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The Impact of the COVID-19 Pandemic on State Court Proceedings: Five Key Findings

SUMMARY OF FINDINGS

The University of Illinois System's Institute for Government and Public Affairs and the National Center for State Courts jointly conducted the COVID-19 and the State Courts Study between August 2020 and July 2021. The first stage of the study involved focus groups of attorneys, judges, court administrators, court staff, jurors, and litigants in four states. This report describes some results of the second stage of the study, which involved nationwide surveys of judges, court personnel, and attorneys. The surveys asked participants questions about access to courts during the pandemic and their experiences with the new strategies courts adopted to continue hearing and processing cases. This report summarizes five key findings from the surveys concerning access to the courts.

- First, early in the pandemic, most attorneys thought that litigants' access to judicial proceedings was worse than usual.

- Second, attorneys reported that litigants' experiences in courts improved after September

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2020. Over time, participants believed that some early access difficulties abated.

- Third, court personnel had a more positive view than did attorneys about the ability of individuals to participate in the judicial system during the pandemic.

- Fourth, attorneys with practices concentrated in landlord-tenant law and criminal law perceived somewhat greater problems than did attorneys who practice in other areas of the law.

- Fifth, while participants identified many benefits to online court proceedings, they also saw drawbacks. Assessing whether and under what circumstances to conduct court proceedings online after the pandemic is over will require careful consideration of benefits and downsides and balancing some competing factors.

SURVEY SAMPLE CHARACTERISTICS

The survey portion of this study was conducted between March and July 2021. One sample included attorneys and other legal practitioners (such as allied legal professionals and guardians *ad litem*) who represent litigants—parties in civil or criminal cases—in court. The report refers to this group as the "attorney sample" throughout, although some participants are not licensed as attorneys. The second sample included judges and court staff. The report refers to that group as court personnel.

Attorney sample

Our attorney sample included 855 participants who took the survey between March 15 and July 1, 2021, spanning 45 U.S.

states and territories. About 28% of the participants in the attorney sample work in Illinois. Participants who worked in both state and federal courts rated their experiences in the state courts and federal courts separately; the findings reported below include only their responses regarding the state courts. We have excluded from the analysis 14 participants (1.6%) who reported working exclusively or primarily in federal courts.

Attorneys in the sample experienced court proceedings in a variety of formats during the pandemic. Between March and August 2020, about a third participated in in-person court proceedings; around 90% participated in online court proceedings; and just under half participated in telephonic court proceedings. After September 2020, online proceedings were a bit less common, but more than 70% of the respondents reported having taken part in some.

Court personnel sample

Our court personnel sample included 103 judges and 228 court staff who participated in the survey between March 8 and July 28, 2021. These participants work in the state courts of 40 different U.S. states. About 49% of the participants work in the Illinois courts. We have excluded from the analysis 30 participants (9%) who reported working in federal courts.

Participants in the court personnel sample experienced proceedings in a variety of formats during the pandemic. Between March and August 2020, about half participated in in-person court proceedings; nearly 80% participated in online court proceedings; and just under half participated in telephonic court proceedings. After September 2020, telephonic proceedings were a little less common, experienced by around one-third of the respondents, and the percentage reporting experience with online proceedings fell to roughly 70.

