

Results of a Survey of U.S. District and Magistrate Judges: Use of Virtual Technology to Hold Court Proceedings

Carly Giffin and Rebecca Eyre

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Executive Summary

This report summarizes the responses to a survey conducted by the Federal Judicial Center in July 2021 to collect the experiences and insights of U.S. district and magistrate judges across the country regarding their use of virtual technology (videoconferencing and teleconferencing) before, during, and after the pandemic.

We received 1,035 responses, including at least one from each of the ninety-four (94) district courts, for a response rate of 63%. Based on those respondents who answered demographic questions, the average number of responses per district was ten, and all but one district had multiple respondents. Respondents represented a range of time on the federal bench, with one respondent serving since the mid-seventies and approximately a fifth (21%) having served since the eighties and nineties. Approximately half were newer appointees, with 56% having been appointed in 2010 or later. Judges representing all judge types (active and senior district judges, active and recalled magistrate judges, chief and nonchief judges) answered the questionnaire.

Key results include:

- Respondents have moved toward greater use of both videoconference and teleconference technology during the pandemic.
- Respondents reported having mostly positive experiences with using both videoconferencing and teleconferencing. No strong evidence emerged that positive or negative experience with virtual technology during the pandemic varied based on years on the bench or type of judge.
- In terms of the degree of difficulty experienced using virtual technology, the most common response was that respondents “consistently had few or no problems” with the technology used to hold court proceedings by videoconference and by teleconference. The second most common response for both technologies was that while respondents “initially had problems with the technology,” those problems dissipated as time went on. This response pattern did not vary meaningfully by amount of time on the bench or judge type.
- Seventy-nine percent of respondents reported their current views about using virtual technology for court proceedings were “more favorable” than they had been prior to the pandemic. This did not vary by judge type or length of time on the bench; the percentage was lowest for the longest-serving judges.
- A majority of respondents who said their views about using virtual technology to hold court proceedings were currently “more favorable” than before the pandemic also reported having mostly positive experiences using both videoconferencing (70%) and teleconferencing (65%).
- Respondents who reported “consistently” having problems with videoconferencing technology had less favorable views of virtual technology than before the pandemic.
- Respondents generally expressed more caution about the use of virtual technology for criminal proceedings than civil proceedings.
- For hybrid proceedings (i.e., those that are held with some participants physically present in the courtroom and others participating using virtual technology), most

respondents strongly agreed that judges (59%) and jurors (80%) should be physically present, while indicating more latitude for remote appearances by witnesses.

- A majority of respondents thought the ability for participants to avoid potential health risks (61%) and the ability of remote witnesses to testify (57%) were significant benefits of videoconferencing. The former was also endorsed by a majority of respondents as a significant benefit of teleconferencing (51%).
- A majority of respondents felt that each of the following was a “significant” drawback of videoconferencing: difficulty of evaluating witness credibility (66%), distraction of jurors (66%), unseen influence of witnesses or jurors (57%), potential that proceedings could be recorded or photographed without court knowledge (57%), possibility that parties may fail to appreciate the gravity of the proceeding (54%), difficulty engaging in dialogue with a defendant (53%), and inequality of access to technology across parties (52%).
- For teleconferencing, as for videoconferencing, a majority of respondents also said each of the following was a “significant” drawback: difficulty of evaluating witness credibility (82%), difficulty engaging in dialogue with a defendant (72%), distraction of jurors (71%), unseen influence of witnesses or jurors (64%), failing to appreciate the gravity of the proceeding (61%), and potential that proceedings could be recorded or photographed without court knowledge (56%). In addition, the majority of respondents indicated that teleconferencing could make it more difficult for attorneys to provide effective assistance to their clients (58%) and could make parties feel they did not have their “day in court” (57%).
- The majority of respondents indicated that when they are deciding whether to hold a proceeding by videoconference, the factors they consider “to a great extent” are the gravity or importance of the proceeding (72%), the emergency nature of the matter (70%), health considerations (66%), whether the case is civil or criminal (65%), agreement among the parties to use videoconferencing (55%), the geographical distance between the courthouse and parties or witnesses (52%), and the reliability of the technology (52%). The degree to which respondents took certain factors into consideration when deciding whether a court proceeding should be held via teleconference was almost identical to that for videoconferencing.

Introduction

The use of videoconferencing and teleconferencing (collectively, “virtual technology”) to hold court proceedings increased dramatically in response to the COVID-19 pandemic. The health risks posed by the pandemic changed judges’ analysis of the utility and necessity of using virtual technology, and the CARES Act¹ expanded the allowable uses of this tool. As the pandemic subsides, questions will naturally arise about how this technology can and should be used absent a public health threat. The courts can also use what they have learned from their current experiences with virtual technology to plan for responding to such a situation in the future. This report summarizes the responses to a survey the Federal Judicial Center (“Center”) conducted to collect the experiences and insights of district and magistrate judges across the country about their use of virtual technology before and during the pandemic. The Center hopes this information will help those who will be grappling with these issues moving forward. A copy of the survey is provided in Appendix A.

Background and Purpose

Since the pandemic began, the Center has been collecting information about courts’ responses to the pandemic, anticipating that such data would be helpful for informing future court operations and policy decisions.

As one step, the Center compiled information from court websites to create a permanent archive of responses to the pandemic. The website information provided an initial picture of practices the courts adopted as the pandemic altered court operations.²

To achieve a deeper understanding of the pandemic’s effects on the courts, the Center held focus groups with judges and clerks of court in the district and bankruptcy courts.³

Concurrently, the Center began assisting the Virtual Judiciary Operations Subgroup of the AO COVID-19 Taskforce (“VJOS”)⁴ with research on using remote technology in detention facilities during the pandemic. In the context of that work, the Center gathered information through surveys, focus groups, and interviews in selected districts from many different con-

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1. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

2. A report on this project, which reviewed the public facing websites of every court, provides a great deal of detailed information about how courts responded to the pandemic. <https://www.fjc.gov/content/359218/how-federal-courts-used-their-public-websites-during-covid-19-pandemic>.

3. Leann Bass, COVID-19 Focus Groups Summary: Themes and Highlights, Federal Judicial Center (2021). Between November 2020 and February 2021, the Center held thirteen focus groups with a total of seventy-five participants: three district judge groups, three magistrate judge groups, two bankruptcy judge groups, three district court clerk groups, and two bankruptcy court clerk groups. Participating district judges, magistrate judges, and district clerks of court served on thirty-eight separate district courts. Participating bankruptcy judges and clerks of court were from fourteen separate bankruptcy courts. Focus groups included four to seven participants each. <https://www.fjc.gov/content/365149/covid-19-focus-groups-summary>.

4. The Virtual Judiciary Operations Subgroup is a component of the AO COVID-19 Judiciary Task Force (<https://covid-19-judiciary-tf-aousc.hub.arcgis.com/>). The task force addresses emerging issues prompted by the pandemic and coordinates the judiciary’s response.

stituent groups. This included a survey to Chief Judges and Clerks of Court asking about their districts' use of virtual technology with detainees.

Through these research efforts it became clear that decisionmakers within the courts (including individual courts and Judicial Conference committees) would benefit from empirical data about federal judges' general views of, and experiences with, remote technology during the pandemic. This led the Center to develop the survey discussed in this report.

Method, Definitions of Key Terms, and Structure of the Questionnaire

We sent the online questionnaire to all senior district judges, active district judges, magistrate judges, and recalled magistrate judges on July 15, 2021. We sent a reminder to nonrespondents on July 22, 2021.⁵

For purposes of the questionnaire, videoconferencing, teleconferencing, virtual technology, and court proceedings were defined as follows:

- *Videoconferencing* refers to situations in which a proceeding is held with at least two participants in different locations interacting through a live audiovisual call using a VTC device or a videoconferencing platform (such as Teams, Zoom, WebEx, or CMS) that allows everyone to see and hear each other.
- *Teleconferencing* refers to situations in which a proceeding is held with at least two participants in different locations interacting through a live audio-only call using a telephone line or teleconferencing platform that allows the participants to hear each other but not see each other.
- *Virtual technology* encompasses both videoconferencing and teleconferencing.
- *Court proceedings* includes case-related proceedings (e.g., a complete *Daubert* hearing, trial) as well as portions of those proceedings (e.g., testimony of a single witness).

The questionnaire was divided into four sections: Use of Videoconferencing for Court Proceedings; Use of Teleconferencing for Court Proceedings; Hybrid Proceedings; and Overall Views on the Use of Virtual Technology to Hold Court Proceedings. Respondents could answer many questions by checking one or more of the listed options, and the questionnaire also provided ample opportunity for written comments. See Appendix A for a copy of the questionnaire.

Response Rate

Overall, we received 1,035 responses, including 20 partial responses. Based on the 1,646 surveys sent, we had a response rate of 63%.⁶

5. The Center plans to conduct a similar survey of bankruptcy judges in summer 2022.

6. Typically, we would include responses only from respondents who affirmatively clicked "Submit" at the end of a questionnaire, but for the present questionnaire, we also included twenty partial responses in our analysis. These are responses in which the respondent answered some questions but did not hit "Submit." We made this decision because the structure of the questionnaire caused confusion for some respondents. Part A of the question-

The total number of respondents varies from question to question throughout this report, as not all respondents answered all questions. Respondents may not have been shown certain questions due to their response to earlier questions, could have chosen not to answer a question, or may have skipped a question by accident. Questions that appeared later were more often skipped; the demographic questions were some of the last presented to respondents and had the lowest response rates. Judges may also have skipped these questions to avoid any possibility of being identified.

Respondent Demographics

At least one judge in each of the ninety-four judicial districts responded. The average number of responses per district was ten, and all but one district had multiple respondents. Respondents represented a range of time on the federal bench, with seven respondents serving since the 1970s and approximately a fifth (21%) having served since the eighties and nineties. On the whole, however, respondents tended to be newer appointees, with 56% having been appointed in 2010 or later. The respondents represented all judge types (Table 1).

Table 1. Respondents by Judge Type

	N	Percentage of Total Respondents	Percentage of this Judge Type Who Responded
Chief district judge	64	7%	64%
Active district judge	295	31%	58%
Senior district judge	194	20%	49%
Magistrate judge ¹	373	39%	66%
Recalled magistrate judge	28	3%	36%
Total	954	100%	

¹This row includes both active magistrate judges and those who indicated that they are chief magistrate judges.

naire asked questions about judges' experience using videoconferencing for court proceedings, and Part B asked nearly identical questions about teleconferencing. We received a number of inquiries from judges who reported that they had completed the questionnaire and been "sent back to the beginning." After looking at their responses in the survey software, we realized these judges had completed Part A and then had probably overlooked the word "teleconference" in the headings and questions in Part B. Thus, when these judges saw substantially similar questions, they thought they had been sent back to the beginning of the questionnaire. To reduce confusion, we edited the active questionnaire to draw attention to the difference between the two sections. Even after this edit, a few additional judges expressed confusion, believing they had been sent back to the beginning of the questionnaire once they reached Part B. Due to this confusion, and to respect the judges' time and effort, this report's results include responses from any respondent who fully answered Part A, but then stopped answering in Part B.

We examined whether length of tenure on the bench or judge type were related to responses to some of the other questions in the survey. That is, were judges with a particular length of service or judges of a particular type likely to have a certain view of, or experience with, virtual technology? We found no clear patterns either by length of tenure on the bench or judge type, and therefore do not report those analyses in the body of this report. Tables presenting the results can be found in Appendix B.

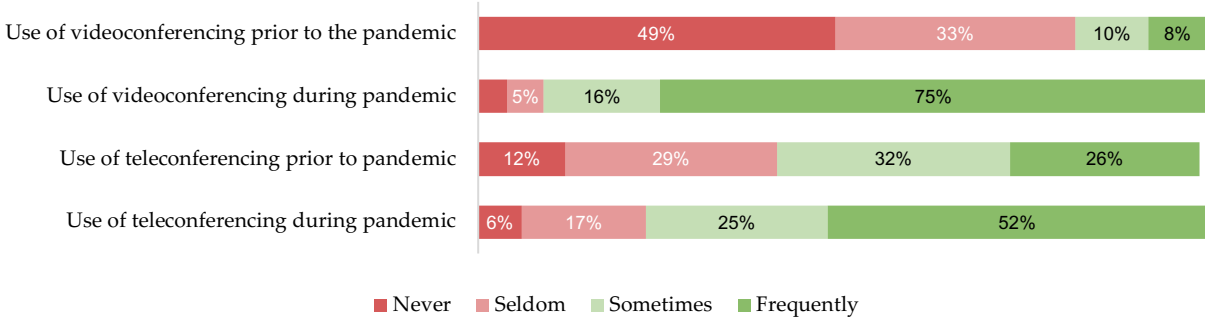
Frequency of Virtual Technology Use for Before and During the Pandemic⁷

The questionnaire began by asking judges about the frequency with which they used videoconferencing (Part A) and teleconferencing (Part B) to conduct court proceedings before and during the pandemic. Responses show a trend toward greater use of both types of virtual technology during the pandemic, although respondents’ reports of their use prior to the pandemic show clear differences between prepandemic use of videoconferencing compared to teleconferencing.

As shown in Graph 1, only 18% of respondents said they “frequently” or “sometimes” used videoconferencing prior to the pandemic. In contrast, 91% of respondents said they “frequently” or “sometimes” used videoconferencing during the pandemic. Only 4% of respondents said they “never” used videoconferencing during the pandemic compared to 49% prior to the pandemic.

In comparison, more judges had already been using teleconferencing prior to the pandemic, with 58% of the respondents saying they “frequently” or “sometimes” used teleconferencing for court proceedings prior to the pandemic. As with videoconferencing, this use increased during the pandemic, with 77% of respondents reporting they used teleconferencing “frequently” or “sometimes” for court proceedings during the pandemic. Only 6% of the respondents said they “never” used teleconferencing for court proceedings during the pandemic compared to 12% prior to the pandemic.

Graph 1: Use of Virtual Technology for Court Proceedings Prior to and During the Pandemic



7. This report generally follows the structure and order of the questionnaire, although it occasionally discusses relationships between responses from different parts of the questionnaire when those comparisons are useful.

Degree of Positive and Negative Experience Holding Virtual Proceedings During the Pandemic

In addition to asking about prepandemic and during-pandemic use of virtual technology, the survey asked whether the respondents had generally positive or negative experiences using this technology during the pandemic.

