three-day trial for several weeks**



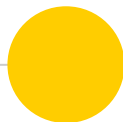
Cost

- Despite these challenges, we still recognize that remote appearances offer many benefits to clients and would like them to remain an option, with improvements.
- Some counties may only have funding for remote appearances through a one-time source. For example, though LACourtConnect is currently free, the website states it was developed using one-time state budget funding. If this funding is not renewed:
 1. Clients will struggle to retain fee waivers for remote appearances
 2. Waivers will only cover litigants and attorneys, not witnesses.



Recommendations

Improvements to remote appearances that can remedy barriers.





Recommended improvements

Establish Uniformity

Create uniformity between in-person and remote appearances

Increase Accessibility

Provide technology and allow support people in remote hearings

Ensure Safety

Provide a safe location to appear remotely and allow the blur-background function

Maintain Electronic Recordings

Audio record and maintain electronic recordings of remote appearances to avoid inaccurate transcripts

Improve Technology

Improve technology instructions and availability of cameras in the courtroom

Decrease Language Barriers

Improve translation tools and provide the option for consecutive translation



Uniformity

Make remote appearances permanent and accessible for all family law

- Family Code 6308 makes remote appearances available for restraining order hearings, but survivors face obstacles in subsequent proceedings
- In some jurisdictions, such as LA County, remote appearances are available in most family law proceedings, but the right to access is not codified, and access has not been expanded to all family law proceedings, such as child support courtrooms (AB 1058)
- It is confusing for litigants to have different procedures for appearing for hearings on custody and support



Uniformity

Make uniform rules for continuous streaming of the courtroom feed while in session

- The court may turn off the feed while in recess, equivalent to closing the courtroom
- When the physical courtroom is open, the virtual gallery should also be accessible



Accessibility

- The court should make technology more accessible, linking litigants to library-issuable devices such as laptops and take-home WiFi hotspots.
- The court should consider allowing litigants to call-in to the proceeding as a backup option, as not all litigants are familiar with video conferencing.
- Support people should be allowed in remote hearings



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Kate Forrest

*Staff Attorney at
Jenesse Center, Inc.*

“The need for a **support person** is not just about the physical safety, but also having someone present with the litigant to hear what is happening and help them understand it afterwards, as the stress of the event and unfamiliar legal jargon can interfere with their ability to process what they went through and remember what next steps they are supposed to take.”



Accessibility

Allow the public remote access to hearings

- Remote platforms are already set up to stream court video for registered participants. Many courts already offer in-person live streaming. Adding public access to the remote platform seems within the court's capabilities.
- No reason for requiring interested parties to appear in person when all involved parties are appearing remotely.
- Litigants should be able to view the proceedings before theirs to help with understanding the process and decrease the amount of time the court spends explaining the process
- This can also reduce the anxiety litigants experience of not knowing when they may be called



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Kate Forrest

*Staff Attorney at
Jenesse Center, Inc.*

“Sitting in front of a blank screen with hold music for hours and then **all of a sudden being called to testify** is more stressful than waiting in person where you know when a prior proceeding is wrapping up.”



Safety

- The court could provide a safe location for litigants to appear remotely. This could be a private room or “kiosk” in the courthouse, a private room at the public library, or even a room at a local non-profit, legal aid organization, or family justice center.
- Courts should allow the blur-background function.





Language

- Improve translate tools on court platforms
- Translate court video platform pages and video run-throughs to Spanish, and other languages
- Create a test environment of the platform so attorneys can understand the platform and inform clients of what to expect
- Give non-English speaking litigants the option of consecutive translation
- Enable non-English speaking litigants to use two devices when an interpreter is needed: one to call and one to video-in
- Do not ask litigants to mute



Improve Technology and Logistics

Improve logistics

Improve instructions, create video guidance and QR codes. Eliminate repetitive RA notice requirement.

Train staff and employ a courtroom technician

Hire a designated AV technician for the courtroom to promote seamlessness and monitor the waiting room. Train courtroom staff in court technology.

Improve trouble-shooting and technology support

Incorporate technology support on the same software as joining software

Improve evidence sharing

Make the sharing of evidence easier by allowing litigants to screen-share

Improve technology in the courtroom

Incorporate two cameras: one for the judge and one at counsel's table

Re-approve any budget requests for remote appearances

If remote appearances were to come with a fee in the future, low-income litigants, many of whom are DV survivors, would face hardship



Maintain an electronic recording of all proceedings

Proposed amendments to Government Code § 69957

- Audio recording remote appearances can be done at a low burden and low cost
- Digital recordings ensure that the record is correct and complete, and avoid inaccurate transcripts
- Litigants should be able to access their own hearings
- Video recordings in restraining order hearings can increase safety
- Electronic recordings can alleviate the workload of court reporters



Thanks!

Any **questions** ?

You can find me at

- amessenger@jenesse.org
- CCP 367.9 Working Group

Positives, Perils & Pitfalls: Remote Proceedings in Juvenile Court

A View from the Trenches

Methodology

- ▶ Survey of DDA attorneys and managing attorneys
 - ▶ Use of technology during COVID-19 Pandemic & Post-pandemic
 - ▶ Survey sent to Juvenile subscribers and Assistants/Chief Deputies
 - ▶ Impressions, not guided responses (open-ended)
 - ▶ 30 of 56 counties (over 40 total responses)
 - ▶ Assumes current law applicable to juveniles.

Results

- ▶ Pre- and Post Pandemic
 - ▶ 30 counties used remote technology during Pandemic
 - ▶ All but one currently using remote technology
- ▶ Hearing types
 - ▶ All used it for hearings without witnesses
 - ▶ Some used it for testimony

Positive Aspects of Remote Proceedings in Delinquency Cases

- ▶ Less congested courtrooms
- ▶ Reduced travel cost & inconvenience - litigants, family, witnesses/victims (where permitted)
- ▶ Cost reduction for caregivers and parents who work outside the home
- ▶ COVID+, sick, and immuno-compromised access

Additional Advantages

- ▶ Fewer FTA's & BW's issued for non-detained youth
- ▶ More flexibility for attorneys, facilitating calendar coverage and reducing wait time for cases to be called
- ▶ Benefit to Probation, not having to transport as many detained youth from JH to court
- ▶ Courts believe that, with remote appearances, attorneys are more likely to meet and confer prior to the hearing, rather than in court on the day of the hearing
- ▶ Management advantage - monitor multiple courtrooms

Challenges for courts, parties, & attorneys, generally ...

- ▶ The written notice requirements don't work in short-set matters or with heavy calendar courts - for the most part, being ignored
- ▶ Zoom v. Teams - limitations with the various platforms
- ▶ Lack of formality in attire and demeanor of attorneys, witnesses, parties, and others in the vicinity of the attendee
- ▶ Impedes court's control over proceedings
- ▶ Confidentiality (WIC 827) can be compromised
- ▶ Difficult to make "connection" with juveniles via Zoom
- ▶ Lack of ability to discuss short-notice matters
- ▶ Making a record and introducing exhibits is a challenge and testimony of witnesses can be impeded by technology issues - courts are typically doing remote hearings only where evidence is not being taken. (Appointment of counsel, detention, discovery, scheduling, review hearings)

Special challenges for non-English language speakers

- ▶ Interpreter cannot hear - leads to frequent interruptions/please repeat - especially problematic when child or parent victim is testifying about sensitive topics
- ▶ Audio only increases frequency of interruptions & talking over others
- ▶ Lack of in person interpreters and challenges with use of breakout rooms make it extremely difficult for the attorney to have private conversation with their client during or immediately before or after a hearing. Clients often not tech savvy, unlike attorney do not spend all day on zoom so difficult to navigate - easily stressed and frustrated, often already in a trauma response state of mind
- ▶ Parties have reported inability to hear or understand the interpreter - compounds existing lack of familiarity with legal terms, acronyms etc. and is exacerbated when the party is a child or parent with limited education. Very difficult for the witness or party to interrupt or express they do not understand when they are not in the same place as their attorney.

The view from the bench v. The view from the well

- ▶ Efficiency and convenience for the court, attorneys and other personnel should not take precedence over or even be equal to ensuring meaningful access to justice for litigants whose entire lives are at stake.
- ▶ Families served by the dependency court are overwhelmingly disenfranchised, lack power, have typically suffered generational trauma and have long histories of negative interactions with government systems including the courts.

Juvenile court can be messy

- ▶ California should be proud of the body of statutory and case law which provides a right to counsel, right to be present in court (including for children and at specified hearings for incarcerated parents) and meaningful due process at every stage of juvenile court proceedings.
- ▶ Advocates, youth and their families fought for decades to demonstrate that the best decisions are made when court sees, hears and interacts with the children and families whose lives they hold in their hands.
- ▶ Sometimes this is very uncomfortable. Decisions made in the juvenile courts are often painful and always impactful.

Remote court is not always best even if it is easiest

- ▶ Those who have not worked in the dependency courts who did not work in this arena prior to March of 2020 may not fully appreciate the **intangible but important differences between a remote (or hybrid) hearing and an in-person hearing.**
- ▶ The litigant experience, the quality of evidence and accordingly the quality of decision making are impacted by the forum.
- ▶ **Relationships and connections b/w judges** and the parties have an impact. Children and parents are often motivated, given hope or even brought to difficult realizations based on in-court experiences and exchanges with “their” judge. When there is no existing relationship - it is far more difficult to establish that important connection via video link.
- ▶ At these **critical moments** a remote appearance - which may lack the needed formality or seriousness of purpose that is present in a courthouse, where there are off screen distractions, and often no supportive persons nearby, does a disservice to the families and ultimately to the court system.
- ▶ The attorney’s **ability to provide guidance, support and explanations** to individuals in crisis is severely limited when they are not in the same physical space as their client.

Pitfalls and perils of remote appearances by parties in dependency cases:

- ▶ Child and other vulnerable witnesses
- ▶ Sensitive subject matter
- ▶ Often in a trauma response mindset to recent or generational trauma and negative experiences with child welfare and other government systems
- ▶ Overwhelmingly disenfranchised litigants
- ▶ Unlike other civil proceedings - families are brought to court via a government action and fundamental rights are implicated

Perils & Pitfalls - in delinquency cases, liberty interests implicate constitutional guarantees different than in civil cases

- ▶ *In re Gault* (1967) 387 U.S. 1 - Due Process and Confrontation Clause rights apply to juvenile proceedings.
- ▶ *Illinois v. Allen* (1970) 397 U.S. 337-338 - “One of the most basic of the rights guaranteed by the Confrontation Clause is the accused’s right to be present in the courtroom at every stage of his trial.”
- ▶ *United States v. Gagnon* (1985) 470 U.S. 522, 526 - A defendant has a “due process right to be present at a proceeding whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge.”
- ▶ *J.A.T. v. Jackson County Juvenile Office* (2022) 637S.W.3d 1, 8-9; *In the Interest of: L.I.B. v. Juv. Officer* (2022) 640 S.W.3d 813, 816-817 - denial of minor’s right to be physically present in court for trial, upon assertion of that right, and requiring remote appearance, violates DP, requiring reversal.
- ▶ *E.P. v. Sup. Ct.* (2020) 59 Cal.App.5th 52, 59 [minor who is subject of delinquency proceeding has a statutory right to be physically present in court for juvenile court hearings under WIC 679]

Pitfalls and perils of remote appearances by parties in delinquency cases:

- ▶ Access issues for minors' attorneys
 - ▶ to the D.A. (for meaningful negotiation and case resolution),
 - ▶ to the judge (who is responsible for making appropriate orders as to child's care, custody and treatment),
 - ▶ for meaningful assessments of client competency,
 - ▶ for vulnerable client's need for human contact/connection while experiencing trauma, including separation from family and other emotional support people
- ▶ Access issues for justice-involved youth
 - ▶ to devices which have internet compatibility and reliable connectivity
 - ▶ 2/3 of school-age children do not have access to devices or the internet in their homes
 - ▶ to confidential proceedings
 - ▶ to their attorney (to understanding what is happening to them and for emotional support)
 - ▶ Adolescents between the ages of 16 and 24 have significant impairment in both reasoning and understanding.
 - ▶ Children younger than 16 have significantly impaired reasoning or understanding abilities when compared even to older adolescents

More concerns about remote proceedings and appearances ...

- ▶ “Virtual reality” has no place in WIC 602 proceedings - research shows that children do not connect things they see on computer screens with things that are happening to them in real life.
- ▶ Video appearances proceedings facilitate dehumanization of our clients and result in worse outcomes for our clients:
 - ▶ In adult court, we see bail amounts are set at higher rates, increase between 54-90%, in video-arraignments
 - ▶ In immigration proceedings, individuals are more likely to be deported when their hearings occur over video

Perils & Pitfalls of remote appearances and testimony by witnesses, including experts, in juvenile court

- ▶ Increased difficulty in determining witness credibility
 - ▶ Misinterpretation of demeanor - mere presence of the camera effects behavior (camera-consciousness, nervousness, grandstanding) - this impacts assessment of credibility - particularly by child witnesses
 - ▶ “Vividness effect” - testimony that is more emotionally interesting and proximate (in a sensory, temporal, or spatial way) is generally perceived as more credible and is better remembered.
 - ▶ No means for preventing “cheating” (reading from pre-prepared Q&A vs. actual testimony)
- ▶ Increased difficulty in assessing witness competency (particularly with young children, who are more likely to be easily distracted)
- ▶ Unregulated shot size and camera placement impairs credibility determination
 - ▶ Close-up shot hides witness’s body (disallows observation of gestures) and other items within witness’s view (i.e. scripted Q&A), permitting improper refreshing of recollection (“cheating”) vs. testimony from witnesses memory
 - ▶ Long shot diminishes ability to observe witness’s facial expressions

Majority of dependency and delinquency practitioners believe that certain hearings should always (or almost always) be in-person

- ▶ Dependency (153 responses from 34 counties, evenly split b/w parent and child attorneys, 30% of respondents represent both; 98% have participated in hybrid hearings; majority generally satisfied with hybrid proceedings)
 - ▶ Initial Hearing/Detention
 - ▶ 366.26 if contested
 - ▶ Any contested matter *especially jurisdiction
 - ▶ Trials with interpreters
- ▶ Delinquency
 - ▶ Initial Hearing/Detention
 - ▶ Motion hearings where witnesses testify; i.e. suppression motions
 - ▶ Jurisdictional hearings
 - ▶ Disposition hearings
 - ▶ Transfer hearings

The Legislature knows how to balance efficiency with fundamental rights

- ▶ PC 977(c) amendments, eff. 1/1/2014, recognize the need for fluid A/C communication, even during noncritical hearing
- ▶ Subdivision (c)(1) - a represented defendant may be permitted to appear by video from jail or prison for initial court hearing and arraignment, **but may only enter a guilty or nolo plea if the defendant's attorney is present with the defendant. If the defendant enters a not guilty plea, the attorney, if not present with the defendant, must be present in court.**
- ▶ Subdivision (c)(2)(A) - If the defendant is represented by counsel, the attorney shall not be required to be physically present with the defendant **if remote technology allows for private communication between the defendant and the attorney prior to and during the proceedings** Any private communication shall be confidential and privileged pursuant to Section 952 of the Evidence Code.