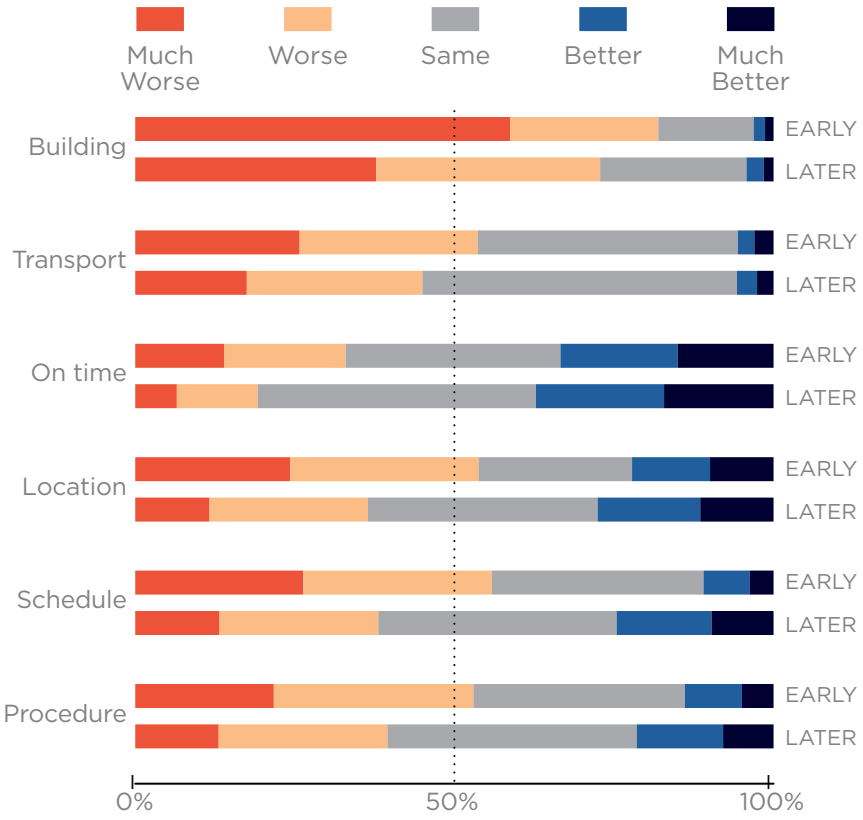
THE PANDEMIC'S EFFECTS ON EXPERIENCES IN STATE COURTS

We asked attorneys six questions about how experiences with state court proceedings changed during the pandemic. Three survey items asked attorneys about their ability and the ability of litigants, i.e., their clients in civil or criminal cases, to follow changes in schedule, location (including moves to remote venues), and procedures. Three other items asked the attorneys about the ability of their clients to access court buildings, secure transportation to court, and arrive on time for proceedings. Exact question wordings can be found in the appendix. For these questions, respondents were given five response options: much or somewhat worse than before the pandemic, much or somewhat better than before the pandemic, or the same as before the pandemic.

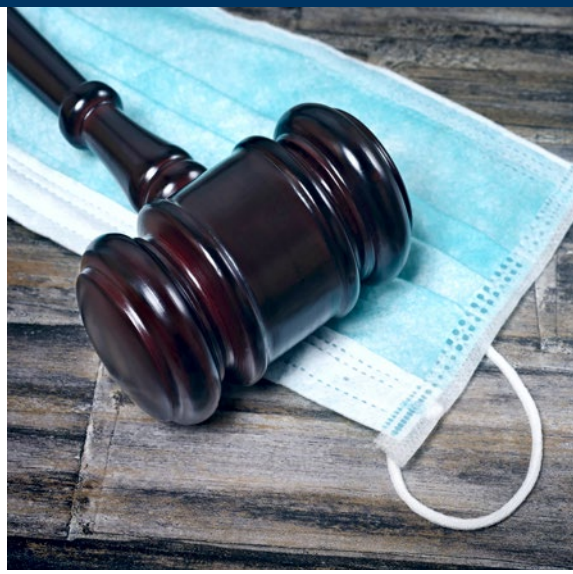
Finding 1: Most attorneys thought that experiences with judicial proceedings early in the pandemic were worse than usual.

Figure 1 shows the responses attorneys gave about experiences with judicial proceedings during two time periods: between March and August 2020 ("early" for brevity) and from September 2020 onward ("later"). The top bars in each row of Figure 1 show that responses skewed to the negative side for all questions except for the ability of litigants to be on time for proceedings. The modal view was clearly that navigating state court was unusually hard in the early months of the pandemic, in myriad ways.

Figure 1. Attorneys' Views of How the Pandemic Affected Experience with Court Proceedings



Notes: Respondent totals (Ns) were, from top to bottom: 676 (building, early), 519 (building, later), 466, 439, 719, 583, 794, 653, 809, 659, 806, 658 (procedure, later).



Finding 2: Attorneys thought experiences improved after September 2020.

Comparing the top and bottom bars for each of the six rows in Figure 1 makes clear that attorneys, as a group, saw improvements in state court experiences as the pandemic stretched on. For this later period, only the question about the ability of clients to access court buildings had a majority on the "worse" side. At the other end of the spectrum, when asked about their clients' ability to be on time, more attorneys chose "better" responses than "worse." For that item and the other four (excluding building access), the modal view was that after September 2020 experiences were essentially the same as before the pandemic.