Overall, respondents reported having mostly positive experiences using both videoconferencing (Table 2) and teleconferencing (Table 3).⁸ Fifty-eight percent of respondents said they had “mostly positive experiences” holding proceedings using videoconference, and 60% of respondents said they had “mostly positive experiences” holding proceedings over teleconference. Most of the remaining respondents said their experiences were mixed (36% of respondents for videoconference; 34% for teleconference). Only 5% of respondents reported having “mostly negative experiences” holding proceedings using videoconference, and only 6% reported “mostly negative experiences” holding proceedings over teleconference.

Table 2. Which of the following statements best describes your overall experiences with holding proceedings by videoconference during the pandemic?

	N	Percentage
I have had mostly positive experiences with holding proceedings by videoconference.	585	58%
I have had some positive experiences and some negative experiences with holding proceedings by videoconference.	361	36%
I have had mostly negative experiences with holding proceedings by videoconference.	52	5%
Total	998	100%

8. The questions reported in Tables 2 and 3 were not seen by judges who indicated in the prior question that they had “never” used videoconferencing (124 respondents) or teleconferencing (60 respondents), respectively. That is, judges who said they had never used videoconferencing to hold a proceeding were not asked about their experience holding a proceeding via videoconference.

Table 3. Which of the following statements best describes your overall experiences with holding proceedings by teleconference during the pandemic?

	N	Percentage
I have had mostly positive experiences with holding proceedings by teleconference.	570	60%
I have had some positive experiences and some negative experiences with holding proceedings by teleconference.	320	34%
I have had mostly negative experiences with holding proceedings by teleconference.	59	6%
Total	949	100%

Degree of Problems Experienced Using Virtual Technology for Holding Proceedings

In addition to asking respondents whether their experiences holding proceedings via virtual technology tended to be positive or negative, we asked about the degree of problems they experienced with the technology while holding proceedings by videoconference or teleconference.

The most common response was that respondents “consistently had few or no problems” with the technology used to hold court proceedings over videoconference, 44% of respondents (Table 4), or through teleconference, 74% of respondents (Table 5). The second most common answer for both technologies was that, while respondents “initially had problems with the technology,” those problems dissipated as time went on: 30% of respondents for videoconferencing and 11% of respondents for teleconferencing.⁹ Even though the patterns are the same for both technologies, the percentages are quite different, with respondents having less trouble with teleconferencing than videoconferencing. This may stem in part from greater initial familiarity with teleconferencing, as well as more variability in videoconferencing systems.

9. The questions reported in Tables 4 and 5 were not seen by judges who indicated that they had “never” held a proceeding using either videoconferencing (124 respondents) or teleconferencing (60 respondents), as applicable.

Table 4. Which of the following statements best describes your experience with the technology used for holding proceedings by videoconference during the pandemic?

Respondents were able to select multiple answers. Percentages are out of the number of respondents, not responses.

	N	Percentage
I initially had problems with the technology used for holding proceedings by videoconference during the pandemic, but as time went on I had few or no problems with the technology.	297	30%
I consistently had few or no problems with the technology used for holding proceedings by videoconference.	435	44%
I consistently had moderate problems with the technology used for holding proceedings by videoconference.	213	21%
I consistently had major problems with the technology used for holding proceedings by videoconference.	20	2%
Other	58	6%
Total Respondents	998	

Table 5. Which of the following statements best describes your experience with the technology used for holding proceedings by teleconference during the pandemic?

Respondents were able to select multiple answers. Percentages are out of the number of respondents, not responses.

	N	Percentage
I initially had problems with the technology used for holding proceedings by teleconference during the pandemic, but as time went on I had few or no problems with the technology.	106	11%
I consistently had few or no problems with the technology used for holding proceedings by teleconference.	704	74%
I consistently had moderate problems with the technology used for holding proceedings by teleconference.	100	10%
I consistently had major problems with the technology used for holding proceedings by teleconference.	7	1%
Other	36	4%
Total Respondents	947	

Respondents also had the opportunity to select “Other” and write in a response to the questions in Tables 4 and 5. Sixty-five respondents chose to write in an “Other” response to the videoconferencing question. Three common themes emerged from these responses: that problems were platform-specific (mentioned twenty-four times, or in 37% of responses); that problems tended to originate outside rather than inside the courthouse (mentioned ten times; 15% of responses); and that there were particular problems arising from connections to jails (mentioned fifteen times; 23%).¹⁰ In contrast, “Other” responses to the teleconferencing question—of which there were thirty-six—tended to indicate either no or few problems (mentioned in ten of the comments, or 28%), rare use or not applicable (also mentioned in ten comments, or 28%), or a belief that videoconferencing was a superior option to teleconferencing (nine mentions; 25%).

¹⁰ Here and for all discussion of write-in comments, a single comment could, and often did, reflect more than one theme, so there can be more “mentions” than comments.

Change in View About Virtual Technology from Before to During the Pandemic

We asked respondents whether their views about the use of virtual technology were more favorable, less favorable, or unchanged from before to during the pandemic. Given the findings reported above, it is not surprising that 79% of respondents said that their views about using virtual technology for court proceedings were “more favorable” than they had been prior to the pandemic. Only 6% said their views were “less favorable” (Table 6).

Importantly, this question asks about *virtual technology*, combining both videoconferencing and teleconferencing. When faced with this question, respondents may have been thinking about their views about both kinds of technology or the one they used most often. Thus, the responses to this broader question about virtual technology cannot be neatly mapped onto questions that ask about the two technologies separately. Any comparison between these results and technology-specific questions should be interpreted with caution.

Table 6. Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

	N	Percentage
My views about the use of virtual technology to hold court proceedings are <i>more</i> favorable than they were prior to the pandemic.	735	79%
My views about the use of virtual technology to hold court proceedings have <i>not changed</i> since the onset of the pandemic.	143	15%
My views about the use of virtual technology to hold court proceedings are <i>less</i> favorable than they were prior to the pandemic.	55	6%
Total	933	100%

When asked if they would like to explain their answer, 171 respondents chose to do so. Of these, 71 (42%) expressed favorable views about the use of videoconferencing for proceedings; 50 (29%) expressed favorable views about the use of videoconferencing but caveated those views by indicating that use would not be appropriate in all circumstances; and 45 (26%) expressed unfavorable or conflicted views about the use of videoconferencing (e.g., “in criminal proceedings my view is less favorable; in civil proceedings my views have no[t] changed.”).

Change in View About Virtual Technology from Before to During the Pandemic by Positive or Negative Experience Holding Virtual Proceedings

Next, we explored how respondents' change in view about the use of virtual technology for court proceedings (Table 6) is related to positive or negative experiences holding proceedings by videoconference (Table 2) and by teleconference (Table 3). We found that respondents who said that their views about using videoconferencing to hold court proceedings were "more favorable" now than prior to the pandemic were most likely to report "mostly positive" experiences with the technology. The majority of respondents who said that their views about using videoconferencing were "unchanged" reported a mix of positive and negative experiences, and the majority of respondents who said that their views about using videoconferencing were "less favorable" reported having "mostly negative" experiences. Thus, for videoconferencing, we see a perhaps unsurprising relationship between experience with the technology and change of views.

The picture for teleconferencing is less clear. The majority of respondents who said that their views about using teleconferencing to hold court proceedings was "more favorable" now than prior to the pandemic reported "mostly positive" experience with the technology. However, most respondents who said that their views about using teleconferencing were "unchanged" also reported "mostly positive" experiences, and most respondents who said their views about using teleconferencing were "less favorable" reported a mix of experiences. The greater use of teleconferencing prior to the pandemic (*see* Graph 1, *supra* p. 4) may have led some judges to have higher expectations for this more familiar technology, such that even a mixed experience was discouraging.¹¹

Change in View About Virtual Technology from Before to During the Pandemic by Degree of Reported Problems with Virtual Technology

We also considered whether respondents' change in view of virtual technology (Table 6) was influenced by the degree of difficulty they had with either videoconferencing (Table 4) or teleconferencing (Table 5). For videoconferencing, we found that most respondents who said that their views were "more favorable" now than prior to the pandemic reported that they "consistently had few or no problems with the technology." Most respondents who said that their views about using videoconferencing were "unchanged" reported consistent, moderate problems with the technology, and most respondents who said that their views about using videoconferencing were "less favorable" also reported consistent, moderate problems with the technology.

For teleconferencing, again, the pattern indicates that respondents had less tolerance for failures. Most respondents who said that their views were "more favorable" reported consistently having "few or no problems" with the technology. However, most respondents who said that their views about using teleconferencing were "unchanged" also reported consistently having "few or no problems with the technology." Respondents who said their views about using teleconferencing were "less favorable" were almost evenly split between reporting consistently

11. Full tables for the analysis discussed on pages 10 and 11 are on file with the authors.

having “few or no problems with the technology” and “moderate problems with the technology,” with few respondents in this group picking any other option. As discussed above, consistent performance with few or no problems may not have changed views about teleconferencing as much as it changed views about videoconferencing because respondents reported that they already had significant experience with teleconferencing prior to the pandemic, and thus may have held higher expectations for it.

Use of Virtual Technology for Civil and Criminal Proceedings

Survey questions we have discussed to this point did not distinguish between civil and criminal proceedings when asking about the use of virtual technology. The following questions probe potential differences in the use of virtual technology for civil versus criminal proceedings. For the following questions, the phrase “virtual technology” was used, and videoconferencing or teleconferencing were not specified.

The survey asked respondents their overall view of the use of virtual technology for civil court proceedings, outside the context of a pandemic or other emergency. Respondents were asked to select as many answers as applied. Most respondents (71%) were “generally in favor of individual judge discretion about when to use it,” and only a third (32%) indicated they were “generally in favor of judges using virtual technology subject to applicable laws and policies,” perhaps as an acknowledgement that cases present situations that the presiding judge is best suited to evaluate. The next most selected option, endorsed by just under half the respondents (44%), was that they “believe some civil proceedings are conducive to being held using virtual technology” while others “should always be in person.” Again, this option may indicate that many respondents felt no one rule or standard regarding virtual technology should dictate all behavior. Only 3% of the respondents indicated they were generally opposed to using virtual technology for civil proceedings (Table 7).

Table 7. Use of Virtual Technology for Civil Proceedings

Please indicate your overall view about using virtual technology for civil court proceedings, outside of the circumstances of a pandemic or other emergency.

Respondents were able to select multiple answers. Percentages are out of the number of respondents, not responses.

	N	Percentage
I am generally in favor of individual judge discretion about when to use virtual technology for civil proceedings.	663	71%
I am generally in favor of judges using virtual technology for civil proceedings, subject to applicable laws and policies.	305	32%
I believe some civil proceedings are conducive to being held using virtual technology, while others should always be held in person.	415	44%
I am opposed to judges using virtual technology for any civil proceedings, except in rare circumstances.	26	3%
Total Respondents	940	

While judge discretion in the use of virtual technology was the most common answer for civil proceedings, respondents were more cautious about the use of virtual technology for criminal proceedings. In the latter case, the most common answer (56%) was that “some criminal proceedings are conducive to being held using virtual technology, while others should always be in person.” This selection may be due to respondents’ feelings that some specific criminal proceedings, identified in Tables 10 and 12 below, ought typically to be held in person. Only a third of respondents (33%) indicated they were “generally in favor of individual judge discretion,” and about a quarter (27%) indicated they were “generally in favor of judges using virtual technology for criminal proceedings, subject to applicable laws and policies.” The lower endorsement for these options concerning criminal proceedings as compared to civil proceedings may be another acknowledgement of the fundamental differences between the two kinds of proceedings. Nearly a fifth of respondents (19%) said they were opposed to using virtual technology for criminal proceedings (Table 8). It is only through specific provisions of the CARES Act, of course, that some criminal proceedings may currently be conducted virtually, and it remains to be seen which of these allowances might be made permanent. A few respondents raised this issue in their answers to a later question, *see infra* p. 42.

Table 8. Use of Virtual Technology for Criminal Proceedings

Please indicate your overall view about using virtual technology for criminal court proceedings, outside of the circumstances of a pandemic or other emergency.

Respondents were able to select multiple answers. Percentages are out of the number of respondents, not responses.

	N	Percentage
I am generally in favor of individual judge discretion about when to use virtual technology for criminal proceedings.	308	33%
I am generally in favor of judges using virtual technology for criminal proceedings, subject to applicable laws and policies.	254	27%
I believe some criminal proceedings are conducive to being held using virtual technology, while others should always be held in person.	516	56%
I am opposed to judges using virtual technology for any criminal proceedings, except in rare circumstances.	178	19%
Total Respondents	926	

Use of Virtual Technology for Civil and Criminal Proceedings by Positive or Negative Experience Holding Virtual Proceedings

Next, we explored whether respondents’ opinions about the appropriate use of virtual technology for civil (Table 7) and criminal (Table 8) court proceedings varied as a function of their overall positive or negative experiences using videoconferencing (Table 2) and teleconferencing (Table 3) to hold court proceedings during the pandemic. As above, we found that whether the proceeding was civil or criminal in nature carried primary importance.

Civil Proceedings

For civil proceedings, most respondents, regardless of their experience with the technology, indicated that they favored “individual judge discretion” in using videoconferencing or teleconferencing to hold court proceedings outside the context of the pandemic.

For videoconferencing, the second most common answer for civil proceedings was influenced by reported experience. For those who had “mostly positive” experiences with videoconferencing, the second most common answer was that they were “generally in favor of judges using virtual technologies for civil proceedings,” but for those who had a mix of positive and

negative experiences or “mostly negative” experiences, it was that they believed “some civil proceedings are conducive to being held using virtual technology, while others are not.”

For teleconferencing, the second most common answer for civil proceedings did not vary by group. All experience groups said they believed “some civil proceedings are conducive to being held using virtual technology, while others are not.”

For both videoconferencing and teleconferencing, those who said they had “mostly negative” experiences with the technology were the most likely to say that they were “opposed to judges using virtual technology, for any civil proceeding, except in rare circumstances,” but this was a small minority.