PC 977 amendments also take into account challenges with technology

- ▶ Subdivision (f) - Except as otherwise provided by law, the court shall require a prosecuting attorney, defense counsel, defendant, or witness to appear in person at a proceeding, if any of the following conditions are present and cannot be resolved in a reasonable amount of time:
 - ▶ (1) The court does not have the technology necessary to conduct the proceeding remotely.
 - ▶ (2) Although the court has the requisite technology, the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding.
 - ▶ (3) The quality of the technology or audibility at a proceeding inhibits the court reporter's ability to accurately prepare a transcript of the proceeding.
 - ▶ (4) The quality of the technology or audibility at a proceeding prevents defense counsel from being able to provide effective representation to the defendant.
 - ▶ (5) The quality of the technology or audibility at a proceeding inhibits a court interpreter's ability to provide language access, including the ability to communicate and translate directly with the defendant and the court during the proceeding.



PC 977.3, eff. 6/30 with sunset 1/1/2024) takes into account confrontation and DP rights of litigants

- ▶ No remote testimony permitted in felony trials
- ▶ Written or oral consent of all parties, on the record, is required, along with court approval. (Exception, where remote testimony is authorized by another statute; i.e. victims of sex crimes and conditional examinations.)
- ▶ Court must make findings on the record that any waiver (consent) by defendant is knowing, intelligent, and voluntary.

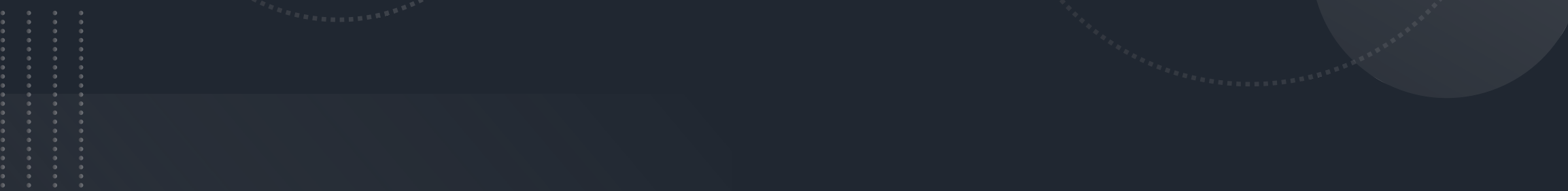
We can look to the Federal Rules of Court for guidance

- ▶ Federal counterpart - Rule 43(a) of the Federal Rules of Court - remote witness testimony should be permitted in civil cases only “for good cause in compelling circumstances and with appropriate safeguards.” (See, e.g., Rule 43(a) of the Federal Rules of Civil Procedure)
 - ▶ The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.

Fed. Rules Civ.Proc., rule 43, 28 U.S.C.A., Adv. Committee’s note to 1996 Amendment



Advantages of Remote Hearings in Juvenile



Increased Participation – Less FTAs

Increased Flexibility – Attorneys,
Social Workers, Parents, and Juveniles

Eliminates transportation issues from
juvenile hall

Disadvantages of Remote Hearings in Juvenile

Ability to ensure confidential hearings

Lack of appreciation of the seriousness of the proceedings

Inability to make a connection with/impact on juvenile

Misc. Issues

Notice of intent to
appear remotely =
cumbersome

Inability to conduct
hybrid hearings

Technology
issues/Lag time
waiting for parties
to log on

367.9 Working Group

ATTACHMENT A – Unlawful Detainer Cases Open-Ended Survey Responses

August 10, 2022

Question 2A: What are challenges that the court reporter experienced? (Provide observations uniquely relevant to Unlawful Detainer cases.)

JUDICIAL OFFICERS

People speaking over one another or speaking too fast

Technology problems, sound levels, people talking over each other

hearing and understanding parties and proceedings

Ability to hear, electronic difficulties and insufficient courtroom resources.

Lost connection; garbled connection, inaudible witness or attorney, getting timing of hearing wrong or leaving connection and not coming back on time,

Difficult to have LiveNote; difficulty for court reporters to hear the testimony or proceedings.

Garbled voices, low volume

Can't hear litigants - talk over each other. Discuss documents the other side doesn't have.

no court reporter. electronic record takes too long to process, such that they are irrelevant to the trial itself and only helpful on appeal. Readbacks are impossible.

Don't use court reporter for UD cases, which is a problem for the judge. It was also a problem for me in my role as PJ, when people complained about judicial officers concerning their experience in UD cases, as what may have been a valid complaint was difficult to document given the pitiful status of the official record. Also, prior to remote proceedings being implemented, the landlord and/or attorney for the landlord appeared in person and the cases were often settled successfully on the day of trial, benefiting all parties.

Often the Defendant does not have the more sophisticated equipment that is available and the audio is of poor quality or does not work well.

Due to the statewide court reporter shortage, the Court is not able to provide a court reporter in Unlawful Detainer cases.

Voice overrides, poor audio connections, etc.

The court reporter cannot clearly hear litigants sometimes due to connectivity issues.

LEGAL AID ORGANIZATIONS

Not being able to hear the litigants which led to transcription issues as well as connectivity issues.

(Note there are never court reporters in the Counties we work in)

SANTA BARBARA ORGANIZATIONS

Couldn't hear the litigant due to poor signal or incompetence with technology

Question 2B: What were some things that worked especially well for the court reporter? (Provide observations uniquely relevant to Unlawful Detainer cases.)

JUDICIAL OFFICERS

Our court does not have a court reporter for UD matters.

The court reporter indicated she could hear everyone better.

When the connection is strong the ability to hear witness is enhanced.

Dont have them

We do not have court reporters in UD cases; all proceedings are audio recorded.

CSR can see parties and witnesses more clearly (b/c screen near her/him) and it is easier to control self - represented litigants so that there is less interruption.

I have not used a court reporter except on a couple of occasions

Adequate volume of proceedings

Telling lawyers and litigants to speak up, slow down, and to remember that there is a court reporter trying to get it all down.

We have no court reporters

Due to the statewide court reporter shortage, the Court is not able to provide a court reporter in Unlawful Detainer cases.

The Court utilizes audio recording for UD matters. No court reporter, generally.

LEGAL AID ORGANIZATIONS

Microphones, slowing down proceedings

With one pretrial case we used the JAVS recording device and the transcript seemed as good as any in person reporter would have reported. With many other appearances, we hired court reporters who appeared by Zoom, and there were no problems. Sometimes the judge (masked, in person) was hard to hear but as long as the court reporter asked for clarification/to speak up, the judge respects the court reporter's requests

Our UD department in Sacramento finally went to official electronic recordings of UD proceedings, so we did not hit a snag on this issue. We have done several depositions, however, and remote proceedings with a court reporter have been super easy. It would have been more of a hassle and a significant financial expense, though, if the court had not done official electronic recording.

No experiences with court reporters.

SANTA BARBARA ORGANIZATIONS

All the court reporters are great. I think what may help is having attorney names on the screen. I would think it would be even better than trying to figure out how to spell the names when just mentioned orally in court.

I have only had a few attorneys appear via Zoom and attorneys generally are mindful of the need for a strong wifi signal.

I would assume not having to drive from more affordable locations.

Advance instructions and continuing reminders to not speak over each other and speak slowly and clearly.

Question 3A: What are the challenges that the court interpreter experienced? (Provide observations uniquely relevant to Unlawful Detainer cases.)

JUDICIAL OFFICERS

Interruptions/objections were especially difficult for the interpreter.

hearing and understanding the litigants

Difficulty with hearing and doing the simultaneous translation

Relay interpreting is challenging with self-represented parties, and interrupting in order to interpret lengthier testimony is more challenging when a party is remote and not receiving the usual visual cues to pause for the interpreter.

insufficient technology from litigant - the connection was not always sufficient for the litigant to have meaningful access to the proceeding

This isn't necessarily unique to UD cases, but difficulty on the part of the litigant in terms of knowing how to use the technology, as well as poor telephone or internet connection.

Often the audio equipment used by the Defendant is of poor quality and the translator has to struggle to hear what is being said. It works but it takes a lot more time than if done in the courtroom.

Remote appearances require relay interpreting which is time-consuming, especially in UD cases where most testimony is in the narrative and often a stream of consciousness from litigants. This may not work in heavily impacted calendars. Remote appearances have expanded access to interpreters for more scarce languages.

People (Witnesses and Attorneys) not waiting for the interpreter to make the interpretation before proceeding.

LEGAL AID ORGANIZATIONS

being unable to fully hear and accurately interpret the language for the litigants who do not have English fluency.

Several times early on the interpreter was on the line doing simultaneous interpretation at approximately the same volume as whoever was speaking in English. This was extremely distracting to me, especially when I could understand both languages. At some point interpreters switched to using direct lines to the persons requesting their services. This worked much better.

the court interpreters have had difficulty with timing and hearing testimony when the translating remotely.

SANTA BARBARA ORGANIZATIONS

Pro pers don't know how to switch between translation features.

Question 3B: What were some things that worked especially well for the court interpreter? (Provide observations uniquely relevant to Unlawful Detainer cases.)

JUDICIAL OFFICERS

no issues

Our court does not have a court reporter for UD matters.

I do not handle unlawful detainer cases.

dont have them

Video of person speaking or signing.

We do not require interpreters to do contemporaneous interpretation. We do standard witness answer and then interpreter translate. Because of the shortage of interpreters in California, it also provides a greater opportunity to find and use interpreters because they do not have to physically travel to court.

Court interpreters could be on a separate phone line and then interpret things. Documents are difficult.

Court interpreter frequently uses a phone to communicate directly with the remote litigant, allowing more seamless communications.

No experience with interpreters in unlawful detainer cases

We have no reporters

The Court utilizes audio recording for UD matters. No court reporter, generally.

LEGAL AID ORGANIZATIONS

Sometimes there were some issues with court reporter but ultimately worked out.

Not applicable--did not observe court interpreter in UD remote proceeding.

For our LEP clients who would otherwise have to take time off work to make appearances, it was helpful to be able to do everything remotely. Interpreters would join remotely too. The downside is that previously, the interpreter could further help interpret after the hearing, if there were other things to discuss between attorney and client after a hearing. But with remote, once your appearance is over, you don't have further interpretation with them.

I just have not personally had a court interpreter remotely so I'm not sure of the pros/cons.

SANTA BARBARA ORGANIZATIONS

I had a translator for Vietnamese for a Trial. She was amazing.

Advance notice that they are needed by filling out the INT -300 form.

Question 4: What are things that worked especially well for remote hearings, specifically related to Unlawful Detainer cases?

JUDICIAL OFFICERS

keeping tensions to a minimum between the opposing parties

Setting clear rules/boundaries at the onset of each hearing.

Access for those who had transportation issues.

video but not audio

having exhibits available electronically

nothing

Zoom/video appearances are much better than CourtCall and have helped proceedings go more smoothly, especially in cases that involve multiple agents or tenants.

Pre-trial instruction regarding submission of evidence to court and opposing party.

Much more convenient for parties and witnesses because they could appear remotely in their homes and no need to travel to court. Saved a lot of time and expense. Less delayed because there was no loss of time due to passing through security, or finding parking, or taking breaks, etc.

Continuances

If it's a motion or a continuance request or status hearing it's fine. Trials don't work.

Allows people with handicaps or who are not conveniently located to appear in court.

No experience with interpreters in unlawful detainer cases

Telling parties and witnesses to speak up, slow down, and to look at the camera.

The ability of the case to be heard by any available judicial officer, reducing the number and need for continuances.

Defendants often did not have to take time off from work and that eliminated defaults.

4. Remote appearances have expanded litigant access to the court.

Patience.

I think allowing remote appearances is an access to justice issue. I find it is far more convenient and less costly for parties and counsel to appear remotely. Overall, I find remote appearances to be a positive aspect.

LEGAL AID ORGANIZATIONS

Remote hearings worked well for my disabled clients.

Flexibility with the litigants and their attorneys to appear remotely and being able to access the courtroom.

Demurrer hearings and other non-evidentiary type hearings

Flexibility for both the tenant and lawyer to appear remotely or in person. This allows us to serve more tenants with attorneys who are not physically based near the court in question. And, it gives peace of mind to individuals who have concerns regarding Covid-19.

It is very efficient and particularly helpful/efficient to have remote motion and e.g. Covid-19 dec and forfeiture hearings remotely. After everyone got comfortable with sharing screens for evidence, it's been very smooth in Sacramento for our appearances. We lose a lot of time driving out to the courthouse and waiting around. Appearing remotely was a large time saver. It also helped expedite drafting settlements because we are at our computers.

High volume of relatively short appearances makes remote option especially useful.

Flexibility; witness friendly

Our clients are often disabled and it is very useful for them not to need to go to the court house. It is also less stressful to avoid the full trappings of court.

SANTA BARBARA ORGANIZATIONS
Access is easy
It seems that parties and attorneys are less stressed when speaking over Zoom rather than in person. And, this helps with the entire process. Also, especially during COVID but really in general it is so much easier to appear by Zoom rather than driving to court and parking and walking and timing everything just right. MSC's work especially well remotely.
Functioning internet that will maintain a steady signal and if a webcam is used, appropriate attire being worn. Documents should be readily available electronically and prepared in advance and submitted to Court in advance.

Question 5: What are some things that could be improved about remote proceedings, specifically related to Unlawful Detainer cases?

JUDICIAL OFFICERS

The judge needs to set the tone to make sure the proceedings are orderly and recordable

Simultaneous interpreting works best and should be the standard. Less time and interruptions resulted.

audio connection

better case management systems so all could see exhibits when appearing remotely

eliminate them

Connectivity issues; ensuring that litigants are appearing from a quiet, private location that will not disrupt proceedings.

Audio and video connection, quality.

It is difficult to deal with documents that pro per litigants want to present in evidence (or otherwise) if it is a remote hearing. Also a problem that people still show up in person even if it is anticipated to be a remote hearing -- so you have to have the technology to do a hybrid hearing/trial (which our Court DOES have now).

How exhibits can be used when one party is remote and another party is in courtroom

Portions of computer-recorded proceedings (occurring w/o a court reporter) are sometimes inaudible for "playback." Unless the bench officer is able to take detailed notes, post-trial issues become time-consuming and can be riddled with accuracy issues.

No experience with interpreters in unlawful detainer cases

some way to provide access to adequate technology for the SRL parties

Clear and easy to read instructions, in multiple languages, advising people how to utilize the technology. Perhaps videos that courts could post on their websites.

Not sure.

The equipment used by Defendants in particular.

5. Submission of exhibits for pro per litigants needs to be improved.

Patience and clear directions before the hearing begins.

To allow court reporters to appear remotely.

LEGAL AID ORGANIZATIONS

Patience with litigants with small children, limited technology, age, and disability.

Pro per litigants access to remote proceedings challenging--internet, location, and being able to navigate remote.

I think that all courts should permit remote proceedings as well as in-person and leave it to the option of the litigant and parties. However, some courts have terrible technology (Modesto/Turlock) where you have to call in only (San Joaquin/Stockton) and it's much harder to proceed via telephone than video. Court technology needs to be improved. I believe the Stockton courthouse already has this technology in many courtrooms, but they don't offer it for UD's and you need special approval to appear in UD's ahead of time per local rules and that doesn't work for UD litigation. Turlock is such an old courthouse that the clerk calls you from the courtroom on speaker phone and there is a lot of ambient noise and it can be hard to understand. It would be impossible to do a trial this way.