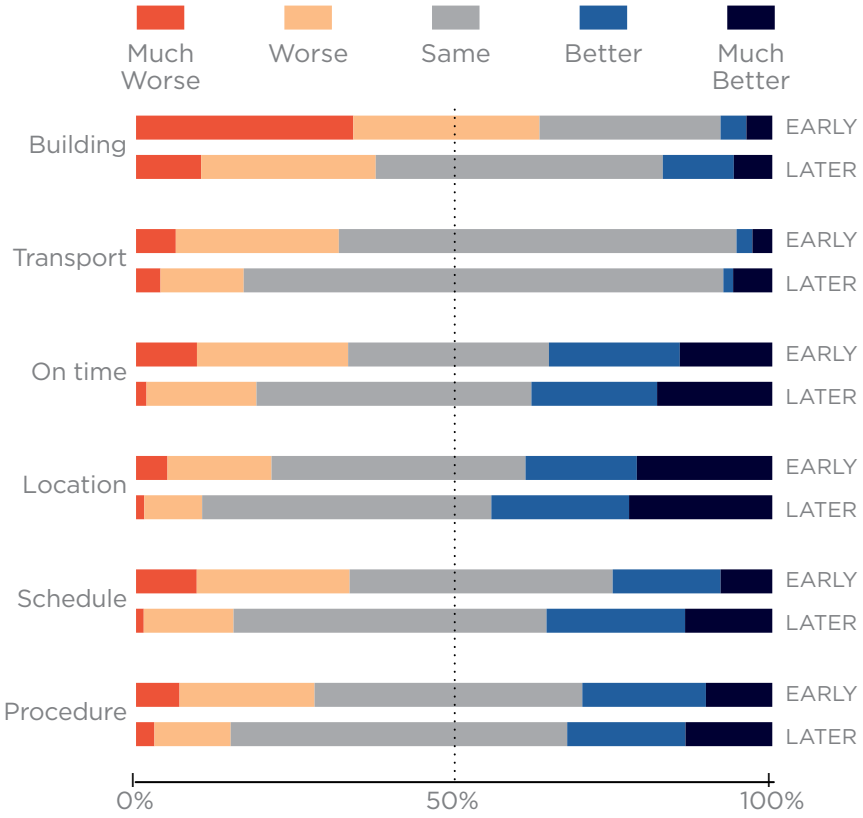
One possible explanation for these differences over time is that in the early days of the pandemic, courts were forced to make quick changes to their

operations and were fine-tuning those changes in real time, with the result that lawyers and their clients had difficulty learning about and following procedures until they stabilized. It is also possible that, as the pandemic continued, lawyers and litigants became more accustomed to changed and changing court operations and were able to adjust their expectations and behavior. For instance, if, as the pandemic continued, attorneys and litigants understood that courts were changing their schedules more frequently than they did before the pandemic, they would likely anticipate that a scheduled hearing time and date might be altered and plan accordingly. In sum, the different experiences in the two time periods could reflect an evolution in court practices as well as in the expectations and behavior of those seeking to access the judicial system.

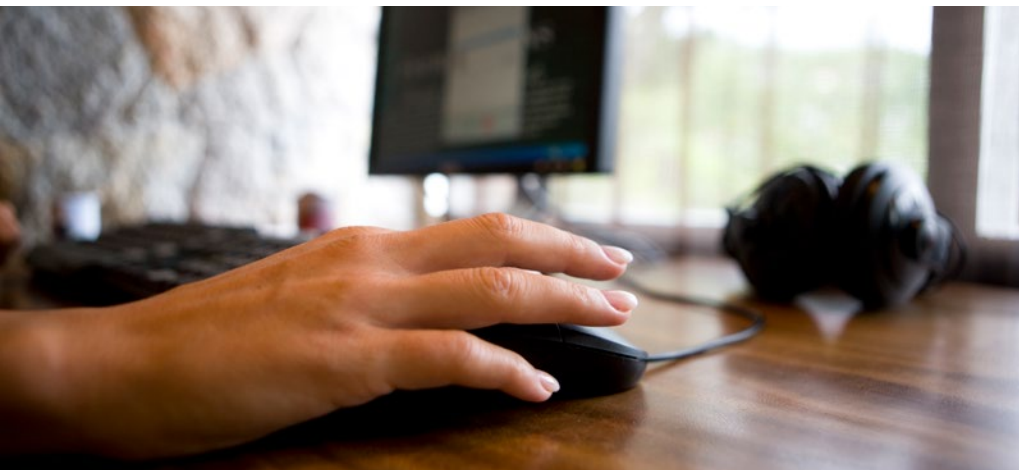
Finding 3: Court personnel viewed experiences with judicial proceedings more positively than did attorneys.

Figure 2 is the companion to Figure 1, but for responses by court personnel. The questions were nearly identical, except that the question posed referenced "litigants" in general rather than "your clients," and the items about location, schedule, and procedure referenced only litigants, rather than litigants and their attorneys.

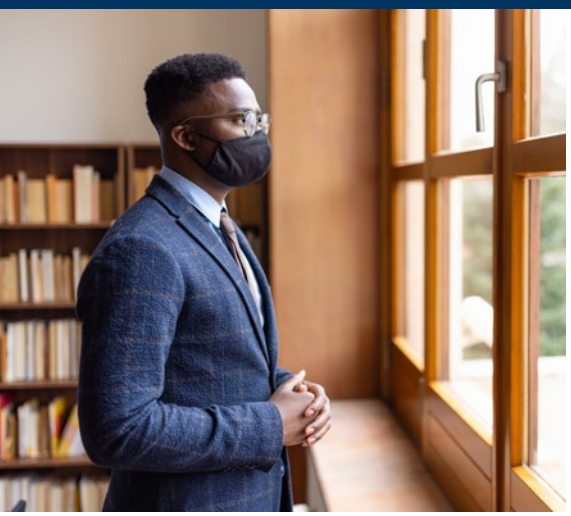
Figure 2. Views of Court Personnel on How the Pandemic Affected Experience with Court Proceedings



Notes: Respondent totals (Ns) were, from top to bottom: 246 (building, early), 215 (building, later), 160, 130, 282, 243, 263, 231, 283, 248, 278, 242 (procedure, later).