These results are perhaps not surprising: respondents generally believe that individual judges are in the best position to decide whether to use virtual technology for civil proceedings. Judges trust other judges to make sound decisions for their own cases. However, respondents’ experiences with the technology do impact their views, suggesting that a continued effort on the part of the judiciary to improve and support virtual technology platforms will be key to their effective use moving forward.¹²

Criminal Proceedings

For criminal proceedings, respondents’ answers concerning the appropriate use of videoconferencing or teleconferencing reveal a difference from views on civil proceedings, as well as the influence of respondents’ personal experience with the technology.

The majority of respondents who reported having either “mostly positive” or a mix of positive and negative experiences with using either videoconferencing or teleconferencing said that “some criminal proceedings are conducive to being held using virtual technology, while others should always be in person.” The majority of respondents who reported having “mostly negative” experiences with either videoconferencing or teleconferencing were most likely to say that they were “opposed to judges using virtual technology for any criminal proceeding.”

Overall, this pattern of responses shows more caution about using virtual technology—regardless of the kind of virtual technology—for criminal proceedings than civil proceedings, although there is some mediating impact of an individual respondent’s experience with the use of virtual technology.

For criminal proceedings, unlike civil proceedings, improving the reliability of the technology may not lead to wider use. Criminal proceedings are fundamentally different from civil proceedings, and the responses we received suggest that even improved technology would not be adequate for some kinds of criminal proceedings.

Use of Virtual Technology for Civil and Criminal Proceedings by Degree of Reported Problems with Virtual Technology Itself

We also examined respondents’ views on the ongoing use of virtual technology for civil (Table 7) and criminal (Table 8) proceedings in light of the degree of their reported problems with the videoconferencing (Table 4) and teleconferencing (Table 5) technology itself. We found that

12. Full tables for analysis discussed on pages 14 through 16 on file with the authors.

respondents' beliefs about the appropriateness of using virtual technology to hold court proceedings were related to their reported experiences with the performance of that technology, but, as with the results above, the civil or criminal nature of the court proceeding was more determinative.

Civil Proceedings

For civil proceedings, the most common answer for nearly all respondents, regardless of their degree of reported problems with the technology, was that they were “generally in favor of individual judge discretion” for both videoconferencing and teleconferencing. The second most common response for most respondents was “some civil proceedings are conducive to being held using virtual technology, while others should always be held in person.” This was again true for both videoconferencing and teleconferencing.

The only exception was those respondents who reported experiencing moderate problems with the teleconferencing technology used to hold court proceedings. For those respondents, judge discretion was the second most common answer and “some civil proceedings are conducive” was the most common answer.

While some variation by experience was evident, overall, regardless of the issues they may have had with videoconferencing or teleconferencing, the majority of respondents support allowing judges to use virtual technology as an effective tool in civil proceedings.

As discussed in the previous section, when proceedings are civil in nature, respondents generally defer to judge discretion in deciding when the use of virtual technology is appropriate in their cases. Those respondents who experienced the most trouble, though, were less supportive of the use of virtual technology, again suggesting the need for continued improvements and support for virtual technology platforms if they are to be effectively employed in civil proceedings.

Criminal Proceedings

As seen previously, respondents were generally more cautious regarding the use of virtual technology in criminal proceedings compared to civil proceedings. When we examine responses regarding the use of virtual technology by degree of reported problems, for criminal proceedings the most common response, regardless of degree of reported problems, was that “some criminal proceedings are conducive to being held using virtual technology, while others should always be in person.”

The exception was that those respondents who reported having “major problems” with either videoconferencing or teleconferencing technology were most likely to say that they are “opposed to judges using virtual technology for any criminal proceeding, except in rare circumstances.” The second most common response varied more for criminal proceedings than civil proceedings.

Responses to many questions in the survey highlight the differences between civil and criminal proceedings, and these questions are no exception. Even respondents who reported “few or no” problems with the virtual technology they were using were not willing to endorse judge discretion for criminal proceedings as they had for civil proceedings. Respondents' answers

indicate a belief that criminal proceedings more often require the greater seriousness that is inherent to in-person proceedings and may be more difficult to achieve virtually.

Appropriate Use of Virtual Technology in Certain Civil and Criminal Proceedings

Most respondents reported they felt more favorable during than before the pandemic using virtual technology for court proceedings. However, as the previous tables show, this varies both by whether the proceedings are civil or criminal in nature and whether the virtual technology in question is videoconferencing or teleconferencing.

Respondents were asked about the frequency with which they believe it will be appropriate, postpandemic, to hold certain types of civil and criminal proceedings via videoconference (Tables 9 and 10) and teleconference (Tables 11 and 12). They also indicated whether they believed party consent should be required for such use.

Views on Using Videoconferencing for Specific Civil Proceedings

When considering civil proceedings, a majority of respondents said it was “always or almost always” appropriate to conduct Rule 16 conferences (55%) and status conferences (55%) by videoconference and that party consent should not be required. A majority of respondents also said that it is “sometimes” appropriate to use videoconferencing for pretrial hearings with legal arguments only (52%), and, again, a majority did not believe consent should be required. Conversely, most respondents believed that jury selection (78%) and jury trials (75%) should never be held by videoconference. There was less agreement about the remainder of the proceedings the survey listed (Table 9). In general, respondents were more cautious about holding proceedings by videoconference the closer the proceedings would come to trial, and consent followed that pattern as well.

Respondents also appeared to weigh factors in addition to the stage of litigation. For instance, 80% of respondents said that it was either “always or almost always” or “sometimes” appropriate to hold pretrial hearings with just legal arguments by videoconference, and 75% of respondents believed that consent should not be required to do so. Contrast that with the fact that only 39% of respondents believed that it was either “always or almost always” or “sometimes” appropriate to hold pretrial hearings with evidence over videoconference, and 51% of respondents reported that consent should be required to do so. Thus, stage of the proceedings, though important, was not the only consideration.

Table 9. Views on Using Videoconferencing for Specific Civil Proceedings

Percentages are by row for each of the two sections.

	When is it appropriate to hold this type of proceeding using videoconferencing?				Should consent of one or more parties be required to hold this type of proceeding using videoconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using VC)	Yes	No
Initial Rule 16 scheduling or case management conference	546 55%	319 32%	83 8%	46 5%	22 2%	132 14%	794 84%
Status conference	550 55%	346 35%	76 8%	31 3%	19 2%	111 12%	824 86%
Final pretrial conference	164 17%	348 35%	313 32%	166 17%	110 12%	255 27%	575 61%
Settlement conference	152 16%	464 48%	249 26%	110 11%	66 7%	419 45%	449 48%
Mediation	144 15%	453 47%	259 27%	110 11%	67 7%	434 47%	418 46%
Pretrial hearing with legal arguments only	276 28%	520 52%	148 15%	51 5%	30 3%	210 22%	703 75%
Pretrial hearing with evidence presented	65 7%	320 32%	424 43%	186 19%	117 12%	475 51%	348 37%
Jury selection	14 1%	46 5%	158 16%	763 78%	545 60%	277 31%	85 9%

Witness testimony at trial	20 2%	254 26%	443 45%	268 27%	175 19%	549 59%	204 22%
Jury trial	14 1%	46 5%	182 18%	744 75%	523 57%	307 34%	82 9%
Bench trial	44 4%	333 34%	393 40%	222 22%	159 17%	586 62%	193 21%
Other, please specify:	20 36%	7 13%	5 9%	23 42%	20 23%	31 36%	35 41%

Three hundred fifteen respondents chose to write in an explanation of why, in their experience, it was or wasn't appropriate to use videoconferencing for particular types of civil proceedings. Of these, seventy-three comments (23%) indicated that jury trials should be held in person. An equal number (seventy-three, 23%) noted that testimony or credibility is hard to assess over videoconference, and forty-one (13%) indicated it is hard to hold evidentiary hearings over videoconference. Other comments noted positive aspects: thirty-nine comments (12%) indicated videoconferencing reduced the need for travel, twenty-five comments (8%) indicated approval of holding mediation or settlement over videoconference, and an additional twenty-three comments (7%) felt it acceptable to hold most or all civil proceedings over videoconference.

Generally, the comments provide the same picture as the fixed responses—i.e., that respondents were more comfortable conducting preliminary civil matters by videoconference than matters involving testimony or juries. One respondent captured this majority perspective by writing, “Pretrial civil matters can be effectively and efficiently handled with video or teleconferencing, saving time and money for the litigants. To preserve the integrity of the trial process, maintain a clear record, and sustain the attention of the jury, a jury trial should be in person if there are no health and safety concerns due to a pandemic.”

Views on Using Videoconferencing for Specific Criminal Proceedings

In contrast to civil proceedings, when asked about using videoconferencing for criminal proceedings, respondents had more reservations. None of the criminal proceedings the survey listed were endorsed by a majority of respondents as “always or almost always” appropriate for videoconference, although across all proceedings the most common response was “sometimes,” and no proceeding was selected by all respondents as “never” appropriate. This suggests that while respondents were more cautious about using videoconferencing for criminal proceedings than civil proceedings, it was far from a total rejection.

Respondents indicated relatively more comfort with use of videoconferencing for proceedings earlier in the criminal process, as well as for misdemeanor pleas (62%). Two-thirds to three-quarters selected either “always or almost always” or “sometimes” for the use of videoconferencing for initial appearances (74%), arraignments (75%), detention hearings (60%), initial appearance for revocation of pretrial release (70%), initial appearance on revocation of probation (69%), and pretrial hearings with only legal arguments (70%).

Conversely, most respondents indicated that criminal jury selection (82%) and jury trials (84%) should “never” be held by videoconferencing. Respondents also indicated that felony pleas (53%), change of plea hearings (53%), pretrial hearings with evidence (68%), witness testimony at trial (87%), bench trials (74%), witness testimony at sentencing (64%), and misdemeanor (54%) and felony sentencing (70%) were generally not appropriate for videoconference, with a majority of respondents selecting one of the two lowest levels of endorsement, either “seldom” or “never.” Overall, it seems that respondents were less likely to endorse videoconferencing for proceedings the closer they were to trial, regardless of the purpose of the proceeding.

The majority of respondents believed that consent should be required to hold any of these criminal proceedings by videoconference, with the exception of the two proceedings that respondents overwhelmingly indicated should “never” be held by videoconference (jury selection and jury trial) and for which they therefore found consent inapplicable (Table 10).

Table 10. Views on Using Videoconferencing for Specific Criminal Proceedings

Percentages are by row for each of the two sections.

	When is it appropriate to hold this type of proceeding using videoconferencing?				Should consent of one or more parties be required to hold this type of proceeding using videoconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using VC)	Yes	No
Initial appearance	333 34%	398 40%	195 20%	59 6%	51 6%	570 61%	307 33%
Detention hearing	168 17%	422 43%	275 28%	118 12%	92 10%	661 72%	171 19%
Arraignment	315 32%	416 43%	173 18%	75 8%	64 7%	590 64%	263 29%

Initial appearance on revocation of pretrial release	274 28%	424 43%	201 21%	83 9%	65 7%	582 63%	275 30%
Hearing on revocation of pretrial release	126 13%	353 36%	315 32%	195 20%	155 17%	653 71%	117 13%
Initial appearance on revocation of probation or supervised release	279 28%	402 41%	221 22%	86 9%	68 7%	592 64%	267 29%
Hearing on revocation of probation or supervised release	112 11%	341 35%	308 31%	226 23%	176 19%	649 70%	102 11%
Misdemeanor plea	179 18%	428 44%	228 24%	135 14%	118 13%	667 73%	132 14%
Felony plea	113 12%	350 36%	266 27%	249 26%	204 22%	648 70%	71 8%
Change of plea hearing	104 11%	360 37%	280 29%	231 24%	189 20%	661 72%	73 8%
Pretrial hearing with legal arguments only	198 20%	488 50%	218 22%	78 8%	65 7%	520 56%	347 37%
Pretrial hearing with evidence presented	53 5%	257 26%	376 38%	295 30%	225 24%	602 65%	101 11%
Jury selection	20 2%	46 5%	114 12%	798 82%	607 67%	258 29%	37 4%
Witness testimony at trial	19 2%	147 15%	385 39%	430 44%	315 35%	499 55%	99 11%
Bench trial	32 3%	224 23%	342 35%	383 39%	307 34%	554 60%	55 6%
Jury trial	15 2%	32 3%	110 11%	822 84%	624 69%	241 27%	33 4%

Witness testimony at sentencing	49 5%	307 32%	388 40%	232 24%	184 20%	576 63%	161 17%
Misdemeanor sentencing	92 10%	355 37%	305 32%	212 22%	183 20%	630 69%	97 11%
Felony sentencing	54 6%	232 24%	303 31%	383 39%	311 34%	555 61%	48 5%

Two hundred sixteen respondents chose to write in an explanation of why, in their experience, it was or was not appropriate to use videoconferencing for the defendant’s appearance for particular types of proceedings. Of these, forty-three comments (20%) emphasized the need for the defendant’s consent. Forty-three comments (20%) also stated a belief that the preservation of the defendant’s rights required in-person proceedings.¹³

Respondents were also able to write in a response regarding their beliefs about the appropriateness of using videoconferencing for the appearance of others besides the defendant, such as probation officers, victims, or family members, for particular types of criminal proceedings, and 449 did so. Almost a third of the comments (139; 30%) endorsed family members appearing via videoconference; a little under a third (123; 27%) supported probation officers appearing via videoconference; and over a quarter (117; 26%) supported victims appearing via videoconference. Additional comments also endorsed appearance by the public and witnesses.

In contrast, forty-six comments (10%) indicated that all participants should appear in person; forty-five (10%) stated that testimony should be given in person; nineteen (4%) supported probation officers appearing in person; and thirteen (3%) stated the defendant should appear in person. Respondents who favored appearance via videoconference gave reasons such as convenience, cost savings, security, and access to the courts. Those who expressed hesitation gave reasons such as technology glitches, propriety, and risk of surreptitious recording.

Views on Using Teleconferencing for Specific Civil Proceedings

Tables 11 and 12 present respondents’ views on holding certain civil and criminal proceedings via teleconference. Consistent with other teleconferencing results discussed in this report, respondents were overall less enthusiastic about holding court proceedings over teleconference than videoconference, although this was more pronounced for criminal than civil proceedings. Even for civil proceedings, no proceeding type was endorsed by the majority of respondents as “always or almost always” appropriate for teleconferencing. The majority of respondents did

13. As noted previously, any write-in comment could reflect one or more themes. Thus, these two sets of forty-three comments do not represent eighty-six unique respondents.

choose one of the two highest levels of endorsement, “always or almost always” or “sometimes,” for Rule 16 (79%) and status conferences (86%).