Better access for pro per clients without the ability to Zoom. Utilizing the phone option puts tenants at a significant disadvantage. Clients now have the option to go in person but the court is still pretty much all remote, so even being in person is not a great advantage when some are remote and the client is at court - it's awkward to cross examine that way and just generally messy. The court does put clients in a room with a computer for the remote settlement discussions, which is helpful. It would be helpful to have that option

across the board when the other side is remote. We are very much hoping the court keeps the ability to appear remotely especially for motions. Trials would still be easier with everyone in person.

There have been days when the system didn't work at all, particularly in Pasadena Dept. R.

Del Norte County could follow CCP 367.75, instead of requiring mutual stipulation for remote appearances. Maybe word of the new law hasn't reached the bench up there.

While oral testimony is easy to present remotely. It is difficult to get documentary evidence in front of the court in the short time frame offered by UD.

SANTA BARBARA ORGANIZATIONS

Submission and marking of evidence

Can't think of a thing. Everything is going smoothly.

I do not allow remote appearances on UD cases absent special circumstances.

Ensuring that all UD's be allowed to continue to be remote for the convenience of everyone involved. (Of course unless someone needs to be in person for some reason I'm not aware of.)

It's just still a learning curve. Perhaps litigants could be encouraged to observe proceedings similar to theirs in advance of their own hearing. Legal representation in these matters is STRONGLY encouraged.

Data and Findings: Unlawful Detainer and Small Claims Cases

Mr. Darrel Parker
Hon. Rupert Byrdsong
Ms. Lorin Kline, on behalf of Ms. Salena Copeland

Constituent Outreach

Judge Byrdsong: Survey sent to judges and commissioners in UD/SC. Received 31 responses. (Three-day turnaround.)

Ms. Lorin Kline: Survey sent to legal aid organizations. Received 12 responses. (One-day turnaround.)

Mr. Darrel Parker: Survey sent to various organizations in Santa Barbara. Received 7 responses. (One-day turnaround.)

For the purposes of this presentation, response data is shared for each presenter and in total.

Common Feedback Themes

Environment

Technology

Demeanor

Submission
of Exhibits

Language
Access

Anecdotal and Survey Information

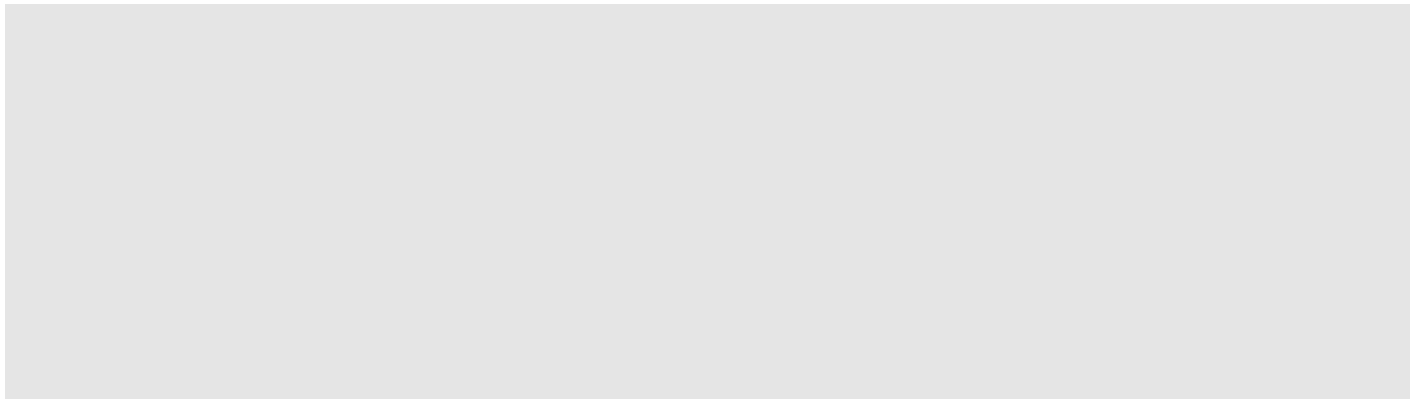
Anecdotal

Provided in separate attachment.

Survey

Quantifiable data included; open-ended data provided in separate attachment.

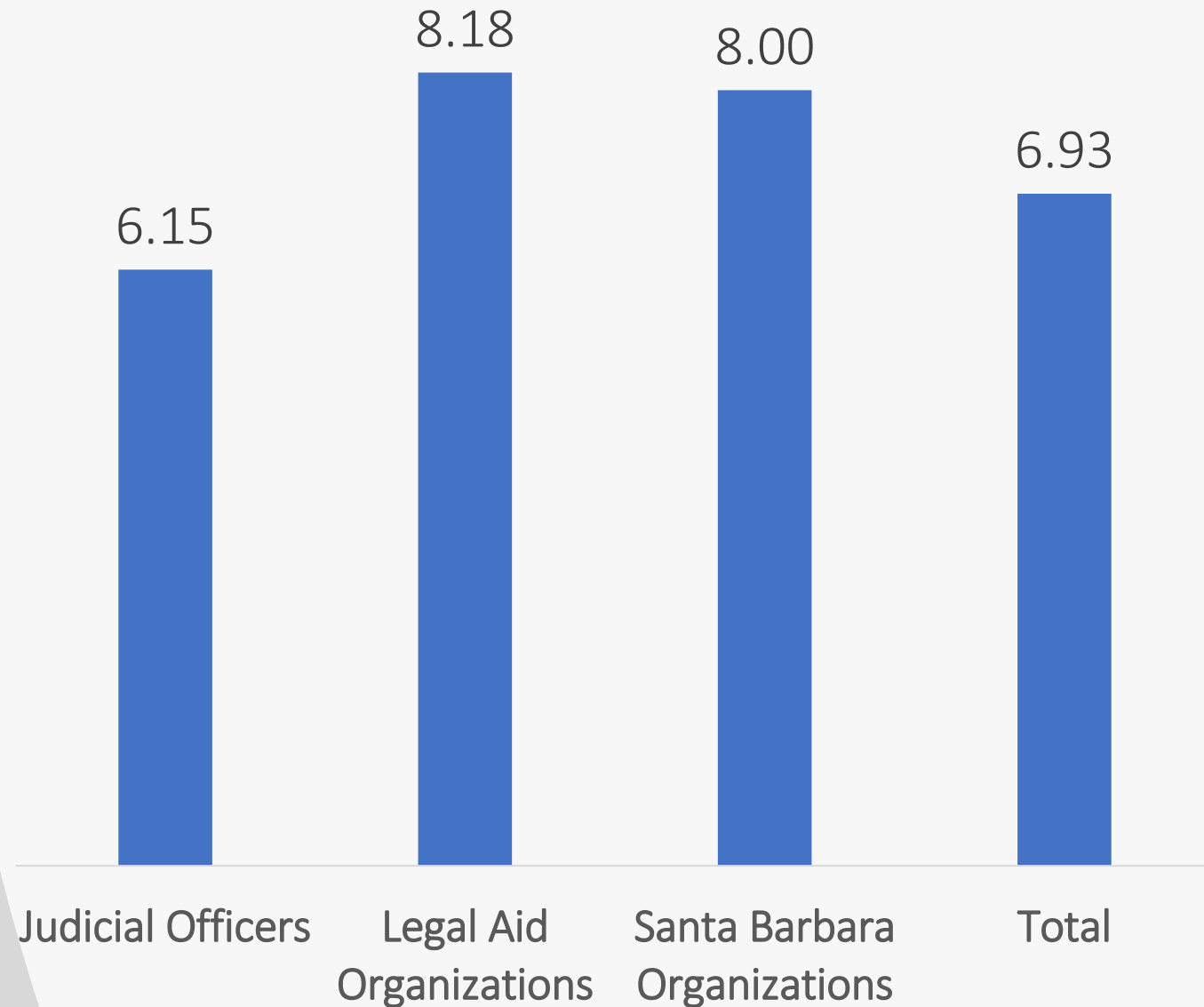
Survey Part One: Unlawful Detainer Cases



Question 1:

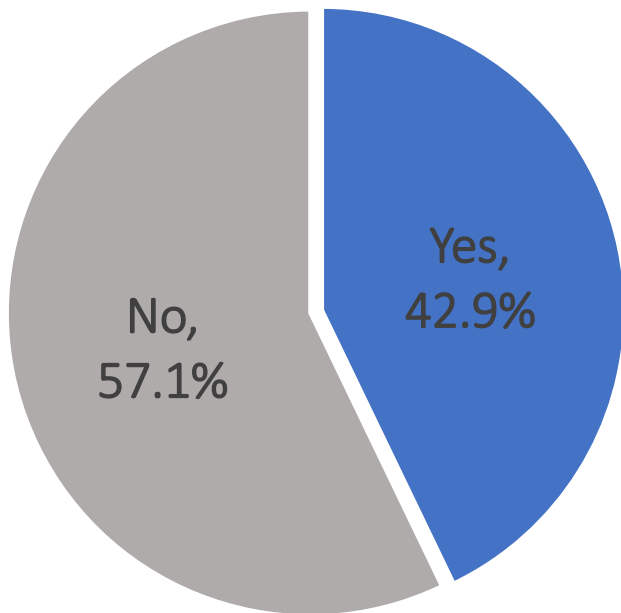
On a scale of 1–10, what is your overall level of satisfaction with being able to appear remotely in Unlawful Detainer cases?

Average Rating by Survey

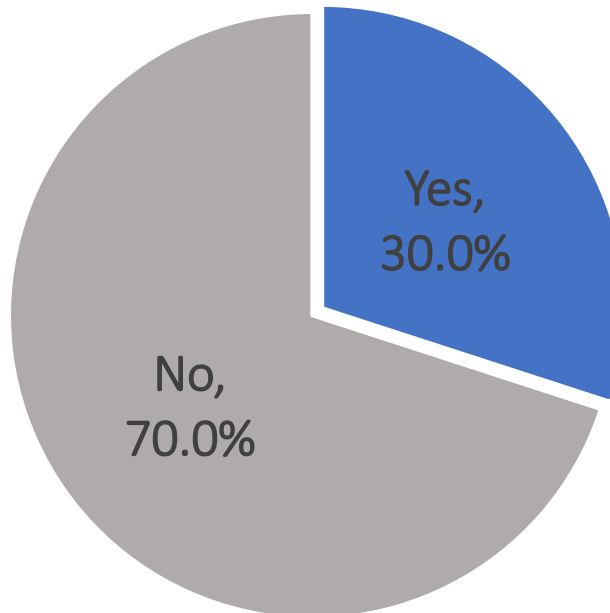


Question 2: Have you experienced court reporters having difficulty reporting remote proceedings?

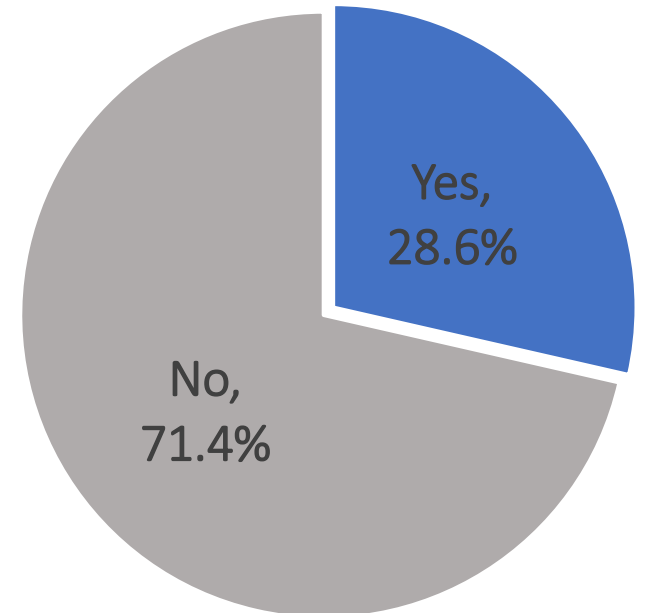
Judicial Officers



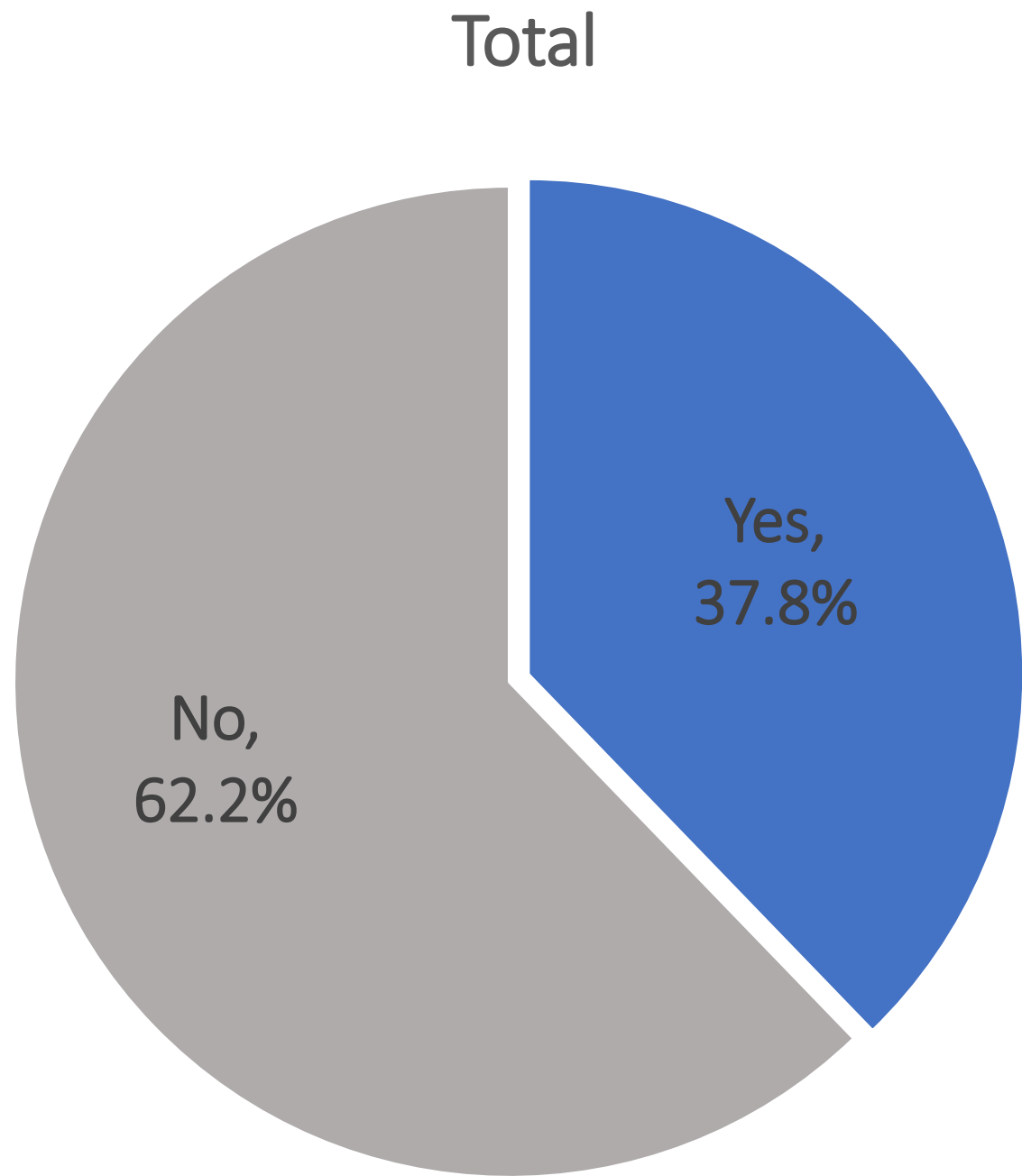
Legal Aid Organizations



Santa Barbara Organizations



Question 2:
Have you
experienced
court
reporters
having
difficulty
reporting
remote
proceedings?