Comparison with Figure 1 makes clear that court personnel were more sanguine than attorneys about the pandemic's effect on state court proceedings. Except for the question about building access in the early period, the modal response of court personnel was always to say that experiences in the pandemic—early and later—were the same as those before the pandemic began. As in the attorney sample, court personnel had a more positive impression of the later period than of the early days of the pandemic. Setting aside securing transportation and accessing buildings, about equally as many in the court personnel sample thought litigants' experiences were better than



pre-pandemic as thought they were worse than pre-pandemic in the early period. For the later period, those saying things were better than before the pandemic outnumbered those saying they were worse.

It is hard to know with certainty why court personnel had a more positive view than did attorneys of the experiences of individuals with the courts during the pandemic. One possible explanation is that court personnel simply overestimated the success of the modifications they were implementing. Perhaps litigants were more likely to complain to their lawyers about challenges they faced in accessing and participating in the judicial system. Perhaps attorneys were able to assist their clients who faced difficulties finding information about or accessing courts so that from the perspective of court personnel things seemed to be working well. Attorneys might have been privy to more information than court personnel were about the barriers and challenges that their clients were experiencing during the pandemic. Conversely, court personnel may have been privy to more information than attorneys were about the efforts the courts were making to improve the availability of information and access to proceedings. In evaluating the differences in responses, it is important to keep in mind that attorneys were asked about their own experiences while court personnel were asked only about the experiences of litigants. In addition, because of the nature of the survey, attorneys and court personnel did not report on the experiences of the same individual litigants. With these caveats in mind, the survey results point to different perceptions of the impact changes to court proceedings had on access to and participation in the judicial system. That itself is notable given the importance that public perceptions play in securing the legitimacy of courts.

Finding 4: Attorneys' views on access to courts varied, but only a little, by practice area.

Attorneys' beliefs about access to the courts during the pandemic appear to vary slightly by the type of law practiced. Figure 3 shows means (averages) for responses to the questions shown in Figures 1 and 2 when we treat those responses as falling at equal intervals on a quantitative scale. We code "much worse" as 0, "somewhat worse" as 0.25, "same" as 0.5, "somewhat better" as 0.75, and "much better" as 1. Here, we calculate averages for each attorney using as many responses as that respondent offered, and then average across attorneys by the type of law practiced. Those who indicated multiple types of practice contribute to multiple means. We show the most common practice types only. These averages were reasonably consistent, but with some limited variation. Attorneys who indicated they practiced landlord-tenant law and criminal law reported slightly worse impressions of access to the courts for themselves and their clients in the early phase of the pandemic. The modestly more positive answers for the later period still translate to mean values a bit lower than "same" (0.5) for most lawyers, with those practicing landlord-tenant law scoring lowest.

Figure 3. Attorneys' Mean Responses about Access to Courts by Type of Law Practiced

Notes: Ns by law practiced for early and later period were: 160, 159 (landlord-tenant); 305, 300 (criminal law (juvenile or adult)); 140, 91 (contracts); 226, 225 (family law and domestic relations); 214, 218 (personal injury, tort); 154, 154 (estate planning, trusts, wills, probate).

The similarity in mean views across practice areas is perhaps not surprising. It is consistent with courts adopting broad changes during the pandemic that affected all types of cases, and with other barriers to access having a generalized impact. At the same time, it is notable that attorneys in the areas of landlord-tenant and criminal law reported more negative experiences than did attorneys handling other types of cases. One possible explanation for the experience in landlord-tenant cases is that they were slowed or halted as a result of federal and state eviction moratoria: the federal CARES Act eviction moratorium began on March 27, 2020, and many states adopted their own eviction moratoria around the same time. It is also possible that attorneys in landlord-tenant cases were more likely to be representing landlords rather than tenants and so were reporting negative experiences that landlords specifically experienced. The negative experience in criminal cases raises important issues that merit further investigation. Reliable and timely access to justice is important to protect the interests of individuals in a wide range of civil cases. In the criminal context, there are some additional considerations: delays and other impediments implicate constitutional rights—such as the right to a speedy trial—and for criminal defendants can mean the difference between incarceration and freedom.