The majority of respondents indicated that pretrial hearings with evidence (60%), jury selection (92%), witness testimony at trial (68%), jury trials (93%), and bench trials (74%) should “never” be held by teleconference. Most respondents also selected one of the two lowest levels of endorsement, “seldom” or “never,” for holding pretrial conferences (63%), settlement conferences (70%), and mediations (72%) by teleconference. The majority of respondents believed that consent was inapplicable for those proceedings they indicated should “never” happen by teleconference. For other proceedings, the general consensus was that consent was not necessary (Table 11).

Table 11. Views on Using Teleconferencing for Specific Civil Proceedings

Percentages are by row for each of the two sections.

	When is it appropriate to hold this type of proceeding using teleconferencing?				Should consent of one or more parties be required to hold this type of proceeding using teleconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using TC)	Yes	No
Initial Rule 16 scheduling or case management conference	386 44%	309 35%	123 14%	69 8%	53 6%	125 15%	655 79%
Status conference	413 46%	355 40%	91 10%	38 4%	33 4%	123 15%	689 82%
Final pretrial conference	92 10%	238 27%	263 30%	289 33%	220 27%	192 23%	414 50%
Settlement conference	45 5%	210 24%	310 35%	310 35%	240 29%	291 35%	291 35%
Mediation	40 5%	206 24%	296 34%	327 38%	256 31%	291 36%	270 33%

Pretrial hearing with legal arguments only	113 13%	332 37%	282 32%	161 18%	125 15%	218 26%	483 58%
Pretrial hearing with evidence presented	26 3%	105 12%	227 26%	527 60%	410 50%	247 30%	163 20%
Jury selection	13 1%	19 2%	35 4%	816 92%	608 76%	141 18%	56 7%
Witness testimony at trial	12 1%	64 7%	209 24%	599 68%	449 56%	260 32%	98 12%
Jury trial	10 1%	17 2%	36 4%	817 93%	612 76%	143 18%	50 6%
Bench trial	16 2%	64 7%	153 17%	648 74%	493 61%	243 30%	74 9%

Similar to the open-ended question described above, respondents were given an opportunity to explain their beliefs about the appropriateness of using teleconferencing for particular types of civil proceedings. Eighty-nine respondents wrote in replies. Of these, thirty (34%) described problems with teleconference use, and an additional twenty (22%) indicated it should not be used. Fourteen (16%) indicated teleconferencing can be effective but videoconferencing or in-person appearance is preferable. In contrast, thirty-eight comments (43%) gave reasons teleconferencing can be appropriate for certain routine proceedings, with most referencing routine or basic events only.

Views on Using Teleconferencing for Specific Criminal Proceedings

Support was even lower for holding criminal proceedings by teleconference. The majority of respondents chose either “seldom” or “never” for initial appearances (76%) and pretrial hearings with legal arguments only (74%). For every other type of criminal proceeding listed, a majority of respondents said they should “never” be held by teleconference. Contrast this with views about the use of teleconferencing for civil proceedings, in which only pretrial hearings with evidence, jury selection, witness testimony at trial, jury trials, and bench trials were thought by the majority to “never” be appropriately conducted by teleconference. Most respondents indicated that the question of consent was inapplicable for all the criminal proceedings they said should “never” be conducted over teleconference, with the next most common answer being that consent should be required (Table 12).

Table 12. Views on Using Teleconferencing for Specific Criminal Proceedings

Percentages are by row for each of the two sections.

	When is it appropriate to hold this type of proceeding using teleconferencing?				Should consent of one or more parties be required to hold this type of proceeding using teleconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using TC)	Yes	No
Initial appearance	68 8%	136 16%	236 27%	425 49%	360 45%	302 38%	142 18%
Detention hearing	40 5%	102 12%	207 24%	514 60%	429 53%	296 37%	77 10%
Arraignment	61 7%	129 15%	229 27%	443 51%	373 47%	319 40%	110 14%
Initial appearance on revocation of pretrial release	52 6%	120 14%	238 28%	449 52%	374 47%	307 38%	120 15%
Hearing on revocation of pretrial release	27 3%	76 9%	182 21%	586 67%	477 59%	284 35%	43 5%
Initial appearance on revocation of probation or supervised release	50 6%	127 15%	238 27%	452 52%	377 47%	304 38%	122 15%
Hearing on revocation of probation or supervised release	27 3%	68 8%	172 20%	604 69%	492 61%	271 34%	40 5%
Misdemeanor plea	38 4%	96 11%	231 27%	496 58%	417 52%	314 39%	68 9%
Felony plea	26 3%	66 8%	136 16%	636 74%	522 65%	240 30%	37 5%

Change of plea hearing	25 3%	72 8%	144 17%	624 72%	512 64%	251 31%	39 5%
Pretrial hearing with legal arguments only	51 6%	179 21%	258 30%	379 44%	310 38%	310 38%	195 24%
Pretrial hearing with evidence presented	13 2%	60 7%	151 18%	639 74%	520 65%	239 30%	45 6%
Jury selection	5 1%	9 1%	20 2%	827 96%	658 83%	120 15%	18 2%
Witness testimony at trial	9 1%	35 4%	187 22%	635 73%	512 64%	238 30%	50 6%
Bench trial	7 1%	24 3%	95 11%	729 85%	590 74%	185 23%	26 3%
Jury trial	4 0%	5 1%	21 2%	831 97%	658 83%	110 14%	23 3%
Witness testimony at sentencing	12 1%	77 9%	243 28%	529 61%	431 54%	282 35%	86 11%
Misdemeanor sentencing	15 2%	65 8%	215 25%	559 65%	469 59%	279 35%	50 6%
Felony sentencing	12 1%	37 4%	107 13%	697 82%	563 71%	204 26%	29 4%

If they chose, respondents were able to explain their views on the appropriateness of using teleconferencing for particular types of criminal proceedings. One hundred two respondents commented. Of these, over half (fifty-six respondents, 55%) indicated teleconferencing is not appropriate for a defendant's appearance, and an additional nine (9%) indicated such use would be unconstitutional or not allowed. However, thirty respondents (29%) did indicate they might use teleconferencing in an emergency situation, or, as one respondent wrote, "if parties consent and no other option is available."

Mirroring a question reported above, respondents were also able to write in a response regarding their beliefs about the appropriateness of using teleconferencing for the appearance of others besides the defendant, such as probation officers, victims, or family members for particular types of criminal proceedings. Of the 225 comments that respondents provided,

almost a third (67 respondents, 30%) indicated it was never or almost never appropriate for participants to join by phone, and approximately one sixth (36 respondents; 16%) said it was only appropriate if those joining would not be speaking. In contrast, approximately half (110 respondents, 49%) of the comments indicated appearance via teleconference is appropriate for some participants (e.g., one respondent wrote, “It is appropriate to use teleconferencing for the public, victims and family members to listen in on court proceedings”). Forty-three comments (19%) specifically supported probation and pretrial officers appearing via teleconference.

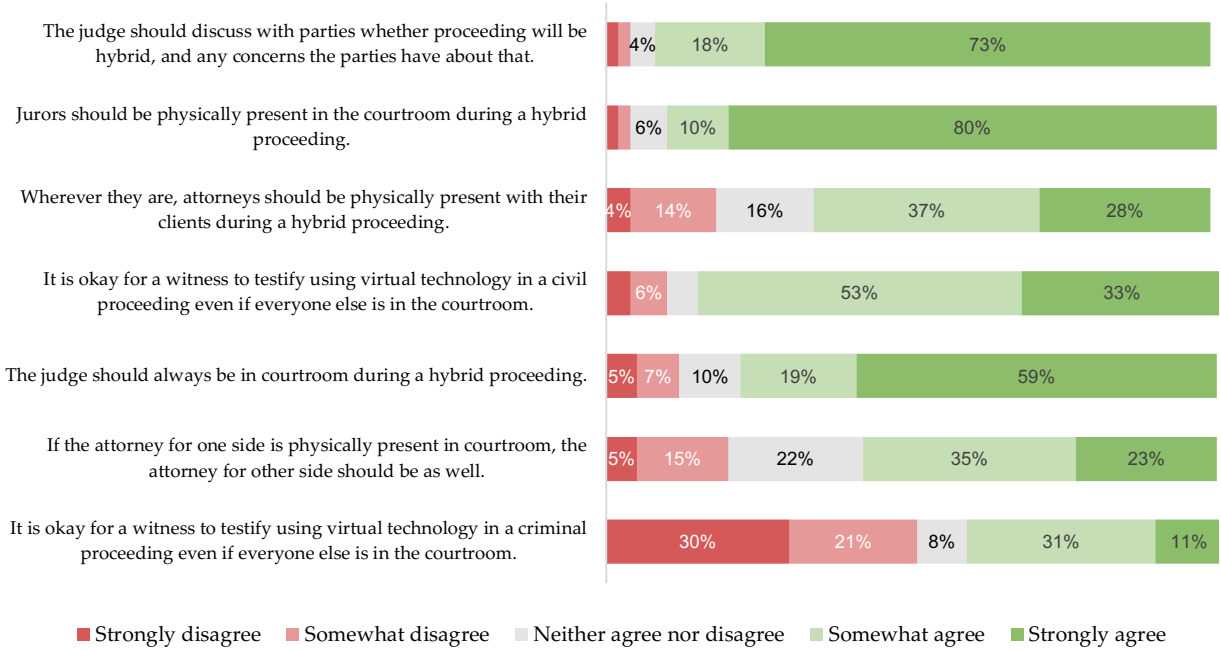
Views on Hybrid Proceedings

As a final way to examine respondents’ views on appropriate use of virtual technology post-pandemic, we presented a list of statements about hybrid proceedings (i.e., those that are held with some participants physically present in the courtroom and others participating using virtual technology). We asked respondents to indicate their disagreement or agreement with each statement. Note that these questions did not distinguish between videoconferencing and teleconferencing.

As Graph 2 shows, the responses to statements about hybrid proceedings suggested respondents felt it is important for the judge and jury to be physically present during hybrid proceedings. The majority of respondents “strongly agree” that judges “should always be in the courtroom during a hybrid proceeding” (59%) and that judges should “discuss with the parties in advance whether a proceeding will be hybrid, and any concerns” (73%). The majority of respondents (80%) also “strongly agree” that “jurors should be physically present in the courtroom during hybrid proceedings.” Witnesses, though, were afforded more latitude. A majority of respondents (53%) “somewhat agree,” and a further 33% “strongly agree,” that it is acceptable for witnesses in a civil proceeding to testify remotely, even if everyone else was in the courtroom. That contrasts with the responses regarding a witness in a criminal proceeding: 30% of respondents said that they “strongly disagree” that it was acceptable for a witness in a criminal proceeding to testify virtually if everyone else was in the courtroom. However, a nearly equal number, 31%, said they “somewhat agree” it would be acceptable.

Overall, these responses suggest that respondents felt it was important for judges and jurors to be physically present, while there is more latitude for allowing remote appearances from witnesses. Respondents showed somewhat less agreement about the importance of the attorneys’ physical presence, although those questions were not broken down by proceeding type—civil versus criminal—so the dispersion of responses could be due to different respondents considering different types of proceedings.

Graph 2. Opinions on Hybrid Proceedings



Potential Benefits and Drawbacks of Using Virtual Technology for Court Proceedings

Even the most ardent supporters of virtual technology acknowledge that using the technology can make some things more difficult, while even its staunchest critics note that it can make some things easier. Several specific questions in the survey sought to determine what respondents found to be the biggest benefits and drawbacks of videoconferencing and teleconferencing. Respondents were provided with lists of potential benefits and drawbacks of using virtual technology for some court proceedings and were asked whether they agreed each item was a benefit or drawback and, for those for which they agreed, whether they were or were not a significant benefit or drawback.¹⁴

Potential Benefits of Using Virtual Technology for Court Proceedings

First, we collected respondents’ views about the benefits of videoconferencing, and then separately, teleconferencing. Respondents were shown a table with a list of statements about potential benefits of using either videoconferencing or teleconferencing, and they were asked to indicate whether the potential benefit was a significant one, a benefit but not a significant one, not a benefit, or that they had no opinion.

14. Some respondents raised concerns about the benefits and drawbacks questions in the open-ended comments. Specifically, some respondents indicated they disagreed with the premise of the questions as worded (as one pointed out: “If one doesn’t agree with the premise of the question (e.g., that public access is more restricted with videoconferencing as opposed to in person courtroom proceedings), should one check off “not a drawback” or “no opinion”?”). Others expressed difficulty answering because their answer was dependent on circumstances.

For only two of the potential benefits listed in the survey did the majority of respondents indicate that videoconferencing provided a significant benefit: the ability for participants to avoid potential health risks (61%) and the ability of remote witnesses to testify (57%) (Table 13). In contrast, the majority of respondents said videoconferencing did **not** provide a number of benefits listed: ease of evaluating defendant credibility (87%), ease of evaluating witness credibility (86%), ease of engaging the defendant in dialogue (79%), having a clearer view of the parties to a proceeding (76%), gaining a clearer view of the defendant (75%), and putting litigants more at ease (53%).

For the other potential benefits listed, most were seen as a benefit, either “a significant one” or “a benefit, but not a significant one.” That is, when responses from the first two columns (i.e., “a benefit and a significant one” and “a benefit, but not a significant one”) are added together, half to more than three-quarters of respondents found that videoconferencing provided the following benefits: lessened security risk for transporting incarcerated defendants (88%); reduced need for USMS to provide transportation and security (88%); opportunity for family members to attend (82%); saving noncourt participants’ money (78%); saving noncourt participants’ time (76%); parties making fewer rescheduling requests (73%); expanded public access (70%); more efficient case management (64%); saving the court money (64%); saving the court time (58%); reduced need for courthouse space (57%); and easier court participation for self-represented litigants (52%).

The overall pattern suggests that respondents believed videoconferencing could ease the burden and cost of coming to in-court proceedings for some stakeholders, such as the Marshal’s Service, remote witnesses, family members, and the general public. Further, videoconferencing was seen as a tool that can increase safety in some situations.

Table 13. Potential Benefits of Using Videoconferencing to Hold Court Proceedings

Percentages are by row.