Questions 2A and 2B

Question 2A:

If you answered yes to the previous question, what are the challenges that the court reporter experienced? (Please provide observations that are *uniquely relevant* to Unlawful Detainer cases).

Provided in separate attachment.

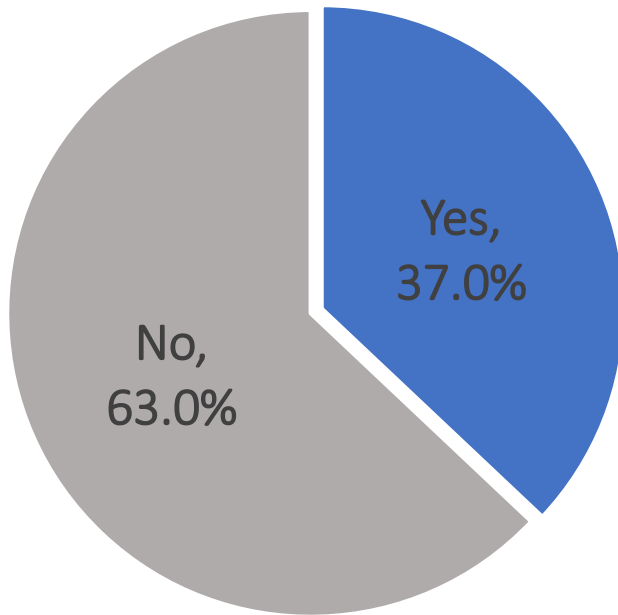
Question 2B:

If you answered no the previous question, what were some things that worked especially well for the court reporter? (Please provide observations that are uniquely relevant to Unlawful Detainer cases).

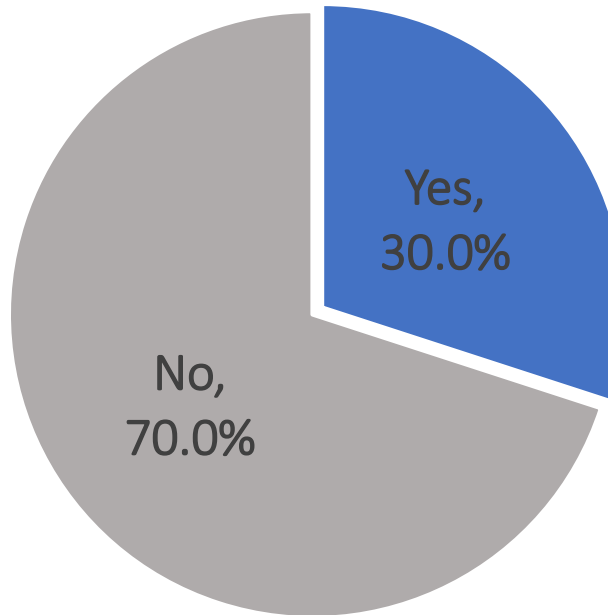
Provided in separate attachment.

Question 3: Have you experienced court interpreters having difficulty translating remote proceedings in Unlawful Detainer cases?

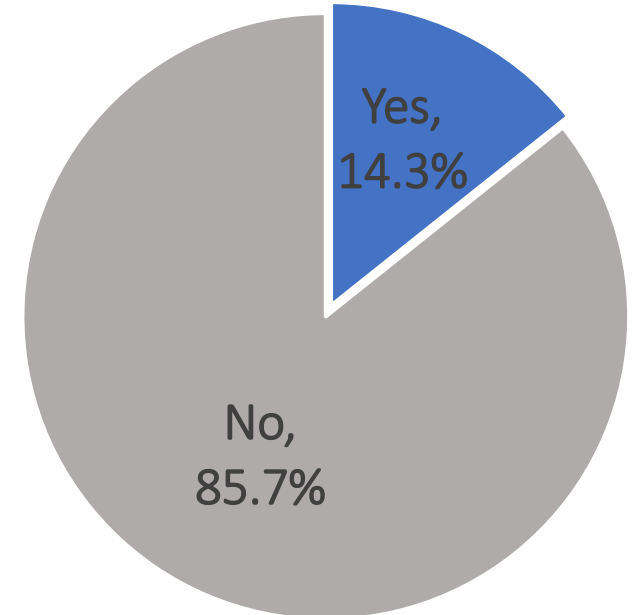
Judicial Officers



Legal Aid Organizations

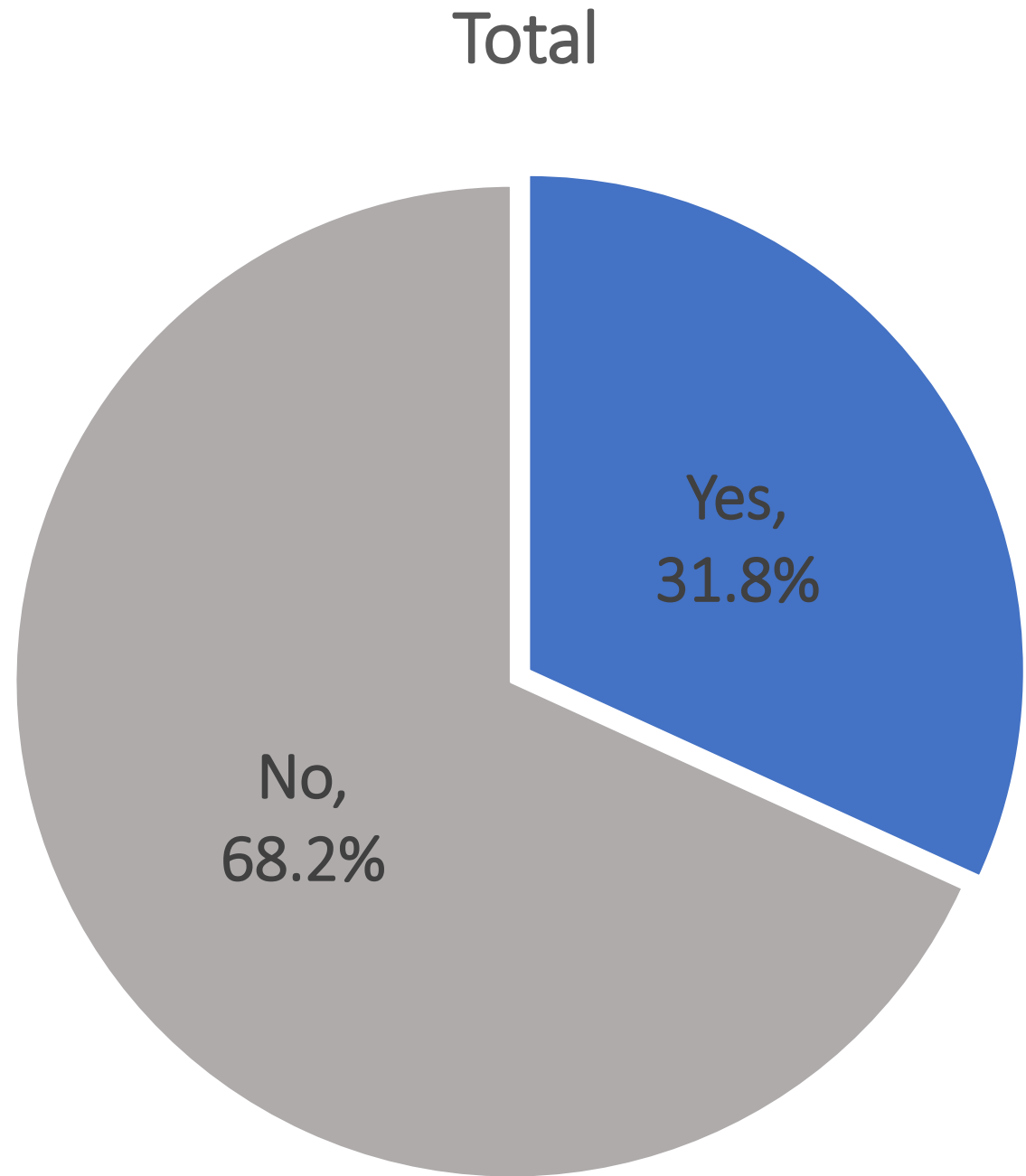


Santa Barbara Organizations



Question 3:

Have you experienced court interpreters having difficulty translating remote proceedings in Unlawful Detainer cases?



Questions 3A and 3B

Question 3A:

If you answered yes to the previous question, what are the challenges that the court interpreter experienced? (Please provide observations that are *uniquely relevant* to Unlawful Detainer cases).

Provided in separate attachment.

Question 3B:

If you answered no the previous question, what were some things that worked especially well for the court interpreter? (Please provide observations that are uniquely relevant to Unlawful Detainer cases).

Provided in separate attachment.

Questions 4 and 5

Question 4:

What are things that worked especially well for remote hearings, specifically related to Unlawful Detainer cases?.

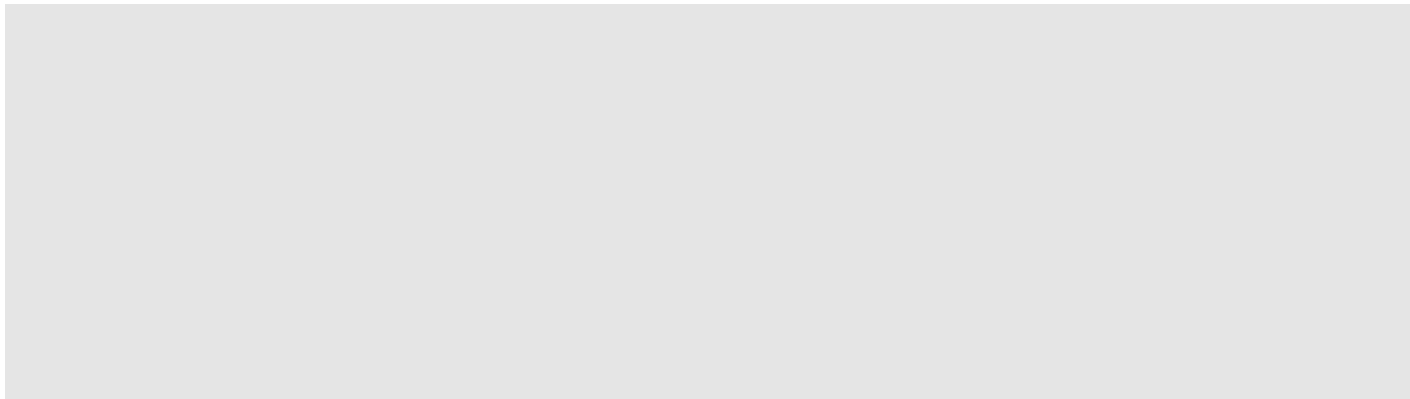
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Question 5:

What are some things that could be improved about remote proceedings, specifically related to Unlawful Detainer cases?

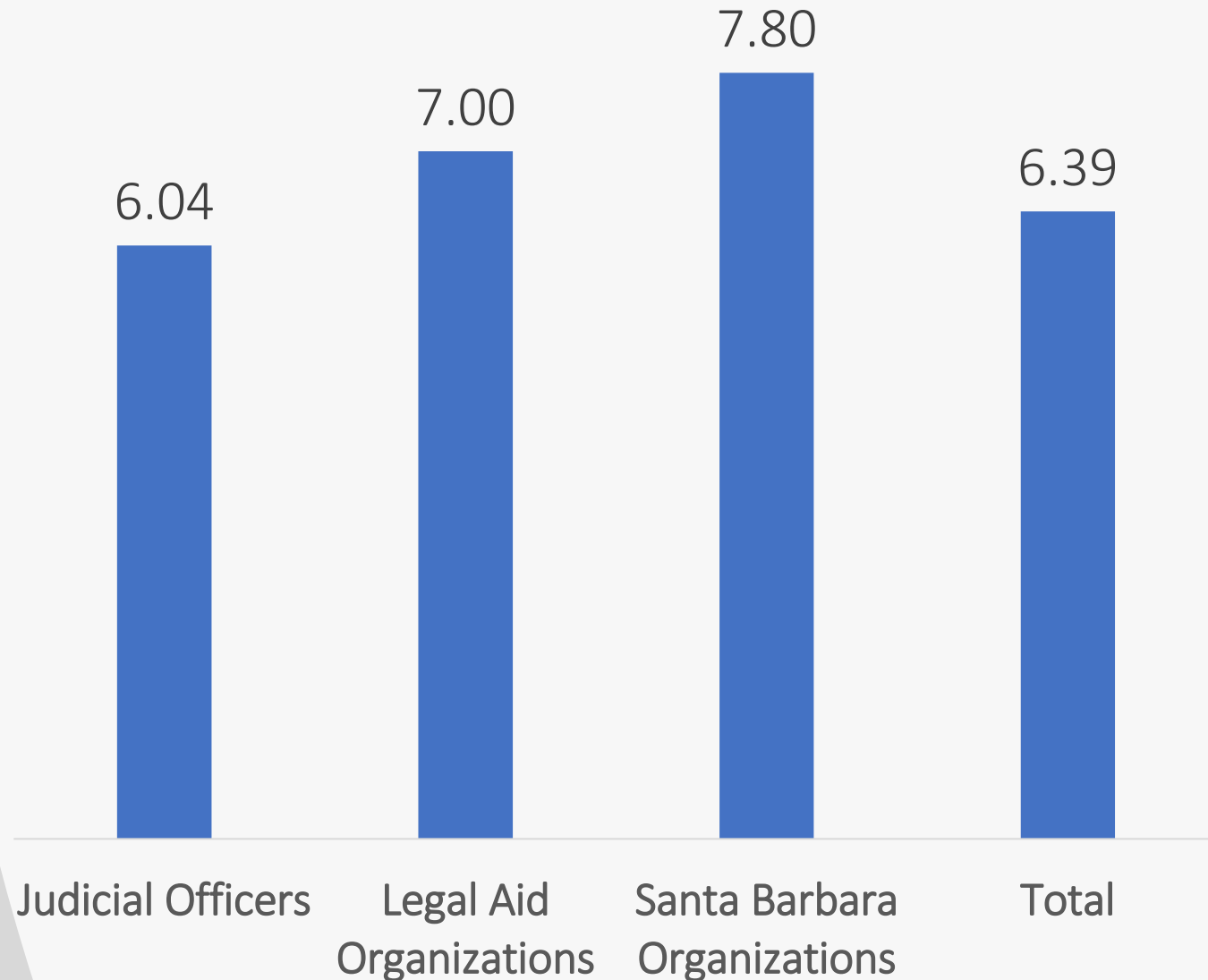
Provided in separate attachment.