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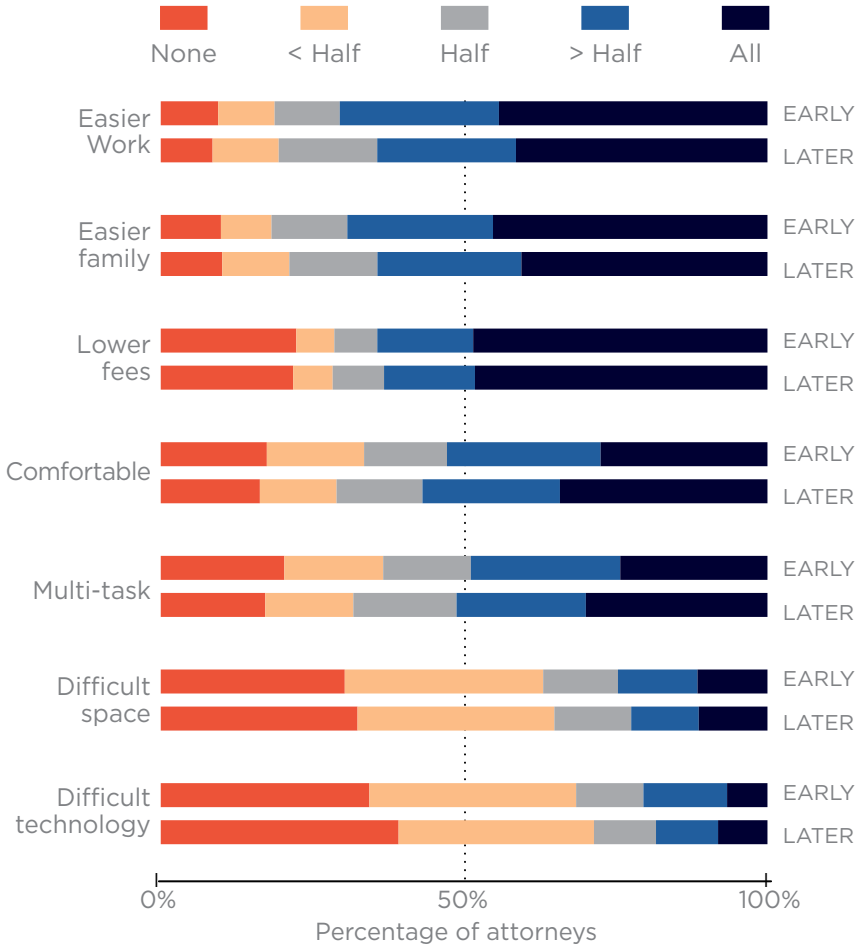
Finding 5: Online proceedings had both pluses and minuses for litigants.

We asked survey participants about the experience of litigants (in both civil and criminal cases) with online court proceedings during the early and later periods of the pandemic. Attorneys were asked about their clients. Court personnel were asked about the litigants in their courts. Specifically, we asked respondents what proportion of litigants they perceived were experiencing any of the following advantages from online proceedings: allowing litigants to schedule court proceedings around work; allowing litigants to schedule court proceedings around family caregiving; making court a more comfortable environment; allowing litigants to multi-task; and reducing attorneys' fees. Other questions asked about possible disadvantages to online proceedings: lacking internet access or the other technology that litigants needed to appear remotely and having access limited by the space litigants were in (e.g., noise, distractions, inability to communicate with attorney). Participants indicated the proportion of litigants they believed were affected, with five options: "none or almost none"; "less than half"; "half"; "more than half"; and "almost all or all." Figure 4 displays the percentages of attorneys who chose each option, for each item and each period. Clearly,

most respondents thought that the advantages of online proceedings were enjoyed by many and the disadvantages felt by few. Answers for the early and later periods are nearly identical, suggesting that the attorneys perceived little if any change. There was not a complete consensus that litigants benefited from online court. Between a quarter and a third of the attorneys thought that at least half of their clients had problems with technology or space. But most of the attorneys thought that most clients accrued advantages from online proceedings. A companion to Figure 4 for the responses of court personnel would be substantially—even startlingly—similar. Those respondents were a tad more positive, with only about one-fifth thinking that at least half of litigants experienced technology or space challenges and over three-fourths saying that at least half of the litigants experience the benefits. And, as with the attorneys, court personnel saw no change in this regard after September 2020.

Figure 4. Attorneys' Estimates of Proportion of Litigants Experiencing Some Effects of Online Proceedings



Notes: Ns by question, for early and later period were: 549, 468 (easier work); 504, 434 (easier caregiving); 540, 441 (multi-task); 549, 459 (approachable); 367, 307 (lower attorneys' fees); 631, 528 (difficult technology); 633, 521 (difficult space).