	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
Parties make fewer requests for rescheduling proceedings.	246 24%	494 49%	168 17%	108 11%
Remote witnesses can testify more easily.	583 57%	300 30%	101 10%	32 3%
It is easier for the judge or jury to evaluate credibility of a witness.	24 2%	65 6%	868 86%	54 5%

It is easier for a judge or jury to evaluate the defendant's credibility in a criminal proceeding.	14 1%	52 5%	882 87%	63 6%
Litigants are more at ease.	58 6%	263 26%	529 53%	160 16%
Self-represented (pro se) litigants can more easily participate in court proceedings.	193 19%	335 33%	386 38%	99 10%
The judge has a clearer view of the defendant in a criminal proceeding.	48 5%	149 15%	763 75%	52 5%
The judge can more easily engage in dialogue with the defendant in a criminal proceeding using videoconferencing.	47 5%	118 12%	794 79%	50 5%
The judge has a clearer view of the parties and counsel in a civil or criminal proceeding.	53 5%	146 15%	767 76%	44 4%
There is a greater opportunity for family members or other support system to attend the proceeding.	354 35%	477 47%	132 13%	47 5%
The potential security risk from transporting incarcerated defendants is lowered.	422 42%	466 46%	80 8%	41 4%
There is a reduced need for USMS personnel for transport and security.	468 47%	410 41%	85 8%	41 4%
Case management is more efficient.	341 34%	302 30%	313 31%	50 5%
Inexperienced attorneys are more likely to have an opportunity to appear in court.	95 9%	277 27%	495 49%	141 14%

It reduces the need for space in the courthouse.	147 15%	427 42%	356 35%	80 8%
It provides an expanded opportunity for public access to proceedings.	298 30%	408 40%	239 24%	65 6%
Participants can avoid potential health risks.	614 61%	305 30%	62 6%	31 3%
It saves time for the court.	260 26%	326 32%	384 38%	37 4%
It saves time for noncourt participants.	388 38%	380 38%	165 16%	75 7%
It saves money for the court.	269 27%	369 37%	225 22%	145 14%
It saves money for noncourt participants.	413 41%	375 37%	106 11%	116 11%
It causes less stress overall for noncourt participants.	210 21%	328 33%	299 30%	169 17%

In response to an open-ended follow-up question about benefits and drawbacks of videoconferencing, 114 respondents provided comments. Of the comments that mentioned benefits of videoconferencing, eighteen (16%) mentioned cost, travel, or time savings; five (4%) indicated it increased access (e.g., for family or the public); and five (4%) reported it allowed new attorneys to participate. See page 35 for details about the comments that mentioned drawbacks.

Table 14 reports the responses regarding teleconferencing. As with videoconferencing, the majority of respondents (51%) indicated that avoiding potential health risks is a “significant” benefit of teleconferencing. Also similar to videoconferencing, the majority of respondents did **not** think the teleconferencing provides the following benefits: ease of evaluating witness credibility (89%); ease of evaluating defendant credibility (89%); ease of engaging the defendant in dialogue (84%); and putting litigants at ease (62%). One additional factor that the majority of

respondents (63%) indicated was not a benefit was the increased likelihood that inexperienced attorneys would have an opportunity to appear in court.

When responses for the first two columns are combined, the majority of respondents indicated the following benefits from teleconferencing (either a “significant benefit” or a “benefit, but not a significant one”): lessened security risk for transporting incarcerated defendants (70%); reduced need for USMS to provide transportation and security (70%); saving time for noncourt participants (64%); greater opportunity for family and support systems to attend proceedings (63%); saving money for noncourt participants (60%); ability for remote witnesses to testify (59%); and saving court time (51%). Respondents indicated that teleconferencing could reduce the burden of attending in-court proceedings for the Marshal’s Service, friends and family, and even witnesses. Thus, while teleconferencing was perceived as having fewer benefits than videoconferencing, the categories of benefits were similar.

Table 14. Potential Benefits of Using Teleconferencing to Hold Court Proceedings

Percentages are by row.

	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
Parties make fewer requests for rescheduling proceedings.	130 15%	294 34%	318 36%	134 15%
Remote witnesses can testify more easily.	201 23%	318 36%	273 31%	81 9%
It is easier for the judge or jury to evaluate credibility of a witness.	8 1%	28 3%	775 89%	58 7%
It is easier for a judge or jury to evaluate the defendant’s credibility in a criminal proceeding.	9 1%	23 3%	779 89%	62 7%
Litigants are more at ease.	18 2%	199 23%	537 62%	116 13%
Self-represented (pro se) litigants can more easily participate in court proceedings.	108 12%	311 36%	363 42%	91 10%

There is a greater opportunity for family members or other support system to attend the proceeding.	159 18%	388 44%	244 28%	82 9%
The judge can more easily engage in dialogue with the defendant in a criminal proceeding using videoconferencing.	18 2%	56 6%	733 84%	64 7%
The potential security risk from transporting incarcerated defendants is lowered.	205 24%	399 46%	188 22%	80 9%
There is a reduced need for USMS personnel for transport and security.	221 25%	396 45%	176 20%	78 9%
Case management is more efficient.	133 15%	248 29%	395 45%	94 11%
Inexperienced attorneys are more likely to have an opportunity to appear in court.	38 4%	158 18%	550 63%	124 14%
It reduces the need for space in the courthouse.	82 9%	290 33%	394 45%	104 12%
It provides an expanded opportunity for public access to proceedings.	126 15%	298 34%	337 39%	104 12%
Participants can avoid potential health risks.	445 51%	303 35%	63 7%	62 7%
It saves time for the court.	160 18%	284 33%	358 41%	69 8%
It saves time for noncourt participants.	220 25%	338 39%	216 25%	93 11%
It saves money for the court.	143 16%	266 31%	301 35%	159 18%
It saves money for noncourt participants.	211 24%	309 36%	190 22%	154 18%

In response to an open-ended follow-up question about benefits and drawbacks to teleconferencing, only fifty-five respondents provided comments. The majority of comments indicated that the question was not applicable, or the technology was not used in this way (thirty-three comments, 60%). Of the other comments, very few listed any benefits of teleconferencing. The most commonly mentioned benefit, appearing five times, was cost or time savings.

Potential Drawbacks of Using Virtual Technology for Court Proceedings

In a second set of questions using the same structure, respondents indicated whether they felt certain potential drawbacks of using videoconferencing were or were not significant. As with benefits, the responses regarding drawbacks of videoconferencing and teleconferencing largely paralleled each other.

The majority of respondents indicated that the following were each a “significant” drawback of videoconferencing: the difficulty of evaluating witness credibility (66%); distraction of jurors (66%); unseen influence on witnesses or jurors (57%); potential that proceedings could be recorded or photographed without court knowledge (57%); possibility that parties participating remotely may fail to appreciate the gravity of the proceeding (54%); difficulty engaging in dialogue with a defendant (53%); and inequality of access to technology across parties (52%) (Table 15).

When the first two columns (i.e., “a drawback and a significant one” and “a drawback, but not a significant one”) are combined, the majority of respondents considered each of the following to be a drawback of holding proceedings by videoconference: difficult for attorneys to provide effective representation (70%); technical problems (84%); parties not feeling they had their “day in court” (78%); more court staff time and skill needed (62%); difficult for self-represented litigants to participate in proceedings (53%); and more restricted public access (51%).

Overall, these drawbacks indicate that technical difficulties and disparity of access, as well as the impersonal nature of virtual proceedings, may lead to a perception that people are being denied dignified access to justice.

Conversely, most respondents indicated that the following were **not** drawbacks: increased rescheduling requests (67%); consumption of more time for noncourt participants (60%); more cost to the court (57%); more cost to noncourt participants (57%); and consumption of more court time (52%). Note, however, that comments indicated respondents sometimes chose “not a drawback” to indicate that they had not experienced that item, and not to suggest that item would not constitute a drawback were it to occur.

Table 15. Potential Drawbacks of Using Videoconferencing to Hold Court Proceedings*Percentages are by row.*

	Yes, a drawback, and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Parties make more requests for rescheduling proceedings.	53 5%	147 15%	674 67%	133 13%
A party who is not in a courtroom may fail to appreciate the gravity of the proceeding.	550 54%	319 32%	113 11%	30 3%
It is more difficult for an attorney to provide effective representation.	455 45%	257 25%	237 23%	62 6%
It is more difficult for a self-represented (pro se) litigant to participate in court proceedings.	280 28%	256 25%	395 39%	78 8%
It is more difficult for the judge or jury to evaluate credibility of a witness.	670 66%	172 17%	124 12%	45 4%
It is harder for the judge to engage in dialogue with a criminal defendant who is not present in the courtroom.	534 53%	215 21%	229 23%	32 3%
Access to sufficient hardware, software, bandwidth, etc. is not equal across all parties and attorneys.	530 52%	350 35%	83 8%	49 5%
Its use requires more court staff time and skill.	216 21%	417 41%	338 34%	37 4%
Technical problems distract from the substance of the proceeding.	400 40%	441 44%	153 15%	15 1%
Witnesses or jurors could be influenced by others without the court's knowledge.	577 57%	274 27%	76 8%	79 8%

Parties might not feel they had their “day in court.”	448 45%	334 33%	148 15%	77 8%
A judge could be more distracted outside a physical courtroom setting.	156 15%	314 31%	477 47%	58 6%
Jurors could be more distracted outside a physical courtroom setting.	661 66%	188 19%	72 7%	87 9%
Proceedings could be recorded, photographed, broadcast, or shared with others without the court’s knowledge.	574 57%	354 35%	42 4%	35 3%
Public access is more restricted.	200 20%	308 31%	436 43%	63 6%
It is more time consuming for the court.	162 16%	262 26%	526 52%	56 6%
It is more time consuming for noncourt participants.	85 8%	173 17%	604 60%	141 14%
It is more costly for the court.	63 6%	165 16%	569 57%	205 20%
It is more costly for noncourt participants.	56 6%	152 15%	570 57%	223 22%

In response to the earlier referenced open-ended question about any other videoconferencing benefits or drawbacks (*see* page 30), to which 114 respondents replied, the most commonly listed drawbacks were impact on courtroom decorum or the perception thereof (twenty-three comments, 20%); technological problems, including access to and aptitude with the technology (sixteen comments, 14%), and increased scheduling difficulty (fourteen comments, 12%). Respondents listed drawbacks relatively more often than benefits, although of course some comments included both.

For teleconferencing, as for videoconferencing, the majority of respondents said each of the following was a “significant” drawback: difficulty of evaluating witness credibility (82%); difficulty engaging in dialogue with a defendant (72%); distraction of jurors (71%); unseen influence on witnesses or jurors (64%); failure to appreciate the gravity of the proceeding (61%); and po-

tential that proceedings could be recorded or photographed without court knowledge (56%) (Table 16). In addition, the majority of respondents indicated that teleconferencing could make it more difficult for attorneys to provide effective assistance to their clients (58%) and could make parties feel they did not have their “day in court” (57%).

When the first two columns are combined, the majority of respondents considered each of the following to be a drawback of holding proceedings by teleconference (either a “significant drawback” or a “drawback, but not a significant one”): access to sufficient technology (67%); technical problems (62%); increased difficulty for self-represented litigants to participate in proceedings (57%); and possibility that the judge may be distracted (50%). Echoing the findings for videoconferencing, the factors selected as drawbacks of teleconferencing point to the potential that this technology will decrease access to justice for some and decrease the dignity of justice for some of the stakeholders involved.

Just as for videoconferencing, items identified by the majority of respondents as **not** being drawbacks of teleconferencing were: more cost to the court (65%); increased rescheduling requests (64%); consumption of more time for noncourt participants (64%); consumption of more court time (63%); and more cost to noncourt participants (63%). Unlike with videoconferencing, the majority of respondents (52%) did not consider the use of court staff time and skill a drawback. As noted above, respondents sometimes indicated something was not a drawback because they had not experienced it, not because it would not constitute a drawback if it occurred.

Table 16. Potential Drawbacks of Using Teleconferencing to Hold Court Proceedings

Percentages are by row.

	Yes, a drawback, and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Parties make more requests for rescheduling proceedings.	41 5%	104 12%	547 64%	168 20%
A party who is not in a courtroom may fail to appreciate the gravity of the proceeding.	525 61%	207 24%	65 8%	65 8%
It is more difficult for an attorney to provide effective representation.	497 58%	183 21%	104 12%	79 9%
It is more difficult for a self-represented (pro se) litigant to participate in court proceedings.	320 37%	173 20%	271 32%	94 11%

It is more difficult for the judge or jury to evaluate credibility of a witness.	703 82%	55 6%	40 5%	57 7%
It is harder for the judge to engage in dialogue with a criminal defendant who is not present in the courtroom.	617 72%	100 12%	78 9%	63 7%
Access to sufficient hardware, software, bandwidth, etc. is not equal across all parties and attorneys.	325 38%	246 29%	204 24%	85 10%
Its use requires more court staff time and skill.	112 13%	218 25%	445 52%	86 10%
Technical problems distract from the substance of the proceeding.	216 25%	314 37%	268 31%	60 7%
Witnesses or jurors could be influenced by others without the court's knowledge.	546 64%	183 21%	53 6%	77 9%
Parties might not feel they had their "day in court."	492 57%	225 26%	61 7%	82 10%
A judge could be more distracted outside a physical courtroom setting.	197 23%	234 27%	345 40%	80 9%
Jurors could be more distracted outside a physical courtroom setting.	611 71%	108 13%	57 7%	82 10%
Proceedings could be recorded, broadcast, or shared with others without the court's knowledge.	482 56%	243 28%	52 6%	77 9%
Public access is more restricted.	174 20%	259 30%	333 39%	91 11%

It is more time consuming for the court.	86 10%	137 16%	540 63%	95 11%
It is more time consuming for noncourt participants.	62 7%	108 13%	543 64%	142 17%
It is more costly for the court.	37 4%	86 10%	560 65%	174 20%
It is more costly for noncourt participants.	38 4%	89 10%	543 63%	186 22%

There were fifty-five responses to the earlier referenced open-ended question regarding any other teleconferencing benefits or drawbacks (*see supra* p. 33). As stated above, the majority of comments (thirty-three, 60%) indicated that the question was not applicable or the technology was not used in this way. Only twelve comments mentioned a drawback that wasn't also included in Table 16; of those, the most common was a lack of decorum (mentioned four times).¹⁵

Factors When Considering the Use of Videoconferencing or Teleconferencing

We asked respondents to indicate the degree to which they considered certain factors when deciding whether to hold a proceeding by videoconference (Table 17) or teleconference (Table 18). Just as respondents' answers regarding benefits and drawbacks were similar for videoconferencing and teleconferencing, so too were the factors that respondents said they considered when deciding whether to hold a court proceeding by videoconference or teleconference.