Survey Part Two: Small Claims Cases



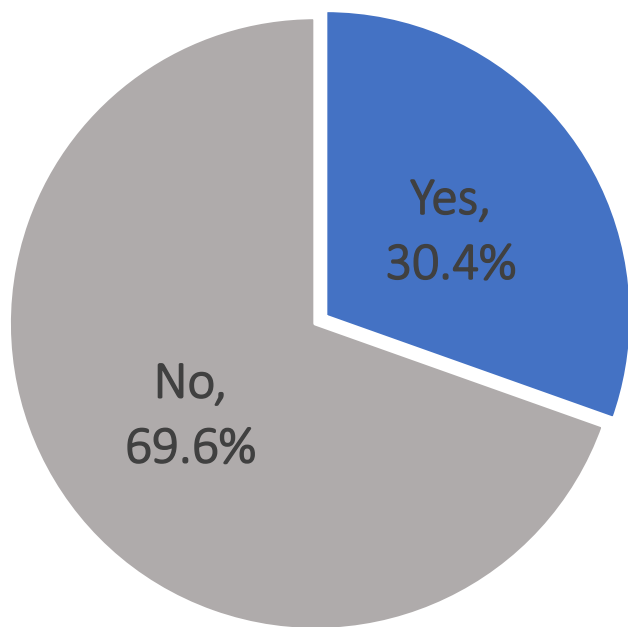
Question 1: On a scale of 1 – 10, what is your overall level of satisfaction with being able to appear remotely in Small Claims cases?

Average Rating by Survey

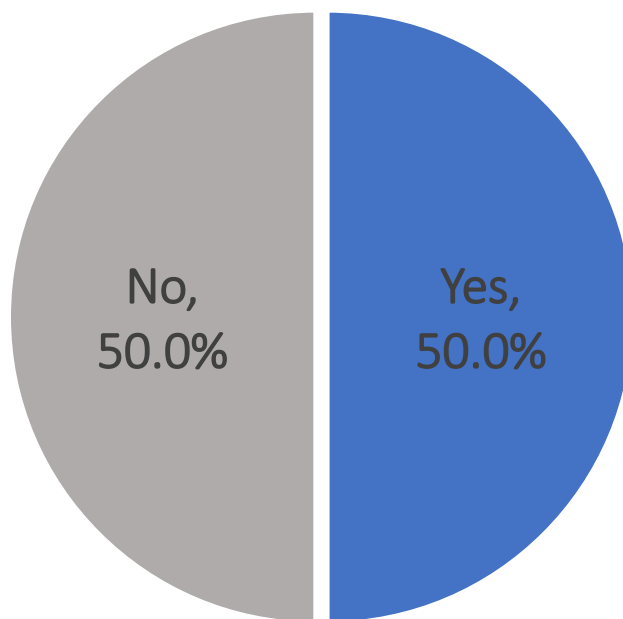


Question 2: Have you experienced court interpreters having difficulty translating remote proceedings in Small Claims?

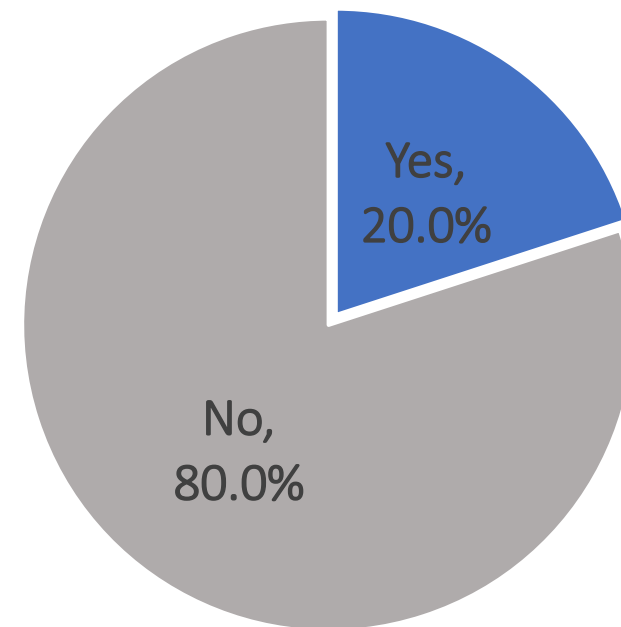
Judicial Officers



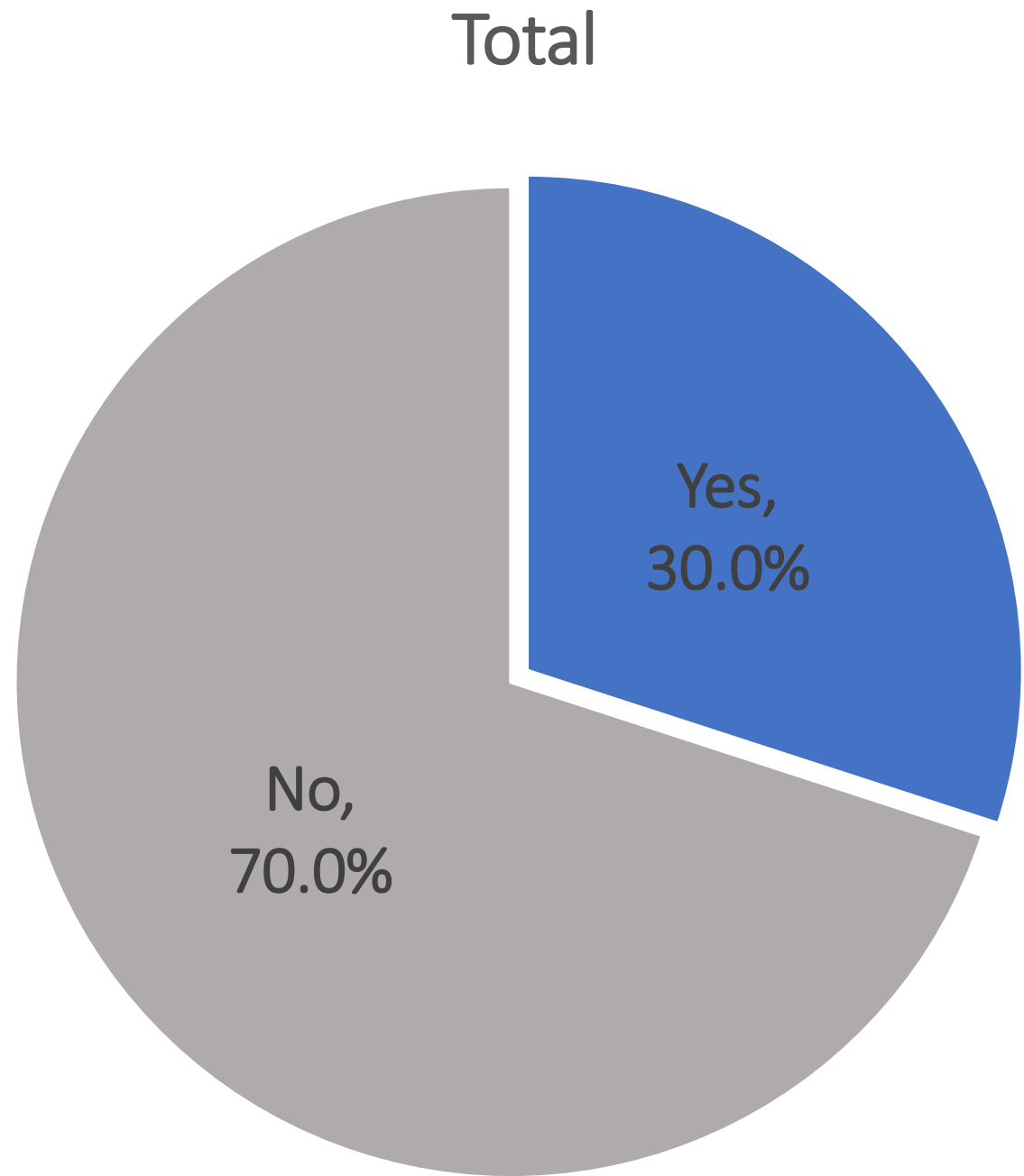
Legal Aid Organizations



Santa Barbara Organizations



Question 2:
Have you
experienced
court
interpreters
having
difficulty
translating
remote
proceedings
in Small
Claims?



Questions 2A and 2B

Question 2A:

If you answered yes to the previous question, what are the challenges that the court interpreter experienced? (Please provide observations that are *uniquely relevant* to Small Claims cases).

Provided in separate attachment.

Question 2B:

If you answered no the previous question, what were some things that worked especially well for the court interpreter? (Please provide observations that are uniquely relevant to Small Claims cases).

Provided in separate attachment.

Questions 3 and 4

Question 3:

What are things that worked especially well for remote hearings, specifically related to Small Claims cases?.

Provided in separate attachment.

Question 4:

What are some things that could be improved about remote proceedings, specifically related to Small Claims cases?

Provided in separate attachment.



Member Input

The image features three overlapping circles in a medium blue color, arranged horizontally. They are set against a dark gray background. A white horizontal band cuts across the middle of the circles. The word "QUESTIONS?" is written in a dark blue, sans-serif font within this white band.

QUESTIONS?

367.9 Working Group

ATTACHMENT B – Small Claims Cases Open-Ended Survey Responses

August 10, 2022

Question 2A: What were the challenges that the court interpreter experienced? (Provide observations uniquely relevant to Small Claims cases.)

JUDICIAL OFFICERS

it doesn't work as the interpreter is not present to pause the speaker in order to interpret. I do not allow remote interpreters in my court

lack of sufficient technology by litigants resulted in lack of clear connection issues

Problems hearing and communicating due to a lack of understanding of how the technology works, as well as poor connectivity for phone line or internet.

Some interpreters have had connection problems.

The parties audio is of poor quality.

LEGAL AID ORGANIZATIONS

Audio problems (for party and interpreter); court room laid out poorly for remote appearances bc interpreter standing behind the bench; camera not set up so litigant can see interpreter or judge so can be very difficult for the litigant to understand what is going on or who is speaking

SANTA BARBARA ORGANIZATIONS

technological challenges

I do not handle small claims cases

Question 2B: What were some things that worked especially well for the court interpreter? (Provide observations uniquely relevant to Small Claims cases.)

JUDICIAL OFFICERS

Our court does not have a court reporter for small claims matters.

There are fewer interruptions and objections during small claims proceedings.

We don't provide court reporters for small claims.

I do not handle small claims matters

Interpreters call into separate phone lines.

No experience with interpreters in small claims cases

We have no reporters

Nothing in particular.

The Court utilizes audio recording for UD matters. No court reporter, generally.

Litigants were advised to speak slowly and pause after 2-3 sentences so interpreter could proceed to interpret into English.

I have not had CSRs in small claims.

LEGAL AID ORGANIZATIONS

My LEP Cantonese clients were able to get judgments against their LEP landlord just fine.

SANTA BARBARA ORGANIZATIONS

I have not appeared remotely for Small Claims cases but I imagine they would work extremely well.

I do not handle small claims cases

Advance instructions and continuing reminders to not speak over each other and speak slowly and clearly.

Question 3: What are things that worked especially well for remote hearings, specifically related to Small Claims cases?*

JUDICIAL OFFICERS

Access for those with transportation issues.

video

requiring exhibits to be submitted electronically ahead of time

nothing

Having a system for presentation of exhibits (ELMO) that connects to the Zoom hearing, enabling all parties to see exhibits being presented in court has been helpful.

Pretrial exchange of documents and submission to the court; utilizing mute button when necessary.

I do not handle small claims matters

No experience with interpreters in small claims cases

ease, convenience

My courtroom does not have zoom, it does have Courtcall. The problem with Courtcall is that I get none of the visual cues that are present when testimony is in the court, and that it is difficult to tell a witness or lawyer to stop talking.

People who live out of the area can appear using this modality, and any available judicial officer can hear, resulting in less continuances.

Very convenient for the litigants allowing for less stress. Litigants save \$. Less contentious. Litigants are more relaxed.

If parties send their exhibits to one another days prior to the court trial, the hearing works better.

Parties who could not take time off from work can appear and have their case heard.

Having a document projector (ELMO) connected to Zoom has been helpful to ensure litigants appearing remotely are able to observe all exhibits that the court is considering.

Patience.

Covid exposure eliminated when litigants appear remotely.

SANTA BARBARA ORGANIZATIONS

Easy access for pro pers

I do not handle small claims cases

Functioning internet that will maintain a steady signal and if a webcam is used, appropriate attire being worn. Documents should be readily available electronically and prepared in advance and submitted to Court in advance.

*Did not receive any open-ended responses to this question from legal aid organizations.

Question 4: What are some things that could be improved about remote proceedings, specifically related to Small Claims cases?

JUDICIAL OFFICERS

The transmission of exhibits for small claims to the court as well as to opposing parties is difficult since they cannot be exchanged at the hearing.

No suggestion. It seems to work well as is.

audio connection

eliminate them

Submission of exhibits is challenging for parties who are appearing remotely. Unless they plan ahead and email the exhibits to the court, it has been difficult to receive all documents and make sure they have been viewed by all parties prior to consideration by the court.

Quality of audio and video connection

I do not handle small claims matters

A mechanism to exchange documents in advance and file them with court before hearing

No experience with interpreters in small claims cases

access to better technology for self represented litigants to be able to attend

Information sheets and/or instructional videos in multiple languages advising how to use the technology, what to expect, etc.

Improve the viewing of evidence.

The exchange of exhibits needs to be improved drastically.

A lot of the parties have a lot of exhibits and it is really difficult to get those documents to the bench officer.

Parties are more inclined to interrupt each other when appearing on Zoom. "Controlling" the proceedings and outbursts from litigants is challenging if one or more are appearing by video (short of muting remote parties who interject).

Clearly providing participants with direction.

We sometimes have audio issues and I am unable to hear the testimony clearly. Nothing can improve the fact that credibility of litigants/witnesses is impaired when they do not appear in the presence of the Trier of Fact. Perhaps, litigants should be told they should appear by VIDEO not just Audio so at least Judge could see their face on the screen monitor.