We also asked attorneys and court personnel to compare online and in-person court proceedings. Specifically, we gave respondents a list of incidents or events and asked them to say whether they believe the incident or event occurs more often during online proceedings, during in-person proceedings, or about the same in both settings.

As Figure 5 shows, there is consensus among a majority of respondents about some of the issues that online proceedings present compared to in-person proceedings. Specifically, most participants said that online hearings involve more audio-visual problems, more difficulty controlling whether proceedings are being improperly recorded or observed, more difficulty assessing whether a witness is being coached, more difficulty reviewing evidence, and more difficulty assessing witness credibility. Very few participants (between 1% and 5%) said that any of these features were more common in in-person proceedings. Additionally, while most participants (67%) reported that the format of the proceeding did not affect the number of procedural errors that arose, among those who did believe that format made a difference, nearly all said that procedural errors occur more often in online proceedings.

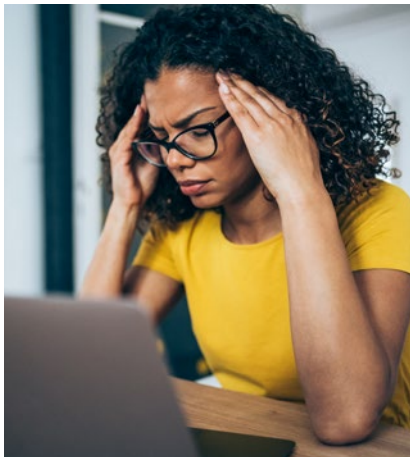
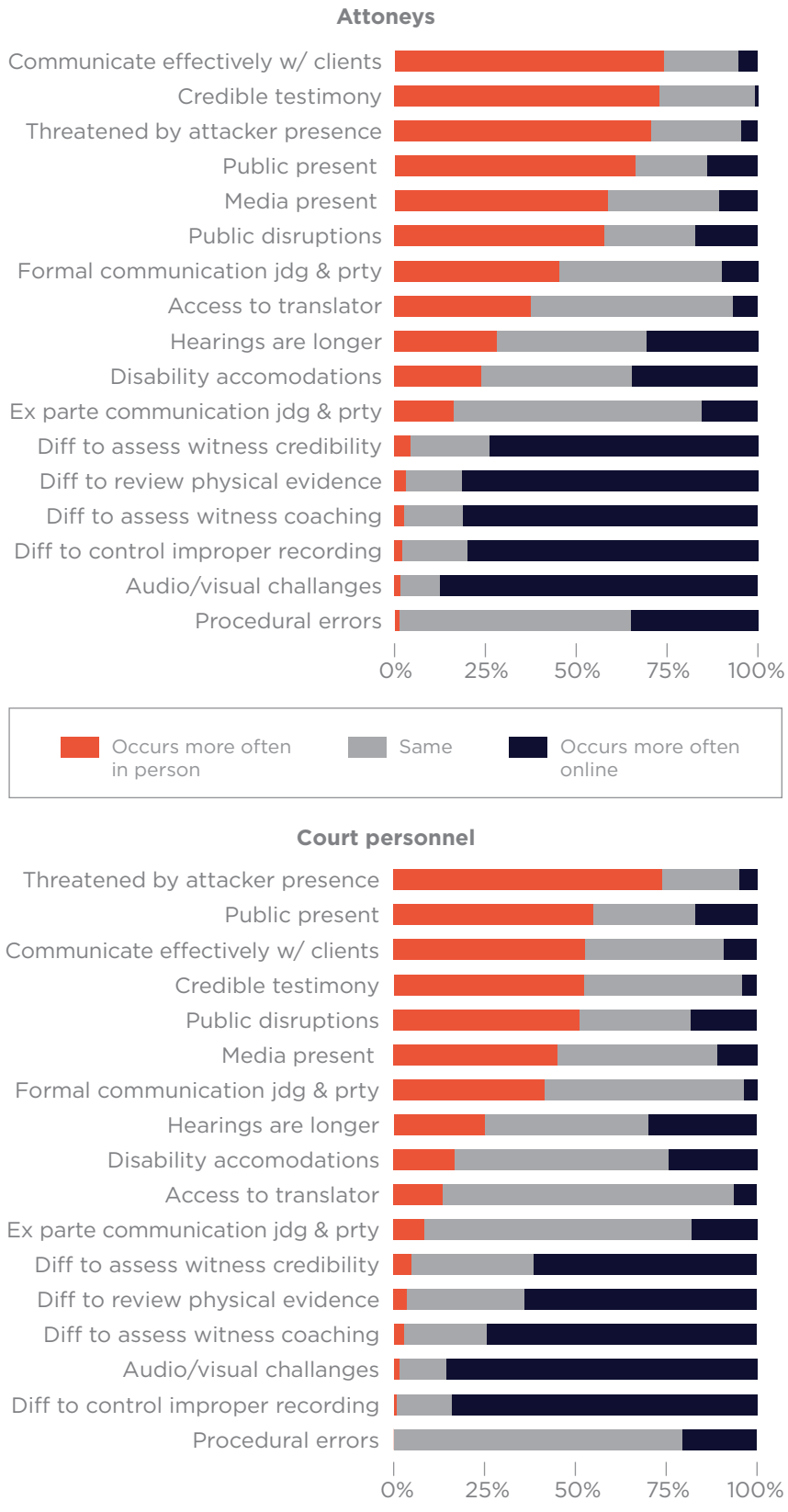