The majority of respondents indicated that when they are deciding whether to hold a proceeding via videoconference, the factors they consider "to a great extent" are the gravity or importance of the proceeding (72%); the emergency nature of the matter (70%); health considerations (66%); whether the case was civil or criminal (65%); agreement among the parties to use videoconferencing (55%); geographical distance between the courthouse and parties or witnesses (52%); and the reliability of the technology (52%) (Table 17).

A factor considered to a "moderate" or "great" extent by the majority of respondents was requests from parties or attorneys to use videoconferencing (88%). A majority of respondents said they considered the convenience of the judge either "not at all" (38%) or only "to a small extent" (38%) when deciding to hold a court proceeding by videoconference. This result echoes some of the findings from previous questions, for instance concerning hybrid proceedings (*supra* p. 26), showing that judges appear to weigh more heavily the burden on others than the

15. When a respondent wrote in an answer that was substantially the same as an option provided in the question displayed in Table 16, we recoded that write-in answer to count in the results shown in the table.

burden on themselves. Other factors that many respondents considered either “not at all” or “to a small extent” were ease of public/media attendance (49%); ease of family attendance (36%); and the convenience or cost/time savings to other participants (31%). It is not clear from the answers whether this lack of concern for the attendance of the public, media, and family members reflects the rarity of attendance for many routine matters or some other factor, or whether they were outweighed by more fundamental considerations such as the gravity of the proceeding.

Table 17. Below is a list of factors that judges might consider when deciding whether to hold a proceeding using videoconferencing, either exclusively or for some of the participants. For each factor, please indicate the extent to which you consider this when making that determination.

Percentages are by row.

	Not at all	To a small extent	To a moderate extent	To a great extent
Whether the case is civil or criminal	35 4%	69 7%	241 24%	645 65%
Request from parties/attorneys to use videoconferencing	13 1%	103 10%	428 43%	447 45%
Agreement among parties/attorneys to use videoconferencing	24 2%	98 10%	319 32%	549 55%
Gravity/importance of the proceeding	27 3%	45 5%	202 21%	711 72%
Geographical distance between courthouse and defendant, other parties, attorneys, or witnesses	14 1%	80 8%	379 38%	516 52%
Convenience of the judge	375 38%	376 38%	186 19%	50 5%
Convenience of or cost/time savings for other participants (e.g., probation officer, parties, witnesses)	46 5%	259 26%	445 45%	235 24%
Health considerations (e.g., COVID; flu season)	17 2%	75 8%	248 25%	646 66%

Existence of emergency matter that needs urgent attention	22 2%	48 5%	227 23%	687 70%
Reliability of the technology to be used	44 4%	101 10%	322 33%	516 52%
Enabling attendance by family or other significant nonparties	67 7%	281 29%	465 47%	173 18%
Enabling attendance by the public or media	138 14%	345 35%	375 38%	125 13%

Respondents were also given the option of selecting “Other” and writing in other factors. Fifteen respondents did so. Ease of accessing the proceeding was mentioned three times, and each of the following was mentioned twice: length of proceeding, cost, number of witnesses and whether they would testify, security (physical and digital), and presence of support (Marshals and IT). Respondents were also given the opportunity to write in other factors that weigh into their consideration of whether to hold a proceeding using videoconferencing. Fifty-nine respondents replied. Commonly listed factors included speed or timing (mentioned in nineteen comments, 32%); the nature of the proceeding (nine comments, 15%); the quality of the connection (nine comments, 15%); and access and ability to use the equipment (eight comments; 14%).

Regarding teleconferencing, the degree to which respondents took certain factors into consideration when deciding whether a court proceeding should be held via teleconference paralleled their considerations when deciding whether to use videoconferencing. The majority of respondents said they considered “to a great extent” whether the case was civil or criminal (76%); the gravity or importance of the proceeding (75%); the emergency nature of the matter (72%); health considerations (60%); and whether parties agreed to use videoconferencing (52%) (Table 18).

The majority of respondents also gave “moderate” or “great” consideration to geographical distance between the courthouse and parties or witnesses (88%); requests by the parties or attorneys to use teleconferencing (85%); and the reliability of the technology (76%). Again mirroring the responses for videoconferencing, respondents indicated that they considered the convenience of the judge “not at all” (40%) or “only to a small extent” (36%) when deciding to hold a proceeding by teleconference. As we saw with videoconferencing, other factors that many respondents say they consider “not at all” or “to a small extent” were ease of public or media attendance (51%), ease of family attendance (40%), and the convenience or cost/time savings for other participants (37%).

Table 18. Below is a list of factors that judges might consider when deciding whether to hold a proceeding using teleconferencing, either exclusively or for some of the participants. For each factor, please indicate the extent to which you consider this when making that determination.

Percentages are by row.

	Not at all	To a small extent	To a moderate extent	To a great extent
Whether the case is civil or criminal	32 4%	40 5%	125 15%	620 76%
Request from parties/attorneys to use teleconferencing	25 3%	99 12%	336 41%	357 44%
Agreement among parties/attorneys to use teleconferencing	33 4%	93 11%	268 33%	422 52%
Gravity/importance of the proceeding	25 3%	32 4%	148 18%	611 75%
Geographical distance between courthouse and defendant, other parties, attorneys, or witnesses	20 2%	80 10%	335 41%	381 47%
Convenience of the judge	323 40%	292 36%	154 19%	45 6%
Convenience of or cost/time savings for other participants (e.g., probation officer, parties, witnesses)	64 8%	235 29%	362 44%	154 19%
Health considerations (e.g., COVID; flu season)	29 4%	81 10%	212 26%	493 60%
Existence of emergency matter that needs urgent attention	21 3%	33 4%	173 21%	587 72%

Reliability of the technology to be used	72 9%	124 15%	276 34%	341 42%
Enabling attendance by family or other significant nonparties	69 8%	260 32%	361 44%	125 15%
Enabling attendance by the public or media	118 15%	293 36%	308 38%	95 12%

As above, respondents were also given the option of selecting “Other” and writing in other factors. Twelve chose to do so. Mentioned two times each were: degree of hardship, whether testimony would be given, availability of videoconferencing, and availability of Marshals. Respondents were also given the opportunity to write in other factors that weigh into their consideration of whether to hold a proceeding using teleconferencing. Twenty-eight respondents replied. The most common reply was that teleconferencing is, or ought to be, used only rarely or not at all if videoconferencing is an option (fifteen, 54%). One emphatic respondent stated, “Telephonic appearance is so inferior to video that I can’t say it has any remaining benefits.” The most frequently mentioned factor not already included in Table 17 was complexity of proceeding (mentioned three times, 11%).¹⁶

In one of the concluding questions of the survey, respondents were asked if there was anything else about the use of virtual technology that they wished to express. One hundred twenty-one respondents answered. Many of the sentiments provided in response to this question mirrored findings revealed in the results discussed above. Specifically, sixty-four comments (53%) described pros or cons of virtual technology; seventeen (14%) discussed pros or cons of specific virtual technology platforms; and eight (7%) commented on balancing the use of virtual technology with face-to-face interactions. In addition, eighteen comments (15%) advocated for rules changes regarding the use of virtual technology;¹⁷ twelve (10%) expressed gratitude that virtual technology allowed the courts to continue functioning during the pandemic; and two (2%) cautioned that cost should not be the primary consideration when contemplating future virtual technology use.

16. When a respondent wrote in an answer that was substantially the same as an option provided in the question displayed in Table 18, we recoded that write-in answer to count in the results shown in the table.

17. These eighteen comments included general sentiments that judges be granted future discretion in the use of virtual technology, hopes that virtual technology continues to be used, and in four instances specific recommendations for rules changes and/or retaining the CARES Act (e.g., “The criminal rules should be amended to allow criminal proceedings to be held virtually for pretrial preliminary matters such as detention hearings and initial appearances as well as evidentiary hearings and changes of pleas, and for posttrial matters such as sentencings”; “CARES Act should be made permanent”).

Conclusions

The judges who responded to this survey provided a wealth of detailed and thoughtful information about their experiences with virtual technology. While judges expressed a variety of experiences and opinions, some common themes emerged.

First, most respondents had largely positive experiences with both the technology used to hold virtual proceedings and the proceedings themselves. This sentiment was not universal, with some respondents reporting more negative experiences, but most respondents reported feeling more favorable toward using virtual technology for court proceedings during the pandemic than they did prior to the pandemic, and most found it generally worked well. This was the case regardless of tenure on the bench or type of judge.

However, respondents did not feel that virtual technology is equally appropriate for all court proceedings. Across several different questions, respondents indicated that it was less appropriate to use virtual technology for criminal court proceedings than for civil court proceedings. Mirroring their appropriateness opinions, respondents were also more likely to say consent must be obtained before using virtual technology for a criminal proceeding than a civil proceeding. Generally, respondents were less inclined to use virtual technology for proceedings closer to, and including, trial, though there were exceptions to this pattern.

Respondents did not feel equally positive about the different kinds of virtual technology. While respondents reported greater use of teleconferencing prior to the pandemic, they generally expressed greater satisfaction with the use of videoconferencing to hold court proceedings during the pandemic. The added functionalities of videoconferencing appear to have outweighed any learning curve that was necessary to employ videoconferencing technology.

Our questions concerning hybrid proceedings asked about virtual technology in general, rather than asking separate questions for both videoconferencing and teleconferencing. Generally, respondents felt it was important for the judge and jury to be physically present, but they expressed more latitude for remote appearances by witnesses and others. Here, also, we see that respondents view civil and criminal proceedings differently, with a majority of respondents agreeing that it is acceptable for civil witnesses to testify remotely, while only a third of respondents agreed that remote witness testimony would be acceptable in criminal proceedings.

Respondents also reported their opinions about proposed benefits and drawbacks of using virtual technology for proceedings and factors they weighed when considering the use of virtual technology. Respondents' answers indicated that they see increased safety and decreased burdens to some stakeholders—such as the Marshal's Service, family members, and the general public—and saving time and money as benefits of both videoconferencing and teleconferencing. Respondents also indicated some similar drawbacks of the two technologies. Namely, respondents felt that technological issues could prevent some people from accessing the proceedings and that the dignity and decorum of the courtroom could suffer during virtual proceedings. Further, respondents expressed concerns that virtual technology could make it more difficult for attorneys to provide effective assistance to their clients.

Together, these findings provide valuable insight into judges' experiences using virtual technology during the pandemic and yield information that can be applied moving forward.

Appendix A: Survey

Survey of U.S. District and Magistrate Judges: Use of Virtual Technology to Hold Court Proceedings

Since the onset of the COVID-19 pandemic in the United States and passage of the CARES Act in March 2020, federal judges have held an unprecedented number of court proceedings using virtual technology—i.e., videoconferencing or teleconferencing. In this survey, we ask about your experiences with and views of the use of virtual technology to conduct court proceedings.

Definitions

- *Videoconferencing* (VC) refers to situations in which a proceeding is held with at least two participants in different locations interacting through a live audiovisual call using a VTC device or a videoconferencing platform (such as Teams, Zoom, WebEx, or CMS) that allows everyone to see and hear each other.
- *Teleconferencing* (TC) refers to situations in which a proceeding is held with at least two participants in different locations interacting through a live audio-only call using a telephone line or teleconferencing platform that allows the participants to hear each other but not see each other.
- *Virtual technology* encompasses both videoconferencing and teleconferencing.
- *Court proceedings* includes full case-related proceedings as well as portions of those proceedings (e.g., testimony of a single witness).

The survey is divided into four sections: A) Use of Videoconferencing for Court Proceedings; B) Use of Teleconferencing for Court Proceedings; C) Hybrid Proceedings; and D) Your Overall Views on the Use of Virtual Technology to Hold Court Proceedings.

There are open-ended questions throughout the questionnaire to allow you to explain your answers or to provide more in-depth or nuanced information. You may find you do not need to answer all these questions to adequately present your views. The very last question gives you a final opportunity to provide any additional explanation or information.

A. Use of Videoconferencing for Court Proceedings

The questions in this section ask about your experiences with and views about using *videoconferencing* for court proceedings.

Prior to the Pandemic

1. Which of the following statements best describes your use of *videoconferencing* for court proceedings prior to the pandemic?
 - a. I *frequently* used videoconferencing to hold court proceedings.
 - b. I *sometimes* used videoconferencing to hold court proceedings.
 - c. I *seldom* used videoconferencing to hold court proceedings.
 - d. I *never* used videoconferencing to hold court proceedings.

During the Pandemic

2. Which of the following statements best describes the frequency with which you have used *videoconferencing* to hold court proceedings, once you had settled into the circumstances created by the pandemic?
 - a. I *frequently* have used videoconferencing to hold court proceedings.
 - b. I *sometimes* have used videoconferencing to hold court proceedings.
 - c. I *seldom* have used videoconferencing to hold court proceedings.
 - d. I *never* have used videoconferencing to hold court proceedings. → Skip to Question #5

3. Which of the following statements best describes your overall experiences with holding proceedings by videoconference during the pandemic?
 - a. I have had mostly positive experiences with holding proceedings by videoconference.
 - b. I have had some positive experiences and some negative experiences with holding proceedings by videoconference.
 - c. I have had mostly negative experiences with holding proceedings by videoconference.

4. Which of the following statements best describes your experience with the technology used for holding proceedings by videoconference during the pandemic? *[Respondents were allowed to select all that applied.]*

- a. I initially had problems with the technology used for holding proceedings by videoconference during the pandemic, but as time went on I had few or no problems with the technology.
- b. I consistently had few or no problems with the technology used for holding proceedings by videoconference.
- c. I consistently had moderate problems with the technology used for holding proceedings by videoconference.
- d. I consistently had major problems with the technology used for holding proceedings by videoconference.
- e. Other. Please specify:

Your Views on Using Videoconferencing for Civil Proceedings

5. The following table lists different types of civil court proceedings sometimes overseen by district or magistrate judges. For each type of proceeding, please select one response in each row under Column 1 and one response in each row under Column 2.