LEGAL AID ORGANIZATIONS

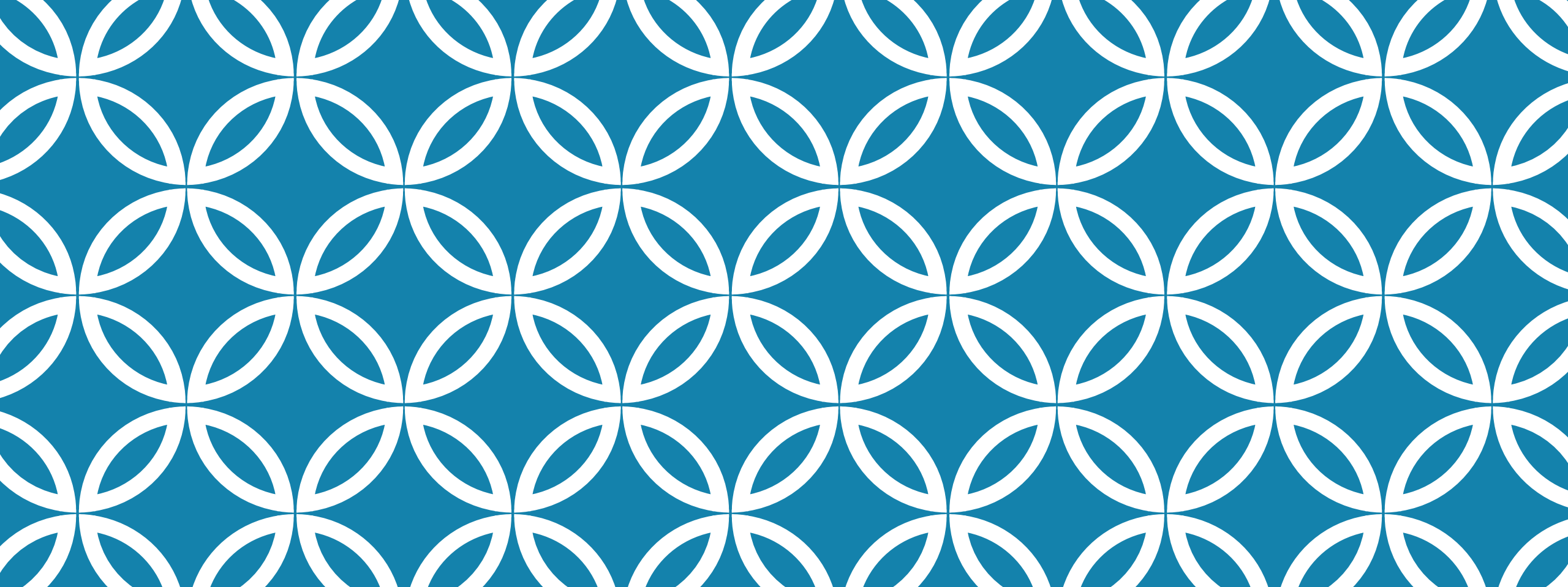
Many of the court room set ups put litigants at a disadvantage. If using video, many courtrooms have camera pointed at empty jury box or random while so litigant cannot see the judge or other party when they are speaking; online request form is confusing and difficult to find for many self represented individuals; many people are not aware of the requirements to mail/exchange evidence in advance if appearing remotely per LA Court local covid rule.

SANTA BARBARA ORGANIZATIONS

submission of evidence

I do not handle small claims cases

It's just still a learning curve. Perhaps litigants could be encouraged to observe proceedings similar to theirs in advance of their own hearing.



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Shift in the court reporting industry – 2012

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More money

Large pool of California reporters, but court work is
not attractive



CALIFORNIA LICENSEES

2000 – 8004 licensees

2010 – 7503 licensees

2020 – 6085 licensees

CERTIFIED SHORTHAND REPORTER EXAM

	Dictation	English	Professional Practice
2000 applicants pass rate	342 51.7%	260 75.8%	269 76.6%
2010 applicants pass rate	332 27.8%	268 46.2%	201 64%
2020 applicants pass rate	235 22.1%	97 56.4%	84 62.3%

EFFORTS TO INCREASE LICENSEE BASE



LICENSE RECIPROCITY

- Texas
- National Court Reporters Association



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INSIGHT INTO VOICE WRITERS



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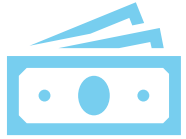
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Return official
reporters to civil
and family law
courts

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New money



Ongoing money



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QUESTIONS



COURT REPORTERS BOARD
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GUIDANCE TO JUVENILE COURTS ON CONDUCTING REMOTE HEARINGS DURING THE COVID-19 PANDEMIC

Social distancing and community shutdowns are having a deep impact on our nation's juvenile courts. As a result, many courts have moved to "remote" hearings to handle cases. Depending on the jurisdiction, remote hearings may be via video or may only be telephonic. Some jurisdictions are holding remote hearings only for critical matters affecting youth liberty, such as detention and parole hearings. Other juvenile courts are handling all kinds of hearings remotely.

As a general principle and under normal circumstances, the National Juvenile Defender Center (NJDC) strongly opposes the use of remote hearings in juvenile delinquency proceedings. Remote hearings present serious due process concerns, as they present insurmountable barriers to effective assistance of counsel, harm attorney-client relationships and confidentiality, and lead to worse outcomes for youth.

However, there are times, as with the current COVID-19 crisis, when youth and defense attorneys who are fully informed of the risks and challenges may find it appropriate to consent to waiving the youth's physical presence in court and participate in hearings facilitated by remote technology.

For emergency situations like the COVID-19 pandemic, NJDC recommends youth and defense attorneys limit their consent to participate in, and juvenile courts limit their use of, remote hearings to only proceedings targeted at increasing youth liberty, whether that be release from facilities or programs, or terms of probation or commitment.

Remote Hearings Generally Harm Due Process

Youth are entitled to due process protections under the Fourteenth Amendment, as guaranteed by the U.S. Supreme Court.¹ Every person charged with a crime has a constitutional right to be present at hearings in which their participation may affect the outcome.²

Remote hearings create challenges for the effectiveness of court proceedings, inhibit and harm the attorney-client relationship, hamper effective juvenile defense advocacy, and lead to disparate outcomes. Due to the limitations inherent in remote hearings and youth's still-developing cognition and socioemotional maturity,³

¹ *In re Gault*, 387 U.S. 1 (1967).

² *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) ("Although the Court has emphasized that this privilege of presence is not guaranteed 'when presence would be useless, or the benefit but a shadow,' due process clearly requires that a defendant be allowed to be present 'to the extent that a fair and just hearing would be thwarted by his absence.' Thus, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.") (internal citations omitted).

³ See generally, National Research Council, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* 89-118 (Richard J. Bonnie et al. eds., 2013).

the lack of physical presence at hearings makes it more likely “that a fair and just hearing would be thwarted by [the young person’s] absence.”⁴

While the practice of remote hearings can never be justified by concerns of judicial economy, transportation time and costs, or administrative ease, how youth and defense attorneys weigh the advantages and disadvantages during this pandemic will obviously vary—and may well vary in each case. Remote hearing should be permitted only with the consent of the defense after thoughtful weighing of the advantages and disadvantages the client may face.

Considerations

When conducting remote hearings, juvenile courts should consider each of the following questions and put in place measures to limit the due process obstacles remote hearings create. Answering “no” to any of the following questions increases the risk that a remote hearing is creating undue harm to a youth’s due process rights and a defense attorney’s effectiveness.

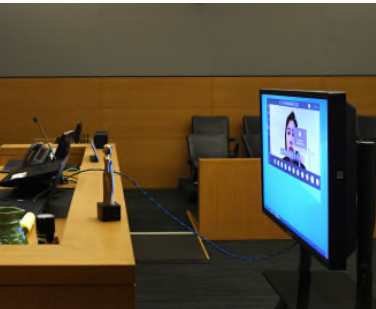
- ☐ Is the purpose of the hearing targeted at youth liberty (i.e., considering potential release from detention or commitment)?
- ☐ Is there a confidential means of communication (i.e., a separate phone line) that allows for privileged two-way communication between the defense attorney and their client before, during, and after the hearing?
- ☐ Will the court permit breaks in the hearing whenever private attorney-client communication is required?
- ☐ Is the youth in a confidential space—meaning there is no other person in the room with them—at the remote location that allows for private attorney-client communications?
- ☐ Does the court’s video technology allow the young person to see the other actors who are speaking?
- ☐ Has defense counsel been provided sufficient time and access to their client prior to the hearing to explain how the process of a remote hearing will work, answer any questions their client has prior to the hearing, and establish a plan for communicating post-hearing?

NJDC would like to thank our colleagues at Juvenile Law Center for their input on this resource.

⁴ See *Kentucky v. Stincer*, 482 U.S. at 745.

RESOURCE

The Impact of Video Proceedings on Fairness and Access to Justice in Court



RJ Sangosti/MediaNews Group/The Denver Post via Getty

Increasing use of remote video technology poses challenges for fair judicial proceedings. Judges should adopt the technology with caution.



Alicia Bannon



Janna Adelstein

PUBLISHED: September 10, 2020

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**Strengthen Our
Courts**

Promote Fair Courts

Introduction

The Brennan Center has also developed a set of principles stakeholders can use as they develop policies for the use of remote court proceedings, [available here](#).

nonessential proceedings and conduct others through video or phone.¹ Even as courts have begun to reopen, many are also continuing or testing new ways to expand the use of remote technology.² At the same time, public health concerns are leading some legal services providers and other advocates to oppose the return to in-person proceedings.³ Beyond the current moment, several court leaders have also suggested that expanded use of remote technology should become a permanent feature of our justice system.⁴

Remote technology has been a vital tool for courts in the midst of a public health crisis. But the use of remote technology — and its possible expansion — also raises critical questions about how litigants' rights and their access to justice may be impacted, either positively or negatively, and what courts and other stakeholders can do to mitigate any harms.

This paper collects and summarizes existing scholarship on the effects of video technology in court proceedings. Federal courts, immigration courts, and state courts have long used video technology for certain kinds of proceedings.⁵ While the available scholarship on the use of video proceedings is limited, existing research suggests reason for caution in expanding the use of these practices, as well as the need for further research on their potential effects.

For Example:

One study of criminal bail hearings found that defendants whose hearings were conducted over video had substantially higher bond amounts set than their in-person counterparts, with increases ranging from 54 to 90 percent, depending on the offense.⁶

A study of immigration courts found that detained individuals were more likely to be deported when their hearings occurred over video conference rather than in person.⁷

Several studies of remote witness testimony by children found that the children were perceived as less accurate, believable, consistent, and confident when appearing over video.⁸

In three out of six surveyed immigration courts, judges identified instances where they had changed credibility assessments made during a video hearing after holding an in-person hearing.⁹

Research also suggests that the use of remote video proceedings can make attorney-client communications more difficult. For example, a 2010 survey by the National Center for State Courts found that 37 percent of courts using videoconferencing had no provisions to enable private communications between attorneys and their clients when they were in separate locations.¹⁰ Remote proceedings can likewise make it harder for self-represented litigants to obtain representation and other forms of support by separating them from the physical courthouse. A study of immigration hearings found that detained immigrants who appeared in person were 35 percent more likely to obtain counsel than those who appeared remotely.¹¹

At the same time, other research suggests that remote video proceedings may also enhance access to justice under some circumstances. For example, a Montana study found that the use of video hearings allowed legal aid organizations to reach previously underserved parts of the state.¹² Organizations such as the Conference of Chief Justices have called for the expanded use of video or telephone proceedings in civil cases, particularly for

time off work to travel to court. ¹³

One challenge in interpreting this research is that court systems hear a wide range of cases, both civil and criminal, and the use of videoconferencing may pose widely disparate challenges and benefits for litigants in different types of cases. Courts are involved in adjudicating everything from evictions to traffic violations, from multimillion-dollar commercial disputes to felony cases. In some instances, litigants are detained in jails or detention centers. In others, they may be self-represented. Courts hold preliminary hearings, arraignments, settlement negotiations, scheduling conferences, arguments on legal motions, jury trials, and much more.

At its core, this review of existing scholarship underscores the need for broad stakeholder engagement in developing court policies involving remote proceedings, as well as the need for more research and evaluation as courts experiment with different systems.

Impact of Video Proceedings on Case Outcomes

A handful of studies have directly assessed whether replacing certain in-person proceedings with videoconferences impacted substantive outcomes in criminal, civil, or immigration proceedings. Several other studies have sought to evaluate the impact of using video on factors that are likely to affect substantive outcomes, such as credibility assessments by juries or other factfinders, and communication between attorneys and their clients.

Video Proceedings and Substantive Outcomes

One study by law and psychology professor Shari Seidman Diamond and coauthors, published in the *Journal of Criminal Law and Criminology*, looked at the impact of using closed-circuit television during bail hearings in Cook County, Illinois. The study found that judges imposed substantially higher bond amounts when proceedings occurred over video. ¹⁴

In 1999, Cook County began using closed-circuit television for most felony cases, requiring defendants to remain at a remote location during bail hearings. A 2008 analysis of over 645,000 felony bond proceedings held between January 1, 1991 and December 31, 2007 found that after the closed-circuit television procedure was introduced, the average bond amount for impacted cases rose by 51 percent — and increased by as much as 90 percent for some offenses. By contrast, there were no statistically significant changes in bond amounts for those cases that continued to have live bail hearings. ¹⁵ These disparities persisted over time. The release of this study, which was prepared in connection with a class action lawsuit challenging Cook County's practices, caused the county to voluntarily return to live bail hearings. ¹⁶

The authors theorized several explanations for the difference in bond amounts in Cook County. Among other things, they pointed to the picture quality and the video setup, which gave the appearance that the defendant was not making eye contact. In addition, they suggested that the defendant's remote location made it difficult for their attorney to gather information in advance of the hearing or consult with their client during the hearing. The authors also pointed out that the video was in black and white, and that litigants with darker skin were difficult to see on camera. Finally, they raised the question of whether some aspect of appearing in person affects a person's believability. ¹⁷

proceedings remotely, finding that detained respondents were more likely to be deported when their proceedings occurred over videoconference.¹⁸ Video hearings are now a common feature in immigration court, and have been used regularly since the 1990s.¹⁹ The use of videoconferencing, even without the petitioner's consent, is specifically authorized by statute.²⁰ According to the Transactional Records Access Clearinghouse Immigration Center at Syracuse University, from October through December 2019, one out of every six final hearings deciding an immigrant's case was held by video.²¹ Eagly examined outcomes for detained immigrants in immigration court, comparing those who participated via video to those who participated in person.²² Eagly used a nationwide sample of nearly 154,000 cases, in which immigration judges reached a decision on the merits during fiscal years 2011 and 2012.²³

Eagly found what she described as a "paradox": detained immigrants whose proceedings occurred over video were more likely to be deported, but *not* because judges denied their claims at higher rates. Rather, these respondents were less likely to take advantage of procedures that might help them. Detained individuals who appeared in person were 90 percent more likely to apply for relief, 35 percent more likely to obtain counsel, and 6 percent more likely to apply only for voluntary departure, as compared to similarly situated individuals who appeared by video. These results were statistically significant, even when controlling for other factors that could influence case outcomes.²⁴

At the same time, among those individuals who actually applied for various forms of relief, there was no statistically significant difference in outcome after controlling for other factors. However, because video participants were *less likely* to seek relief or retain counsel, video cases were still significantly more likely to end in removal.²⁵ Eagly argued that "[t]elevideo must therefore be understood as having an indirect relationship to overall substantive case outcomes—one linked to the disengagement of respondents who are separated from the traditional courtroom setting."²⁶

Eagly relied on interviews and court observations to explore why video proceedings led to less engagement by respondents. She suggested that respondents may have been less likely to participate fully in video proceedings due to logistical hurdles requiring advanced preparation, such as the need to mail an application for relief in advance of the hearing, rather than bringing one to court and physically handing over a copy. She also highlighted the difficulties that video proceedings pose in allowing individuals to communicate effectively and confidentially with their attorney. Finally, she found that respondents often found it difficult to understand what was happening during video proceedings, and that many perceived a video appearance as unfair and not a real "day in court," an assertion which has also been made by the American Bar Association Commission on Immigration.²⁷

A few studies have also examined the impact of video testimony on jury trials, with mixed results. One study by psychology professor Holly Orcutt and coauthors examined the impact of remote testimony by children in sexual abuse cases. The authors created a simulation involving a fake crime with children and an adult actor. The children then testified on their experiences within the experiment during a mock trial, using actors and mock jurors.²⁸ The child witnesses testified either in person or via one-way closed-circuit television.²⁹

Orcutt found that when children testified via closed-circuit television, the mock jurors rated them as less honest, intelligent, and attractive, and concluded that their testimony was less accurate. Mock jurors were also less likely to vote to convict the defendant (accused by the child witness), when the child testified by closed-circuit television.³⁰ Thus, closed-circuit testimony "appeared to result in a more negative view of child witnesses as well as a small but significant decrease in the likelihood of conviction [of the defendant]."³¹ However, after jurors deliberated, there was no statistically significant impact of video versus live testimony on the verdict.³²

due to assumptions about why a child might not testify in person. However, this study also raises the possibility that remote witness testimony is generally less likely to be seen as credible, disadvantaging litigants and raising fairness concerns in cases where testimony is likely to be critical to a party's case.