Figure 5. Attorney and Court Personnel Comparison of Online and In-person Court Proceedings



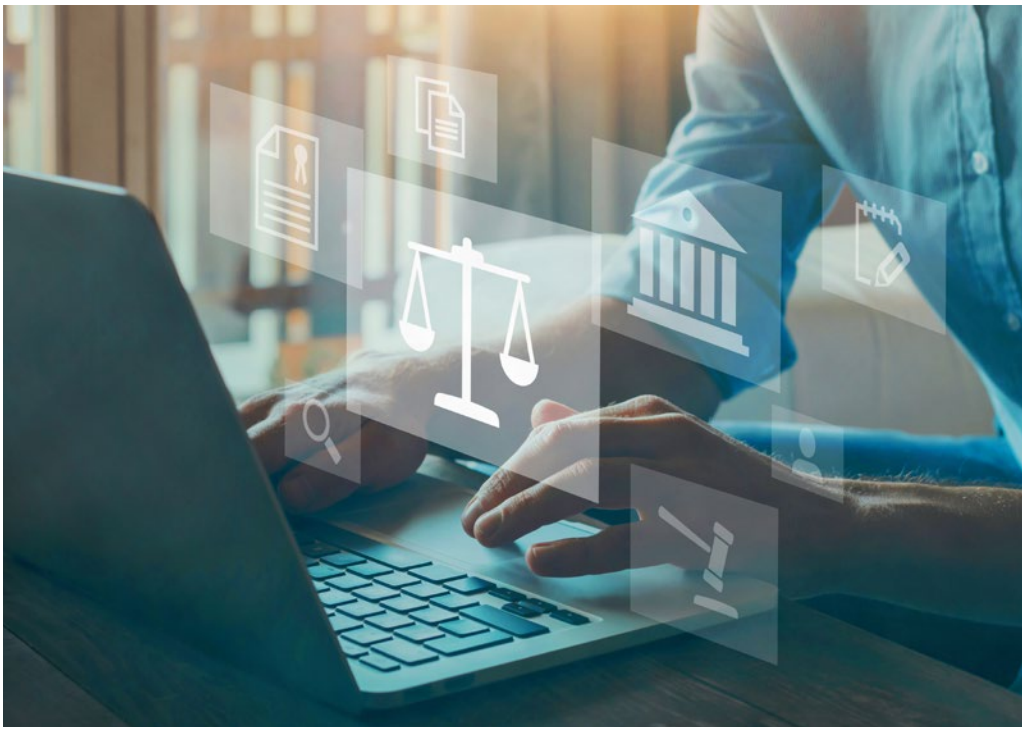
Second, there is consensus about some incidents or events occurring more often during in-person proceedings than in online proceedings. Most participants said that in-person proceedings involve more disruptions from members of the public, cause victims to feel more threatened, involve more formal communication between judges and litigants, allow more media and members of the public to observe, facilitate better communication between attorneys and clients, and allow for more compelling and credible testimony. Few participants (between 1% and 18%) said that any of these features were more common in online proceedings. Additionally, while most participants (62%) said that the format of the proceeding did not affect the availability of language translation services, among those who did believe that format made a difference, nearly all said that translation services were more readily available in in-person proceedings.

Third, some of the comparisons between in-person and online proceedings show substantial disagreement among survey participants. Questions about which proceedings run longer and which better permit accommodations for disabilities divided our respondents into three roughly equal-sized blocs. Most court personnel saw no difference between online and in-person proceedings regarding the availability of translation services, but the dissenters broke about evenly between those thinking online was better in this regard than in-person and those saying the opposite. For attorneys, that same pattern is evident regarding which mode featured more *ex parte* communication.

QUESTIONS AND CONSIDERATIONS FOR THE FUTURE

These findings about the impact of the COVID-19 pandemic on state court proceedings raise questions and considerations for further exploration by courts and researchers alike. Our study necessarily has some limitations: the survey captures individuals' perceptions about various features of the judicial system, rather than measuring those features directly. While we distributed the survey broadly, we did not aim to generate a random sample of all individuals with court experiences. Nonetheless, the survey results highlight some important issues that merit close attention. In particular, further exploration of the upsides and downsides of online court—along with the distribution of advantages and disadvantages across populations of court users and the implications for different kinds of cases—is critical in thinking about whether and how to make virtual court a more regular and permanent feature of the judicial system.