In Column 1, indicate the frequency with which you believe it is appropriate, postpandemic, to hold that type of proceeding using videoconferencing. In Column 2, indicate whether you believe party consent should be required to do so. For the purpose of this question, assume that the applicable laws and rules would permit you as the presiding judge to make these determinations.

Type of civil case proceeding	Column 1 When is it appropriate to hold this type of proceeding using videoconferencing?				Column 2 Should consent of one or more parties be required to hold this type of proceeding using videoconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using VC)	Yes	No
Initial Rule 16 scheduling or case management conference							
Status conference							
Final pretrial conference							
Settlement conference							
Mediation							
Pretrial hearing with legal arguments only							
Pretrial hearing with evidence presented							
Jury selection							
Witness testimony at trial							
Jury trial							
Bench trial							
Other. Please specify:							

6. If you wish, please explain why, in your experience, it is or isn't appropriate to use videoconferencing for particular types of civil proceedings:

Your Views on Using Videoconferencing for Criminal Proceedings

7. The following table lists different types of criminal court proceedings sometimes overseen by district or magistrate judges. For each type of proceeding, please select one response in each row under Column 1 and one response in each row under Column 2.

In Column 1, indicate the frequency with which you believe it is appropriate, postpandemic, to hold that type of proceeding using videoconferencing. In Column 2, indicate whether you believe defendant consent should be required to do so. For the purpose of this question, assume that the applicable laws and rules would permit you as the presiding judge to make these determinations.

Type of proceeding	Column 1 When is it appropriate to hold this type of proceeding using videoconferencing?				Column 2 Should defendant consent be required to hold this type of proceeding using videoconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using VC)	Yes	No
Initial appearance							
Detention hearing							
Arraignment							
Initial appearance on revocation of pretrial release							
Hearing on revocation of pretrial release							
Initial appearance on revocation of probation or supervised release							
Hearing on revocation of probation or supervised release							
Misdemeanor plea							
Felony plea							
Change of plea hearing							
Pretrial hearing with legal arguments only							

Type of proceeding	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using VC)	Yes	No
Pretrial hearing with evidence presented							
Jury selection							
Witness testimony at trial							
Bench trial							
Jury trial							
Witness testimony at sentencing							
Misdemeanor sentencing							
Felony sentencing							
Other. Please specify:							

8. If you wish, please explain why, in your experience, it is or isn't appropriate to use videoconferencing for the defendant's appearance for particular types of criminal proceedings:

9. If you believe it is appropriate to use videoconferencing for the appearance of others besides the defendant, such as probation officers, victims, or family members for particular types of criminal proceedings, please explain, if you wish, why and for what types of proceedings:

Potential Benefits of Using Videoconferencing to Hold Court Proceedings

10. The table below lists potential *benefits* of using videoconferencing to hold some court proceedings, relative to holding them in person. For each, please provide your view about whether this is a benefit of using videoconferencing and, if so, how significant the benefit is.

In your view, is this a benefit of videoconferencing, and how significant is it?	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
Parties make fewer requests for rescheduling proceedings.				
Remote witnesses can testify more easily.				
It is easier for the judge or jury to evaluate credibility of a witness.				
It is easier for a judge or jury to evaluate the defendant's credibility in a criminal proceeding.				
Litigants are more at ease.				
Self-represented (pro se) litigants can more easily participate in court proceedings.				
The judge has a clearer view of the defendant in a criminal proceeding.				
The judge can more easily engage in dialogue with the defendant in a criminal proceeding using videoconferencing.				
The judge has a clearer view of the parties and counsel in a civil or criminal proceeding.				
There is a greater opportunity for family members or other support system to attend the proceeding.				

In your view, is this a benefit of videoconferencing, and how significant is it?	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
The potential security risk from transporting incarcerated defendants is lowered.				
There is a reduced need for USMS personnel for transport and security.				
Case management is more efficient.				
Inexperienced attorneys are more likely to have an opportunity to appear in court.				
It reduces the need for space in the courthouse.				
It provides an expanded opportunity for public access to proceedings.				
Participants can avoid potential health risks.				
It saves time for the court.				
It saves time for noncourt participants.				
It saves money for the court.				
It saves money for noncourt participants.				
It causes less stress overall for noncourt participants.				

Potential Drawbacks of Using Videoconferencing to Hold Court Proceedings

11. The table below lists potential *drawbacks* of using videoconferencing to hold some court proceedings, relative to holding them in person. For each, please provide your view about whether this is a drawback of using videoconferencing and how significant it is.

In your view, is this a drawback of videoconferencing, and how significant is it?	Yes, a drawback, and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Parties make more requests for rescheduling proceedings.				

A party who is not in a courtroom may fail to appreciate the gravity of the proceeding.				
It is more difficult for an attorney to provide effective representation.				
It is more difficult for self-represented (pro se) litigants to participate in court proceedings.				
It is more difficult for the judge or jury to evaluate credibility of a witness.				
It is harder for the judge to engage in dialogue with a criminal defendant who is not present in the courtroom.				
Access to sufficient hardware, software, bandwidth, etc. is not equal across all parties and attorneys.				
Its use requires more court staff time and skill.				
Technical problems distract from the substance of the proceeding.				
Witnesses or jurors could be influenced by others without the court's knowledge.				
Parties might not feel they had their "day in court."				
Judge could be more distracted outside a physical courtroom setting.				
In your view, is this a drawback of video-conferencing and how significant is it?	Yes, a drawback and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Jurors could be more distracted outside a physical courtroom setting.				
Proceedings could be recorded, photographed, broadcast, or shared with others without the court's knowledge.				
Public access is more restricted.				

It is more time consuming for the court.				
It is more time consuming for non-court participants.				
It is more costly for the court.				
It is more costly for noncourt participants.				

12. If you believe there are other benefits or drawbacks of videoconferencing not mentioned above, please list them here:

13. Below is a list of factors that judges might consider when deciding whether to hold a proceeding using videoconferencing, either exclusively or for some of the participants. For each factor, please indicate the extent to which you consider this when making that determination. *[If respondent has not held any proceedings using videoconferencing, skip to Question #15]*

	Not at all	To a small extent	To a moderate extent	To a great extent
Whether the case is civil or criminal				
Request from parties/attorneys to use videoconferencing				
Agreement among parties/attorneys to use videoconferencing				
Gravity/importance of the proceeding				

Geographical distance between courthouse and defendant, other parties, attorneys, or witnesses				
Convenience of the judge				
Convenience of or cost/time savings for other participants (e.g., probation officer, parties, witnesses)				
Health considerations (e.g., COVID; flu season)				
Existence of emergency matter that needs urgent attention				
Reliability of the technology to be used				
Enabling attendance by family or other significant nonparties				
Enabling attendance by the public or media				
Other. Please specify:				
Other. Please specify:				
Other. Please specify:				

14. If there are other factors that weigh into your consideration of whether to hold a proceeding using videoconferencing, please list them here:

B. Use of Teleconferencing for Court Proceedings

The questions in this section ask about your experiences with and views about using *teleconferencing* for court proceedings.

Prior to the Pandemic

15. Which of the following statements best describes your use of *teleconferencing* to hold court proceedings prior to the pandemic?
- I *frequently* used teleconferencing to hold court proceedings.
 - I *sometimes* used teleconferencing to hold court proceedings.
 - I *seldom* used teleconferencing to hold court proceedings.
 - I *never* used teleconferencing to hold court proceedings.

During the Pandemic

16. Which of the following statements best describes your use of *teleconferencing* to hold court proceedings, once you had settled into the circumstances created by the pandemic?
- I *frequently* have used teleconferencing to hold court proceedings.
 - I *sometimes* have used teleconferencing to hold court proceedings.
 - I *seldom* have used teleconferencing to hold court proceedings.
 - I *never* have used teleconferencing to hold court proceedings. → Skip to Question #19.
17. Which of the following statements best describes your overall experiences with holding proceedings by teleconference during the pandemic?
- I have had mostly positive experiences with holding proceedings by teleconference.
 - I have had some positive experiences and some negative experiences with holding proceedings by teleconference.
 - I have had mostly negative experiences with holding proceedings by teleconference.

18. Which of the following statements best describes your experience with the technology used for holding proceedings by teleconference during the pandemic? [*Respondents were allowed to select all that applied.*]

- a. I initially had problems with the technology used for holding proceedings by teleconference during the pandemic, but as time went on I had few or no problems with the technology.
- b. I consistently had few or no problems with the technology used for holding proceedings by teleconference.
- c. I consistently had moderate problems with the technology used for holding proceedings by teleconference.
- d. I consistently had major problems with the technology used for holding proceedings by teleconference.
- e. Other. Please specify:

Your Views on Using Teleconferencing in Civil Proceedings

19. The following table lists different types of civil court proceedings sometimes overseen by district or magistrate judges. For each type of proceeding, please select one response in each row under Column 1 and one response in each row under Column 2.

In Column 1, indicate the circumstances under which you believe it is appropriate, postpandemic, to hold that type of proceeding using teleconferencing; In Column 2, indicate whether you believe party consent should be required to do so. For the purpose of this question, assume that the applicable laws and rules would permit you as the presiding judge to make these determinations.

Type of civil case proceeding	Column 1				Column 2		
	When is it appropriate to hold this type of proceeding using teleconferencing?				Should consent of one or more parties be required to hold this type of proceeding by teleconference?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using TC)	Yes	No
Initial Rule 16 scheduling or case management conference							
Status conference							
Final pretrial conference							
Settlement conference							
Mediation							
Pretrial hearing with legal arguments only							
Pretrial hearing with evidence presented							
Jury selection							
Witness testimony at trial							
Jury trial							
Bench trial							
Other. Please specify:							

20. If you wish, please explain why, in your experience, it is or isn't appropriate to use teleconferencing for particular types of civil proceedings:

Your Views on Using Teleconferencing in Criminal Proceedings

21. The following table lists different types of criminal court proceedings sometimes overseen by district or magistrate judges. For each type of proceeding, please select one response in each row under Column 1 and one response in each row under Column 2.

In Column 1, indicate the frequency with which you believe it is appropriate, postpandemic, to hold that type of proceeding using teleconferencing. In Column 2, indicate whether you believe party consent should be required to do so. For the purpose of this question, assume that the applicable laws and rules would allow you as the presiding judge to make these determinations.

Type of criminal case proceeding	Column 1				Column 2		
	When is it appropriate to hold this type of proceeding using teleconferencing?				Should defendant consent be required to hold this type of proceeding using teleconferencing?		
	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using TC)	Yes	No
Initial appearance							
Detention hearing							
Arraignment							
Initial appearance on revocation of pretrial release							
Hearing on revocation of pretrial release							

Initial appearance on revocation of probation or supervised release							
Hearing on revocation of probation or supervised release							
Type of criminal case proceeding	Always or almost always	Sometimes	Seldom	Never	Not applicable (should never be held using TC)	Yes	No
Misdemeanor plea							
Felony plea							
Change of plea hearing							
Pretrial hearing with legal arguments only							
Pretrial hearing with evidence presented							
Jury selection							
Bench trial							
Jury trial							
Witness testimony at trial							
Witness testimony at sentencing							
Misdemeanor sentencing							
Felony sentencing							
Other. Please specify:							

22. If you wish, please explain why, in your experience, it is or isn't appropriate to use teleconferencing for particular types of criminal proceedings:

23. If you believe it is appropriate to use teleconferencing for the appearance of others besides the defendant, such as probation officers, victims, or family members for particular types of criminal proceedings, please explain, if you wish, why and for what types of proceedings:

Potential Benefits of Using Teleconferencing to Hold Court Proceedings

24. The table below lists potential *benefits* of using teleconferencing to hold some court proceedings, relative to holding them in person. For each, please provide your view about whether this is a benefit of using teleconferencing and, if so, how significant the benefit is.

In your view, is this a benefit of teleconferencing, and how significant is it?	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
Parties make fewer requests for rescheduling proceedings.				
Remote witnesses can testify more easily.				
It is easier for the judge or jury to evaluate credibility of a witness.				

It is easier for a judge or jury to evaluate the defendant's credibility in a criminal proceeding.				
Litigants are more at ease.				
Self-represented (pro se) litigants can more easily participate in court proceedings.				
There is a greater opportunity for family members or other support system to attend the proceeding.				
The judge can more easily engage in dialogue with the defendant in a criminal proceeding using teleconferencing.				
The potential security risk from transporting incarcerated defendants is lowered.				
There is a reduced need for USMS personnel for transport and security.				
Case management is more efficient.				
In your view, is this a benefit of teleconferencing, and how significant is it?	Yes, a benefit, and a significant one	Yes, a benefit, but not a significant one	Not a benefit	No opinion
Inexperienced attorneys are more likely to have an opportunity to appear in court.				
It reduces the need for space in the courthouse.				
It provides an expanded opportunity for public access to proceedings.				
Participants can avoid potential health risks.				
It saves time for the court.				
It saves time for noncourt participants.				
It saves money for the court.				
It saves money for noncourt participants.				

Potential Drawbacks of Using Teleconferencing to Hold Court Proceedings

25. The table below lists potential *drawbacks* of using teleconferencing to hold some court proceedings, relative to holding them in person. For each, please provide your view about whether this is a drawback of using teleconferencing and how significant it is.

In your view, is this a drawback of teleconferencing, and how significant is it?	Yes, a drawback, and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Parties make more requests for rescheduling proceedings.				
A party who is not in a courtroom may fail to appreciate the gravity of the proceeding.				
It is more difficult for an attorney to provide effective representation.				
It is more difficult for self-represented (pro se) litigants to participate in court proceedings.				
It is more difficult for the judge or jury to evaluate credibility of a witness.				
It is harder for the judge to engage in dialogue with a criminal defendant who is not present in the courtroom.				
Access to sufficient hardware, software, bandwidth, etc. is not equal across all parties and attorneys.				
Its use requires more court staff time and skill.				
Technical problems distract from the substance of the proceeding.				
Witnesses or jurors could be influenced by others without the court's knowledge.				
Parties might not feel they had their "day in court."				
A judge could be more distracted outside a physical courtroom setting.				