On the other hand, a series of studies from the 1970s and 1980s based on reenacted trials generally found that videotaped trials had no impact on outcomes. For example, in a reenacted trial involving an automobile personal injury case, staffed by actors, there was no statistically significant difference in the mean amount awarded by the jury, or in the jury's retention of information, between the in-person and videotaped trials.³³ However, several caveats apply. First, these studies did not address the use of remote jurors, or jurors who interacted with each other over video.³⁴ Also relevant is that the technologies available to conduct remote proceedings today are vastly different than those used in studies in the 1970s and 80s. Finally, another limitation of these studies is that they do not address how less than ideal technological conditions may impact court dynamics. For example, a study of immigration courts by Booz Allen Hamilton for the Department of Justice determined that technological glitches had disrupted cases to such an extent that due process concerns may arise.³⁵

Lastly, the Administrative Conference of the United States has studied the use of video teleconferencing by federal executive agencies in administrative hearings. According to an analysis by the Bureau of Veteran Affairs, there was no evidence that video proceedings for veterans benefits adjudications had an impact on outcomes: "the difference in grants [for veterans' benefits claims] between video hearings and in-person hearings has been within one percent" over the five-year period preceding the 2011 report.³⁶ The study also found that these hearings had increased productivity for Veterans Law Judges and supporting counsel by eliminating the need for travel to and from hearings.

Other Effects on Litigants

Video and Perceptions of Credibility

In addition to studies that directly assess the relationship between video proceedings and outcomes, such as conviction or deportation rates, other research has looked at whether video testimony by a witness has an impact on how they are perceived by factfinders. Because credibility determinations are often central to case outcomes, the effect of video appearance on credibility has important implications for the overall fairness of remote proceedings.

In addition to the Orcutt study discussed previously, several other studies have looked at the impact of video testimony by children on their perceived credibility in the context of sexual abuse cases, finding that video testimony had an impact on jurors' perceptions of the child's believability. For example, an analysis involving mock trials with actors where a child testified either in-person or via closed-circuit television found that testimony over video lowered jurors' perception of a child's accuracy and believability.³⁷ Similarly, in a Swedish simulation where different jurors watched the child testimony either live or via video, jurors perceived the live testimony in more positive terms and rated the children's statements as more convincing than the video testimony. Live observers also had a better memory of the children's statements.³⁸

in video proceedings. For example, in a 2017 U.S. Government Accountability Office report on immigration courts, judges in three of the six surveyed courts identified instances where they had changed credibility assessments made during a video hearing after holding a subsequent in-person hearing:

"For example, one immigration judge described making the initial assessment to deny the respondent's asylum application during a [video teleconference] hearing in which it was difficult to understand the respondent due to the poor audio quality of the [video teleconference]. However, after holding an in-person hearing with the respondent in which the audio and resulting interpretation challenges were resolved, the judge clarified the facts of the case, and as a result, decided to grant the respondent asylum. Another immigration judge reported being unable to identify a respondent's cognitive disability over [video teleconference], but that the disability was clearly evident when the respondent appeared in person at a subsequent hearing, which affected the judge's interpretation of the respondent's credibility." ³⁹

Psychology research also provides theoretical support for the concern that individuals who appear by video may face disadvantages. For example, psychology professor Sara Landstrom, who studied video testimony by children, has described the "vividness effect," whereby testimony that is more emotionally interesting and proximate in a sensory, temporal, or spatial way is generally perceived by observers as more credible and is better remembered. Landstrom notes, "it can be argued that live testimonies, due to face-to-face immediacy, are perceived [by jurors] as more vivid than, for example, video-based testimonies, and in-turn are perceived more favourably, considered more credible and are more memorable." ⁴⁰

Similarly, drawing from communications and social psychology research, law professor Anne Bowen Poulin argued, "[s]tudies reveal that people evaluate those with whom they work face-to-face more positively than those with whom they work over a video connection. When decisionmakers interact with the defendant through the barrier of technology, they are likely to be less sensitive to the impact of negative decisions on the defendant." ⁴¹

Technology choices may also have unintended consequences. For example, research by G. Daniel Lassiter and coauthors have documented a camera perspective bias in the context of videotaped confessions, finding that observers were more likely to believe a confession was voluntary when the camera was focused only on the defendant during a videotaped interrogation. ⁴² Poulin has also noted that space constraints may necessitate the use of close-up shots during some video hearings, which can exaggerate features, obfuscate the perception of a person's size and age, and obscure body language. ⁴³

Effects on Attorney-Client Communications and Relationship

Another question raised by the use of video proceedings is whether they impact communication and other aspects of the relationship between attorneys and their clients, who are frequently separated during remote proceedings. For example, in a 2010 survey by the National Center for State Courts, 37 percent of courts that used video proceedings reported that they had no provisions to enable private communications between an attorney and client when they were in separate locations. ⁴⁴ Poulin also noted that even when a secure phone line for private attorney-client communication is provided, nonverbal communication is likely to be difficult, and it may be hard for a client to catch their attorney's attention with a question or to provide relevant information. ⁴⁵

attorneys and clients made it harder for them to quickly confer during a bail hearing. She noted that such a communication challenge could be consequential in a bail hearing: a defendant may be able to provide “mitigating details regarding past convictions that will greatly assist counsel... Obviously, such communications must occur immediately if counsel is to be able to make use of his client’s information during a fast-paced bail hearing.” ⁴⁶

A study by the advocacy organization Transform Justice surveyed lawyers, magistrates, probation officers, intermediaries, and other officials about the use of remote proceedings in the United Kingdom. Fifty-eight percent of respondents thought that video hearings had a negative impact on defendants’ ability to participate in hearings, and 72 percent thought that video hearings had a negative impact on defendants’ ability to communicate with practitioners and judges. ⁴⁷ Survey respondents indicated that they believed the following groups were the most negatively impacted by video hearings: defendants with limited English proficiency, unrepresented defendants, and children under 18. ⁴⁸

These findings were echoed in Florida’s experience with remote video proceedings for juvenile detention hearings. In 2001, the Florida Supreme Court repealed an interim rule that had been in effect from 1999 through 2001 that authorized remote juvenile hearings. ⁴⁹ In repealing the rule, the Court detailed public defenders’ concerns that “there was no proper opportunity for meaningful, private communications between the child and the parents or guardians, between the parents or guardians and the public defender at the detention center, and between a public defender at the detention center and a public defender in the courtroom.” ⁵⁰ The court observed that “[a]t the conclusion of far too many hearings, the child had no comprehension as to what had occurred and was forced to ask the public defender whether he or she was being released or detained.” ⁵¹

Additional Access to Justice Considerations

Another question raised by remote video proceedings is how their use impacts the public’s access to justice in civil cases, where there is generally no right to counsel and where other safeguards for litigants are weaker than in criminal cases.

Access to Counsel and Other Resources in Civil Cases

One critical issue is the extent to which videoconferencing increases or diminishes burdens for self-represented litigants in arenas like housing or family court. Understanding the relationship between video proceedings and access to justice can inform courts’ use of video both now and in the future, and help identify areas where courts should invest in additional resources or support for litigants.

The Conference of Chief Justices has encouraged judges to “promote the use of remote audio and video services for case hearings and case management meetings” in civil cases as part of a broader set of reforms to promote access to justice. ⁵² The Conference cites, among other things, that video proceedings can help mitigate the costs borne by litigants who might have to travel far distances or take time off from work to attend in-person court proceedings. ⁵³ Notably, the Conference of Chief Justices’ proposal calls for combining video proceedings with enhanced services for self-represented litigants, including internet portals and stand-alone kiosks to facilitate access to court services, simplified court forms, and real-time court assistance services over the internet and phone.

reduce the time and expenses associated with traveling, transportation, childcare, and other day-to-day costs that individuals incur when they go to court. The report also noted the potential costs of such technology, including the possibility that remote appearances may lessen the accuracy of factfinding and reduce early opportunities to settle cases. ⁵⁴

There is only limited research on the benefits and harms of video proceedings with respect to access to the courts. Eagly's study of immigration court hearings found that detained immigrants who appeared in person were 35 percent more likely to obtain counsel than those who appeared remotely, highlighting the role that courthouses often play in connecting self-represented individuals with resources, including representation. ⁵⁵

On the other hand, a 2007 study on the use of videoconference technology in Montana, which included interviews and court observations, found that the use of video court appearances in both civil and criminal hearings enabled legal aid organizations to serve previously underserved parts of the state. ⁵⁶ Montana, one of the largest and least populated states, had only 84 lawyers in the entire eastern portion of the state in 2004. ⁵⁷ The study concluded that introducing video hearings means that "legal aid has a presence in counties from which they would be absent if video were not there as an option." ⁵⁸ Video proceedings also opened up greater opportunities for pro bono representation. The report endorsed the use of the video technology in Montana, while urging caution in ensuring that the technology was "used with sensitivity to overall access to justice goals," including recognizing that there are cases that may not be appropriate for video appearances, such as those involving lengthy proceedings. ⁵⁹ The study also acknowledged that there are still unanswered questions about how to properly cross-examine a witness over video and that the potential issues with such examinations could be more significant when dealing with an individual's credibility or integrity. ⁶⁰

Beyond the use of videoconferencing, another study looked at an online case resolution system for minor civil infractions and misdemeanors. This online system did not use video; rather, individuals had the option to use an online portal to communicate with judges, prosecutors, and law enforcement at any time of day. The study found that the system saved time, significantly reduced case duration, and reduced default rates (where individuals lose cases by not contesting their claims). ⁶¹ The author highlighted the costs associated with going to court for relatively low-stakes proceedings: "Physically going to court costs money, takes time, creates fear and confusion, and presents both real and perceived risks." ⁶² To the extent that video proceedings may similarly reduce some of the costs of going to the courthouse, this study suggests that in lower-stakes proceedings, the use of video can save time compared to attending in-person proceedings, and can enable more individuals to engage with the system rather than defaulting their claims. However, it also highlights that videoconferencing is not the only way to conduct proceedings remotely, and that in some contexts online systems and other technologies have functioned well. ⁶³

Additional Consideration for Marginalized Communities

Other research raises potential equity concerns about the broad use of video proceedings, particularly for marginalized communities and in cases where individuals are required to participate by video. These concerns underscore the need for additional research and evaluation as courts experiment with remote systems, as well as the need for courts to consult with a wide array of stakeholders when developing policies for video proceedings.

For instance, there is a substantial digital divide associated with access to the internet and communication technology. One critical unanswered question is whether and how video proceedings may exacerbate existing

internet broadband and computers according to income and race.⁶⁴ Americans who live in rural communities are also less likely to have access to broadband internet.⁶⁵ The same is true for people with disabilities, who may also require special technology in order to engage in online activities such as remote court proceedings.⁶⁶

Technology disparities potentially pose significant hurdles to the widespread use of video court proceedings for marginalized communities, particularly when Covid-19 has led to the closure of many offices and libraries. The pandemic has also caused a massive spike in unemployment, which may hinder litigants' abilities to pay their phone and internet bills.⁶⁷ Because there is currently a dearth of research on how the digital divide impacts access to video proceedings, courts and other stakeholders should conduct their own studies before committing to the use of video hearings in the long term.

Other research has identified challenges that self-represented litigants face in navigating the legal system, including the need for training and support offered in multiple languages.⁶⁸ In some states, as many as 80 to 90 percent of litigants are unrepresented.⁶⁹ Another critical research question is the extent to which courts are able to provide adequate support remotely, particularly in jurisdictions where courthouses have been the principal place where individuals going to court connect with resources.

A final question is how remote technology affects access to justice for individuals who do not speak English or have limited English proficiency. This is a particular concern in the judicial context because research suggests that dense court language can be difficult to communicate via translation to non-English speakers.⁷⁰

Research related to the use of remote translation in areas such as telemedicine has been mixed as to whether remote translation impacts quality and satisfaction.⁷¹ And while there is limited research on remote translation in courts, a study by the Legal Assistance Foundation of Metropolitan Chicago and the Chicago Appleseed Fund for Justice found that approximately 30 percent of litigants in immigration court who used an interpreter appeared to misunderstand what was happening, either due to misinterpretation or inadequate interpretation.⁷² The study lacked a control group, making it difficult to assess the role that remote video immigration proceedings played in translation difficulties, but the report's authors suggested that, based on their observation of these proceedings, videoconferences exacerbated translation difficulties.⁷³

Conclusion

Though video conferencing technology has been a valuable tool during the Covid-19 pandemic, existing scholarship suggests reasons to be cautious about the expansion or long-term adoption of remote court proceedings. More research is necessary, both about the potential impact of remote technology on outcomes in a diverse range of cases, as well as the advantages and disadvantages with respect to access to justice. In the meantime, as courts develop policies for remote proceedings, they should consult with a broad set of stakeholders, including public defenders and prosecutors, legal services providers, victim and disability advocates, community leaders, and legal scholars.