Courts and researchers should evaluate carefully which specific types of proceedings are most amenable to an online format and identify ways to ensure that all litigants—including people with disabilities and limited English proficiency, people who lack access to reliable Internet connections and hardware, and people belonging to historically marginalized groups—have meaningful access. More generally, our findings provide guidance for courts as they consider which other pandemic-related innovations to retain, revise, or discard, and for identifying best practices in creating and implementing future changes to court operations.



APPENDIX: SURVEY ITEMS

Attorney Survey

We'd like to know about your clients' experiences accessing the courts during the earlier months of the pandemic. Please indicate how much your clients were affected by each of the following *[between March and August 2020 / after September 2020]:*

Response options: much worse than before the pandemic; somewhat worse than before the pandemic; about the same as before the pandemic; somewhat better than before the pandemic; much better than before the pandemic; not applicable to my situation or case type(s)

- Litigants' (and their attorneys') ability to learn about or follow schedule changes in the case
- Litigants' (and their attorneys') ability to learn about or follow location changes or shifts to telephone or virtual proceedings
- Litigants' (and their attorneys') ability to learn about or follow procedural changes (such as how to file documents with the court)
- Litigants' ability to access court buildings or pass through security protocols in court buildings
- Litigants' ability to attend court proceedings on time

You indicated that at least some of your court proceedings took place online. What proportion of your clients would you estimate experienced each of the following *[between March and August 2020 / after September 2020]*?

Response options: none or almost none; less than half; about half; more than half; almost all or all; not applicable to my situation

- Having online court proceedings made it easier for litigants to schedule around work
- Having online court proceedings made it easier for litigants to schedule around family caregiving
- Having online court proceedings was difficult because litigants didn't have access to reliable internet, webcams, or other technology
- Having online court proceedings was difficult because of the space litigants were in (noise, distractions, physical separation between client and attorney)
- Having online court proceedings made court a more comfortable, approachable environment for litigants
- Having online court proceedings allowed litigants to multi-task (for example, appear in court while working, driving, or taking care of kids)
- Online court proceedings cost litigants less in attorneys' fees than in-person proceedings cost

You indicated that you've experienced some virtual or online court proceedings during the pandemic. For each of the following case effects, please indicate whether it tends to occur more in in-person proceedings or more in online proceedings:

Response options: occurs more in in-person proceedings; is about the same in-person and online; occurs more in online proceedings; not applicable to my situation or case type(s)

- It is difficult to assess witness credibility
- Testimony is more compelling or credible
- It is difficult to submit and/or review documentary or physical evidence
- Attorneys and clients communicate well with each other during the proceedings
- It is difficult to assess whether a witness is being improperly coached
- Hearings are longer
- It is difficult to control whether proceedings are being improperly observed or recorded
- There are audio-visual challenges related to adequately seeing and hearing the proceedings
- There are more procedural errors
- Victims feel threatened by the presence of their adversary/abuser/attacker
- Communication between judges and the parties is more formal
- There is more ex parte communication between judges and a party
- Members of the media are present to observe the proceedings
- Non-party members of the public are present to observe the proceedings
- There are more disruptions from members of the public
- Litigants have access to adequate disability accommodations for the proceedings
- Litigants have access to adequate language and translation services for the proceedings

Court Personnel Survey

We'd like to know about litigants' experiences accessing the courts during the earlier months of the pandemic. Please indicate how you saw litigants being affected by each of the following *[between March and August 2020 / after September 2020]*:

Response options: much worse than before the pandemic; somewhat worse than before the pandemic; about the same as before the pandemic; somewhat better than before the pandemic; much better than before the pandemic; not applicable to my situation

- Litigants' ability to learn about or follow schedule changes in the case
- Litigants' ability to learn about or follow location changes or shifts to telephone or virtual proceedings
- Litigants' ability to learn about or follow procedural changes (such as how to file documents with the court)
- Litigants' ability to access court buildings or pass through security protocols in court buildings
- Litigants' ability to attend court proceedings on time

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- Having online court proceedings made it easier for litigants to schedule around work
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You indicated that you've experienced some virtual or online court proceedings during the pandemic. For each of the following case effects, please indicate whether it tends to occur more in in-person proceedings or more in online proceedings:

Response options: occurs more in in-person proceedings; is about the same in-person and online; occurs more in online proceedings; not applicable to my situation or case type(s)

- It is difficult to assess witness credibility
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Publisher's Notes

The views and opinions expressed in this report are those of the authors and do not necessarily reflect positions of the Institute of Government and Public Affairs, University of Illinois System, the University of Illinois Urbana-Champaign, or the National Center for State Courts.

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