In your view, is this a drawback of teleconferencing, and how significant is it?	Yes, a drawback, and a significant one	Yes, a drawback, but not a significant one	Not a drawback	No opinion
Jurors could be more distracted outside a physical courtroom setting.				
Proceedings could be recorded, broadcast, or shared with others without the court's knowledge.				
Public access is more restricted.				
It is more time consuming for the court.				
It is more time consuming for noncourt participants.				
It is more costly for the court.				
It is more costly for noncourt participants.				

26. If you believe there are other benefits or drawbacks of teleconferencing not mentioned above, please list them here:

27. Below is a list of factors that judges might consider when deciding whether to hold a proceeding using teleconferencing, either exclusively or for some of the participants. For each factor, please indicate the extent to which you consider this when making that determination. *[If respondent has not held any proceedings using teleconferencing, skip to Question 29.]*

	Not at all	To a small extent	To a moderate extent	To a great extent
Whether the case is civil or criminal				
Request from parties/attorneys to use teleconferencing				
Agreement among parties/attorneys to use teleconferencing				
Gravity/importance of the proceeding				
Geographical distance between courthouse and defendant, other parties, attorneys, or witnesses				
Convenience of the judge				
Convenience of or cost/time savings for other participants (e.g., probation officer, parties, witnesses)				
Health considerations (e.g., COVID; flu season)				
Existence of emergency matter that needs urgent attention				
Reliability of the technology to be used				
Enabling attendance by family or other significant nonparties				
Enabling attendance by the public or media				
Other. Please specify:				
Other. Please specify:				
Other. Please specify:				

28. If there are other factors that weigh into your consideration of whether to hold a proceeding using teleconferencing, please list them here:

C. Hybrid Proceedings

29. The following table lists statements about hybrid proceedings—i.e., those that are held with some participants physically present in the courtroom and others participating using virtual technology. For each statement, please indicate the extent to which you agree or disagree, with regard to your own personal preferences and practices, for proceedings held postpandemic.

	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
The judge should always be in the courtroom during a hybrid proceeding.					
The judge should discuss with the parties in advance whether a proceeding will be hybrid, and any concerns the parties have about that.					
Wherever they are, attorneys should be physically present with their clients during a hybrid proceeding.					
If the attorney for one side is physically present in the courtroom, the attorney for the other side should be as well.					
	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
Jurors should be physically present in the courtroom during a hybrid proceeding.					
It is okay for a witness to testify using virtual technology in a civil proceeding even if everyone else is in the courtroom.					
It is okay for a witness to testify using virtual technology in a criminal proceeding even if everyone else is in the courtroom.					

D. Your Overall Views on the Use of Virtual Technology to Hold Court Proceedings

30. Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings?

- a. My views about the use of virtual technology to hold court proceedings are *more* favorable than they were prior to the pandemic.
- b. My views about the use of virtual technology to hold court proceedings *have not changed* since the onset of the pandemic.
- c. My views about the use of virtual technology to hold court proceedings are *less* favorable than they were prior to the pandemic.

31. If you wish, please explain your answer to the preceding question.

Civil Proceedings

32. Please indicate your overall view about using virtual technology for civil court proceedings, outside of the circumstances of a pandemic or other emergency. *Please select all that apply.*

- a. I am generally in favor of individual judge discretion about when to use virtual technology for civil proceedings.
- b. I am generally in favor of judges using virtual technology for civil proceedings, subject to applicable laws and policies.
- c. I believe some civil proceedings are conducive to being held using virtual technology, while others should always be held in person.
- d. I am opposed to judges using virtual technology for any civil proceedings, except in rare circumstances.

Criminal Proceedings

33. Please indicate your overall view about using virtual technology for criminal proceedings, outside of the circumstances of a pandemic or other emergency. *Please select all that apply.*
- a. I am generally in favor of individual judge discretion about when to use virtual technology for criminal proceedings.
 - b. I am generally in favor of judges using virtual technology for criminal proceedings, subject to applicable laws and policies.
 - c. I believe some criminal proceedings are conducive to being held using virtual technology, while others should always be held in person.
 - d. I am opposed to judges using virtual technology for any criminal proceedings, except in rare circumstances.

34. If there is anything else about the use of virtual technology that you wish to say, please use this space to do so.

E. Demographic Information

Your answers to the following questions will help us put your responses in context. Responses will be aggregated in a way that does not allow identification of a specific judge.

35. In which federal district do you serve?

36. In what year were you appointed to the federal bench? _____

37. What position do you hold?
- a. Chief district judge
 - b. Active district judge
 - c. Senior district judge
 - d. Chief magistrate judge
 - e. Magistrate judge
 - f. Recalled magistrate judge

Appendix B: Selected Questions by Judge Type and Tenure on the Bench

Positive and Negative Experience Holding Virtual Proceedings by Years on the Bench

We examined whether time on the bench interacted with whether respondents reported mostly positive or mostly negative experiences with virtual technology during the pandemic. The results provide no strong evidence that positive or negative experience with virtual technology during the pandemic varied by years on the bench (Tables B1 and B2).

Table B1: Which of the following statements best describes your overall experiences with holding proceedings by videoconference during the pandemic? [Reported by year of appointment. Percentages are by respondents in columns.]

	1970– 1989	1990– 1999	2000– 2009	2010– 2021	Total
I have had mostly positive experiences with holding proceedings by videoconference.	28 58%	95 68%	114 58%	299 58%	536
I have had some positive experiences and some negative experiences with holding proceedings by videoconference.	16 33%	40 29%	69 35%	200 39%	325
I have had mostly negative experiences with holding proceedings by videoconference.	4 8%	5 4%	14 7%	21 4%	44
Total	48	140	197	520	905

Table B2: Which of the following statements best describes your overall experiences with holding proceedings by teleconference during the pandemic? *[Reported by year of appointment. Percentages are by respondents in columns.]*

	1970– 1989	1990– 1999	2000– 2009	2010– 2021	Total
I have had mostly positive experiences with holding proceedings by teleconference.	29 64%	85 62%	117 62%	296 60%	527
I have had some positive experiences and some negative experiences with holding proceedings by teleconference.	13 29%	46 33%	60 32%	170 34%	289
I have had mostly negative experiences with holding proceedings by teleconference.	3 7%	7 5%	12 6%	31 6%	53
Total	45	138	189	497	869

Positive or Negative Experience Holding Virtual Proceedings by Judge Type

Similarly, there was no pronounced difference in positive or negative experience with virtual technology during the pandemic by judge type (Tables B3 and B4).

Table B3. Which of the following statements best describes your overall experiences with holding proceedings by videoconference during the pandemic? [Reported by judge type. Percentages are by respondents in columns.]

	Chief District Judge	Active District Judge	Senior District Judge	Magistrate Judge	Chief Magistrate Judge	Recalled Magistrate Judge	Total
I have had mostly positive experiences with holding proceedings by videoconference.	37 59%	152 53%	111 63%	208 61%	21 66%	15 65%	544
I have had some positive experiences and some negative experiences with holding proceedings by videoconference.	26 41%	117 40%	54 31%	116 34%	10 31%	8 35%	331
I have had mostly negative experiences with holding proceedings by videoconference.	0 0%	20 7%	10 6%	15 4%	1 3%	0 0%	46
Total	63	289	175	339	32	23	921

Table B4. Which of the following statements best describes your overall experiences with holding proceedings by teleconference during the pandemic? [Reported by judge type. Percentages are by respondents in columns.]

	Chief District Judge	Active District Judge	Senior District Judge	Magistrate Judge	Chief Magistrate Judge	Recalled Magistrate Judge	Total
I have had mostly positive experiences with holding proceedings by teleconference.	38 62%	166 59%	110 65%	186 58%	18 60%	15 65%	533
I have had some positive experiences and some negative experiences with holding proceedings by teleconference.	15 25%	104 37%	55 32%	106 33%	11 37%	7 30%	298
I have had mostly negative experiences with holding proceedings by teleconference.	8 13%	10 4%	5 3%	29 9%	1 3%	1 4%	54
Total	61	280	170	321	30	23	885

Degree of Problems Experienced Using Virtual Technology for Holding Proceedings by Years on the Bench

Experiences with the technology used to hold virtual court proceedings during the pandemic did not vary by years on the bench, for either videoconferencing or teleconferencing (Tables B5 and B6).

Table B5: Which of the following statements best describes your experience with the technology used for holding proceedings by videoconference during the pandemic? [Respondents were able to select multiple answers. Reported by year of appointment. Percentages are by respondents in columns.]

	1970– 1989	1990– 1999	2000– 2009	2010– 2021	Total
I initially had problems with the technology used for holding proceedings by videoconference during the pandemic, but as time went on I had few or no problems with the technology.	13 27%	36 26%	65 32%	158 30%	272
I consistently had few or no problems with the technology used for holding proceedings by videoconference.	19 40%	70 50%	83 39%	226 42%	398
I consistently had moderate problems with the technology used for holding proceedings by videoconference.	12 25%	30 21%	43 19%	107 20%	192
I consistently had major problems with the technology used for holding proceedings by videoconference.	2 4%	0 0%	3 2%	13 2%	18
Other	2 4%	5 4%	18 9%	29 5%	54
Total Responses	48	141	212	533	934

Table B6: Which of the following statements best describes your experience with the technology used for holding proceedings by teleconference during the pandemic? [Respondents were able to select multiple answers. Reported by year of appointment. Percentages are by respondents in columns.]

	1970– 1989	1990– 1999	2000– 2009	2010– 2021	Total
I initially had problems with the technology used for holding proceedings by teleconference during the pandemic, but as time went on I had few or no problems with the technology.	11 24%	14 10%	23 12%	48 10%	96
I consistently had few or no problems with the technology used for holding proceedings by teleconference.	27 60%	106 76%	133 70%	388 78%	654
I consistently had moderate problems with the technology used for holding proceedings by teleconference.	4 9%	16 11%	24 13%	42 8%	86
I consistently had major problems with the technology used for holding proceedings by teleconference.	0 0%	1 1%	2 1%	2 0%	5
Other	3 7%	3 2%	9 5%	19 4%	34
Total Responses	45	140	191	499	875

Degree of Problems Experienced Using Virtual Technology for Holding Proceedings by Judge Type

Degree of reported problems also did not vary much based on judge type. The most common answer for most judge types for videoconferencing and teleconferencing was that they had consistently experienced “few or no problems with the technology” (Tables B7 and B8).

Table B7. Which of the following statements best describes your experience with the technology used for holding proceedings by videoconference during the pandemic? [Respondents were able to select multiple answers. Reported by judge type. Percentages are by respondents in columns.]

	Chief District Judge	Active District Judge	Senior District Judge	Magistrate Judge	Chief Magistrate Judge	Recalled Magistrate Judge	Total
I initially had problems with the technology used for holding proceedings by videoconference during the pandemic, but as time went on, I had few or no problems with the technology.	15 23%	69 23%	47 27%	117 34%	17 52%	8 33%	273
I consistently had few or no problems with the technology used for holding proceedings by videoconference.	33 52%	131 44%	83 47%	137 40%	8 24%	10 42%	402
I consistently had moderate problems with the technology used for holding proceedings by videoconference.	13 20%	70 23%	35 20%	67 19%	5 15%	4 17%	194
I consistently had major problems with the technology used for holding proceedings by videoconference.	0 0%	11 4%	1 1%	8 2%	0 0%	0 0%	20
Other	3 5%	18 6%	11 6%	17 5%	3 9%	2 8%	54
Total	64	299	177	346	33	24	943

Table B8. Which of the following statements best describes your experience with the technology used for holding proceedings by teleconference during the pandemic? [Respondents were able to select multiple answers. Reported by judge type. Percentages are by respondents in columns.]

	Chief District Judge	Active District Judge	Senior District Judge	Magistrate Judge	Chief Magistrate Judge	Recalled Magistrate Judge	Total
I initially had problems with the technology used for holding proceedings by teleconference during the pandemic, but as time went on, I had few or no problems with the technology.	3 5%	34 12%	27 16%	29 9%	2 7%	1 4%	96
I consistently had few or no problems with the technology used for holding proceedings by teleconference.	50 82%	212 75%	119 68%	244 76%	24 80%	18 75%	667
I consistently had moderate problems with the technology used for holding proceedings by teleconference.	4 7%	28 10%	19 11%	33 10%	3 10%	2 8%	89
I consistently had major problems with the technology used for holding proceedings by teleconference.	0 0%	0 0%	2 1%	4 1%	0 0%	0 0%	6
Other	4 7%	6 2%	7 4%	13 4%	1 3%	3 13%	34
Total	61	280	174	323	30	24	892

Change in View About Use of Virtual Technology from Before to During the Pandemic, by Years on the Bench

Table B9: Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings? [Reported by year of appointment. Percentages are by respondents in columns.]

	1970– 1989	1990– 1999	2000– 2009	2010– 2021	Total
My views about the use of virtual technology to hold court proceedings are more favorable than they were prior to the pandemic.	36 71%	110 76%	154 76%	424 82%	724
My views about the use of virtual technology to hold court proceedings have not changed since the onset of the pandemic.	11 22%	26 18%	39 19%	62 12%	138
My views about the use of virtual technology to hold court proceedings are less favorable than they were prior to the pandemic.	4 8%	6 4%	11 5%	31 6%	52
Total	51	142	204	517	914

Change in View About Use of Virtual Technology from Before to During the Pandemic, by Judge Type

Views on the use of virtual technology for court proceedings were consistent across judge types.

Table B10. Which of the following statements best describes your views, before and after the onset of the pandemic, about the use of virtual technology (videoconferencing and teleconferencing) to hold court proceedings? [Reported by judge type. Percentages are by respondents in columns.]

	Chief District Judge	Active District Judge	Senior District Judge	Magistrate Judge	Chief Magistrate Judge	Recalled Magistrate Judge	Total
My views about the use of virtual technology to hold court proceedings are more favorable than they were prior to the pandemic.	48 77%	212 73%	142 78%	285 84%	28 88%	18 69%	733
My views about the use of virtual technology to hold court proceedings have not changed since the onset of the pandemic.	13 21%	56 19%	31 17%	31 9%	3 9%	8 31%	142
My views about the use of virtual technology to hold court proceedings are less favorable than they were prior to the pandemic.	1 2%	21 7%	10 5%	22 7%	1 3%	0 0%	55
Total	62	289	183	338	32	26	930