- 2** Daniel Siegel, "Miami, Orlando Headline Fla. Courts' Remote Trial Experiment," Law360, June 4, 2020, <https://www.law360.com/articles/1279653/miami-orlando-headline-fla-courts-remote-trial-experiment>; and Jake Bleiberg, "Texas Court Holds First US Jury Trial via Videoconferencing," Associated Press, May 22, 2020, <https://abcnews.go.com/Health/wireStory/texas-court-holds-us-jury-trial-videoconferencing-70825080>.
- 3** Rocco Parascandola and Molly Crane-Newman, "Lawyers Fear Sudden Return to NYC Courthouses Next Week will Spread Coronavirus," Daily News, July 8, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-courts-reopening-early-outrage-lawyers-advocates-20200708-42rpmgyhyjc2jphrqohwdsy6q-q-story.html>.
- 4** Lyle Moran, "How Hosting a National Pandemic Summit Aided the Nebraska Courts System with its Covid-10 Response," Legal Rebels Podcast, May 13, 2020, https://www.abajournal.com/legalrebels/article/rebels_podcast_episode_052; and Katelyn Kivel, "How the Coronavirus Revolutionized Michigan's Courts," The Gander Newsroom, July 14, 2020, <https://gandernewsroom.com/2020/07/14/coronavirus-revolutionized-courts/>.
- 5** Shari Seidman Diamond et al., "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions," Journal of Criminal Law and Criminology 100 (2010): 877-878, 900; Ingrid V. Eagly, "Remote Adjudication in Immigration," Northwestern University Law Review 109 (2015): 934; and Mike L. Bridenback, Study of State Trial Courts Use of Remote Technology, National Association for Presiding Judges and Court Executive Officers, 2016, 12, <http://napco4courtleaders.org/wp-content/uploads/2016/08/Emerging-Court-Technologies-9-27-Bridenback.pdf>.
- 6** Diamond et al., "Efficiency and Cost," 893.
- 7** Eagly, "Remote Adjudication," 966; and Frank M. Walsh and Edward M. Walsh, "Effective Processing or Assembly-Line Justice - The Use of Videoconferencing in Asylum Removal Hearings," Georgetown Immigration Law Journal 22 (2008): 271-72.
- 8** Holly K. Orcutt et al., "Detecting Deception in Children's Testimony: Factfinders' Abilities to Reach the Truth in Open Court and Closed-Circuit Trials," Law and Human Behavior 25 (2001): 357-8, 366. However, it is important to note that these studies are simulated experiments and not observations of actual court proceedings, so outcomes might have differed if video proceedings were used and examined in an actual court hearing. Also worth noting is that the judge, bailiff, and attorneys questioning the children were in the room with the children testifying; the children only appeared by CCTV to the mock jurors.
- 9** Government Accountability Office, Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges, 2017, 55, <https://www.gao.gov/assets/690/685022.pdf>.
- 10** Eric Bellone, "Private Attorney- Client Communications and the Effect of Videoconferencing in the Courtroom," Journal of International Commercial Law and Technology 8 (2013): 44-45.
- 11** Eagly, "Remote Adjudication," 938.
- 12** Richard Zorza, Video Conferencing for Access to Justice: An Evaluation of the Montana Experiment, Legal Services Corporation, 2007, 1, 3, <https://docplayer.net/3126017-Video-conferencing-for-access-to-justice-an-evaluation-of-the-montana-experiment-final-report.html>.
- 13** National Center for State Courts, Call to Action: Achieving Civil Justice for All, 2016, 37-38 <https://iaals.du.edu/publications/call-action-achieving-civil-justice-all>.
- 14** Diamond et al., "Efficiency and Cost," 897.
- 15** Diamond et al., "Efficiency and Cost," 896.
- 16** Diamond et al., "Efficiency and Cost," 870.
- 17** Diamond et al., "Efficiency and Cost," 884-85, 898-900.
- 18** An earlier analysis by Frank and Edward Walsh in the Georgetown Immigration Law Journal likewise found disparities in outcomes in asylum cases. The study, which looked at fiscal years 2005 and 2006, found that "the grant rate for asylum applicants whose cases were held in person is roughly double the grant rate for the applicants whose cases were heard via [video]." Walsh and Walsh, "Effective Processing," 271. These differences were statistically significant, and the authors found similar and statistically significant differences when controlling for whether the applicant was represented by counsel. However, according to Eagly, most immigration hearings were not coded for whether they were conducted in person or by video prior to 2007, undercutting the reliability of the findings, Eagly, 946. Nor did the study

19 “Video Hearings in Immigration Court FOIA,” American Immigration Council, last modified August 11, 2016, accessed May 14, 2020, <https://www.americanimmigrationcouncil.org/content/video-hearings-immigration-court-foia>.

20 See 8 U.S.C. § 1229a(b)(2)(A)(iii); see also 8 C.F.R. § 1003.25(c) (“An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person.”).

21 TRAC Immigration, “Use of Video in Place of In-Person Immigration Court Hearings,” January 28, 2020, <https://trac.syr.edu/immigration/reports/593/>.

22 Eagly, “Remote Adjudication,” 933.

23 Eagly, “Remote Adjudication,” 960.

24 Among other things, Eagly controlled for the type of proceeding and charge, the respondent’s nationality, whether they are represented by counsel, their judge, and the year the proceedings took place. Eagly, “Remote Adjudication,” 938.

25 Eagly looked at two samples, a national sample and a subset of locations that she called the Active Base Sample. She found that “in the National Sample, 80 percent of in-person respondents were ordered removed, compared to 83 percent of televideo respondents. In the Active Base City Sample, 83 percent of in-person respondents were ordered removed, compared to 88 percent of televideo respondents.” The disparities in outcomes were statistically significant. Eagly, “Remote Adjudication,” 966.

26 Eagly, “Remote Adjudication,” 938.

27 Eagly, “Remote Adjudication,” 978, 984, 989. A 2019 report from the American Bar Association, which issued recommendations for reforming the immigration system, argued that based on its 2010 findings, the use of video conferencing technology can undermine the fairness of proceedings by making it more difficult to establish credibility and thus argue one’s case. The report goes on to suggest limiting the use of video to nonsubstantive hearings. See American Bar Association Commission on Immigration, 2019 Update Report: Reforming the Immigration System, 2019, 18, https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volu

28 Some children experienced the fake crime and some did not. In addition, some children were asked to modify their testimony to falsely indicate that a crime had taken place. Orcutt et al., “Detecting Deception in Children’s Testimony,” 343.

29 Orcutt et al., “Detecting Deception in Children’s Testimony,” 339-372.

30 Orcutt et al., “Detecting Deception in Children’s Testimony,” 357, 363.

31 Orcutt et al., “Detecting Deception in Children’s Testimony,” 366.

32 Orcutt et al., “Detecting Deception in Children’s Testimony,” 358.

33 Gerald Miller, “Televised Trials: How Do Juries React,” *Judicature* 58 (December 1974): 242-246. The jurors in Miller’s study thought they were rendering a verdict in an actual trial. A similar study likewise found no statistically significant difference in juror attributions of negligence or the amount awarded by jurors in simulated video and in-person trials. The mode of presenting expert witnesses did affect pre-deliberation award, information retention, and source credibility, but not in a straightforward manner. The plaintiff’s witness was more effective in obtaining favorable awards when he appeared live, while the defendant’s witness was more effective in reducing the award (advantaging the defendant) when he appeared on videotape. The study suggested that “The most plausible explanation for this difference could be the variations in the communication skills of the two witnesses across presentational modes,” Gerald R. Miller, Norman E. Fontes, and Gordon L. Dahnke, “Using Videotape in the Courtroom: A Four-Year Test Pattern,” *University of Detroit Journal of Urban Law* 55 (Spring 1978): 668. See also Gerald R. Miller, Norman E. Fontes, and Arthur Konopka, *The Effects of Videotaped Court Materials on Juror Response* (East Lansing: Michigan State University Press, 1978).

34 For additional research on simulated trials, see David F. Ross et al., “The Impact of Protective Shields and Videotape Testimony on Conviction Rates in a Simulated Trial of Child Sexual Abuse,” *Law and Human Behavior*, 18, (1994): 553-566; and Tania E. Eaton et al., “Child-Witness and Defendant Credibility: Child Evidence Presentation Mode and Judicial Instructions,” *Journal of Applied Social Psychology*, 31 (2001): 1845-1858. However, in these studies, mock jurors watched videotapes of trials involving either live or videotaped testimony, so their findings are of limited utility for comparing videotaped and live trials.

35 Booz Allen Hamilton, Legal Case Study: Summary Report, 2017, 23, <https://perma.cc/B3VS-FQAY>.

- 37** Gail S. Goodman et al., "Face-to-Face Confrontation: Effects of Closed-Circuit Technology on Children's Eyewitness Testimony and Jurors' Decisions," *Law and Human Behavior* 22 (1998): 195-96.
- 38** Sara Landstrom, "Children's Live and Videotaped Testimonies: How Presentation Mode Affects Observers' Perception, Assessment and Memory," *Legal and Criminological Psychology* 12 (2007): 344-45.
- 39** Government Accountability Office, *Actions Needed to Reduce Case Backlog*, 55.
- 40** Landstrom, "Children's Live and Videotaped Testimonies," 335. See also Richard E. Nisbett and Lee Ross, L. *Human Inference: Strategies and Shortcomings of Social Judgment*. (Englewood Cliffs, NJ: Prentice-Hall, 1980).
- 41** Anne Bowen Poulin, "Criminal Justice and Videoconferencing Technology: The Remote Defendant," *Tulane Law Review* 78 (2004): 1118.
- 42** G. Daniel Lassiter et al., "Videotaped Confessions: Panacea or Pandora's Box?" *Law and Policy* 28 (2006): 195-201.
- 43** Poulin, "Criminal Justice and Videoconferencing," 1121-1122.
- 44** Bellone, "Client Communications and the Effect of Videoconferencing," 44-45.
- 45** Poulin, "Criminal Justice and Videoconferencing," 1130.
- 46** Diamond et al., "Efficiency and Cost," 881-882.
- 47** Penelope Gibbs, *Defendants on video — conveyor belt justice or a revolution in access?*, Transform Justice, 2017, 16, http://www.transformjustice.org.uk/wp-content/uploads/2017/10/TJ_Disconnected.pdf.
- 48** Gibbs, *Defendants on video*, 10, 26.
- 49** Due to the Covid-19 pandemic, the Florida Supreme Court temporarily authorized video proceedings for juvenile delinquency proceedings (including juvenile detention hearings). See Florida Supreme Court, "Chief Justice Issues Emergency Order Expanding Remote Hearings and Suspending Jury Trials into Early July Statewide," May 4, 2020, <https://www.floridasupremecourt.org/News-Media/Court-News/Chief-Justice-issues-emergency-order-expanding-remote-hearings-and-suspending-jury-trials-into-early-july-statewide>.
- 50** Amendment to Fla. Rule of Juvenile Procedure 8.100(A), 796 So. 2d 470, 473 (Fla. 2001).
- 51** Amendment to Fla. Rule of Juvenile Procedure 8.100(A), 796 So. 2d 470, 473 (Fla. 2001).
- 52** National Center for State Courts, *Call to Action*, 37.
- 53** National Center for State Courts, *Call to Action*, 37-38.
- 54** John Greacen, *Remote Appearances of Parties, Attorneys, and Witnesses*, Self-Represented Litigation Network, 2017, 3-4; and see also Camille Gourdet et al., *Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology*, RAND Corporation, 2020, 4-5, https://www.rand.org/pubs/research_reports/RR3222.html (discussing advantages and disadvantages of remote proceedings in criminal cases).
- 55** Eagly, "Remote Adjudication," 960.
- 56** Zorza, *Video Conferencing for Access to Justice*.
- 57** Zorza, *Video Conferencing for Access to Justice*. For context, the overall population in this 47,500 square mile region was between 10 to 14 percent of the state's total in 2004. See Larry Swanson, "Montana is One State with Three Changing Regions," *Belgrade News*, February 28, 2019, http://www.belgrade-news.com/news/feature/montana-is-one-state-with-three-changing-regions/article_cc6ccb66-3b82-11e9-881c-8f20afd84778.html#:~:text=The%20Central%20Front%20region%20has,of%20the%20total%20in%201990.
- 58** Zorza, *Video Conferencing for Access to Justice*, 12.
- 59** Zorza, *Video Conferencing for Access to Justice*, 13.

61 J.J. Prescott, “Improving Access to Justice in State Courts with Platform Technology,” *Vanderbilt Law Review* 70 (2017): 2028-2034.

62 Prescott, “Improving Access to Justice,” 1996.

63 See also Maximilian A. Bulinski and J.J. Prescott, “Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency,” *Michigan Journal of Race and Law* 21 (2016). OCR systems involve transitioning some everyday court proceedings, such as civil infraction citations, outstanding failure-to-pay or failure-to-appear warrants, and some misdemeanors to be settled online, sometimes via videoconference.

64 29 percent of adults with household incomes below \$30,000 did not own a smartphone, 44 percent did not have home broadband services, and 46 percent did not own a traditional computer. Households with incomes of \$100,000 almost universally had access to these technologies. Monica Anderson and Madhumitha Kumar, “Digital Divide Persist Even as Lower-Income Americans Make Gains in Tech Adoption,” Pew Research Center, May 7, 2019, <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>. Only 66 percent and 61 percent of Black and Latino Americans respectively have access to a home broadband compared to 79 percent of white Americans. Andrew Perrin and Erica Turner, “Smartphones Help Blacks, Hispanics Bridge Some — But Not All — Digital Gaps with Whites,” Pew Research Center, August 20, 2019, <https://www.pewresearch.org/fact-tank/2019/08/20/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>.

65 Andrew Perrin, “Digital Gap Between Rural and Nonrural America Persists,” Pew Research Center, May 31, 2019, <https://www.pewresearch.org/fact-tank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/>.

66 Disabled Americans are about 20 percentage points less likely than those without a disability to say that they have access to home broadband internet or own a computer, smartphone, or tablet. Monica Anderson and Andrew Perrin, “Disabled Americans are Less Likely to Use Technology,” Pew Research Center, April 7, 2017, <https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>.

67 Rachel Dissell and Jordyn Grzelewski, “Phone, Internet Providers Extend Service Yet Some Still Disconnected from Lifelines During Coronavirus Pandemic,” *Cleveland.com*, April 8, 2020, <https://www.cleveland.com/coronavirus/2020/04/phone-internet-providers-extend-service-yet-some-still-disconnected-from-lifelines-during-coronavirus-pandemic.html>. See also NORC at the University of Chicago, “Most Working Americans Would Face Economic Hardship If They Missed More than One Paycheck,” press release, May 16, 2019, <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/most-working-americans-would-face-economic-hardship-if-they-missed-more-than-one-paycheck.aspx>.

68 Phil Malone et al., *Best Practices in the Use of Technology to Facilitate Access to Justice Initiatives: Preliminary Report*, Berkman Center for Internet and Society at Harvard University, 2010, 6-7, 14-19, Appendix A, https://cyber.harvard.edu/sites/cyber.harvard.edu/files/A2J_Report_Final_073010.pdf.

69 Jessica Steinberg, “Demand Side Reform in the Poor People’s Court,” *Connecticut Law Review*, 47 (2015): 741.

70 Charles M. Grabau and Llewellyn Joseph Gibbons, “Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation,” *New England Law Review* 30 (1996): 237-244, 255—60. See also Ashton Sappington, “Implied Consent and Non-English Speakers,” *John Marshall Law Journal* 5 (2012): 638.

71 Ann Chen Wu et al., “The Interpreter as Cultural Educator of Residents: Improving Communication for Latino Parents,” *Archives of Pediatrics and Adolescent Medicine* 160 (2006): 1145-50; C. Jack, “Language, Cultural Brokerage and Informed consent — Will Technological Terms Impede Telemedicine Use?” *South African Journal of Bioethics and Law* 7 (2014): 14, 16-17; and Imo S. Momoh, *Cultural Competence Plan*, Contra Costa County Mental Health Services, 2010, 78, 101-108, 114, https://cchealth.org/mentalhealth/pdf/2010_cultural_competence_plan.pdf.

72 The Legal Assistance Foundation of Metropolitan Chicago and the Chicago Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court*, 2005, 8, http://chicagoappleseed.org/wp-content/uploads/2012/08/videoconfreport_080205.pdf.

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