



## **Civil Law and Practice Section MCLE Program Webinar September 1, 2021**

### **Welcome/Announcements and Introduction**

Jim Ryan – Civil Law and Practice Section Chair

**12:00 PM – 1:00 PM**

### **Program**

#### **Adapting Advocacy for the Post-Pandemic Courtroom**

Keith Pounds, Litigation Insights

#### **Presentation Summary**

Legal advocacy has changed. The pandemic has seen courts and parties adopting technology to depose witnesses, hold hearings and mediations, and conduct trials in all-virtual or “hybrid” environments (such as jury selection by Zoom and trial in person). As a result, the ways attorneys tell case stories have had to adapt to the unique situational factors of a courtroom that exists entirely online; or has been drastically modified to fit social-distancing guidelines.

This presentation will cover the technological and physical changes that courts have implemented and will live on in many courts, at least for the short term. We will discuss best practices for crafting a case story, and cover tips on jury selection in this unique environment. We will also cover how jurors’ post-pandemic experiences and expectations will impact their perceptions of your case in the post-pandemic world.

#### **Link to Evaluation**

The evaluation must be completed to receive CLE credit.

<https://www.surveymonkey.com/r/CivilLaw09012021>



**Next CLE Program**                      October 6, 2021 - Issuing and Responding to Interrogatories,  
Hon. Russell W. Hartigan (ret.)

**DCBA OnDemand CLE is Available on IICLE:**

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) catalog on the DCBA website under the menu item **CLE & Events**→**IICLE Online Library**. You must be logged into your DCBA Membership Profile to view courses for free or at a reduced price.

**View & Print CLE Certificates through the DCBA Website:**

Members can view and print their certificates for any DCBA CLE program attended by first signing into their account on the DCBA website. Hover over the **CLE & Events** menu item and select **Find My CLE Credits**. This page will list all the CLE credits earned with DCBA. To the left of each program is an icon to print or email the Statement of Credit. You can find certificates for all CLE credits earned in Illinois by signing into your account on the MCLE Board website.



**Keith C. Pounds, Ph.D.**

SENIOR CONSULTANT

[kpounds@litigationinsights.com](mailto:kpounds@litigationinsights.com)

Keith is a Senior Consultant with 17 years of litigation consulting experience. He has worked on numerous complex, high-exposure cases, including antitrust, patent, trade secret, contract, whistleblower, employment, professional malpractice, product liability, and securities litigation. An expert in the fields of communication and storytelling, his practice area covers a variety of industries in venues across the country. Keith is adept at helping clients identify and develop compelling case themes and presentation strategies, providing quantitative and qualitative analysis through focus groups and mock trials and assisting attorneys with witness preparation, voir dire, and jury selection.

Prior to becoming a full-time jury consultant, Keith spent seven years in academia. During this period, he began working in a consultative nature with clients facing high-stakes litigation, assisting with case strategy, theme development, and effective delivery – and even developing a system for teaching attorneys how to use storytelling techniques to enhance their persuasive arsenal. He now puts these finely honed skills to work as a valuable part of the Litigation Insights team.

Litigation Insights is a national, woman-owned company with 27 years of experience conducting jury research, developing trial graphics and assisting counsel with jury selection and case presentation during trial proceedings. As a full-service firm, the company provides everything from witness preparation and jury selection to trial graphics and courtroom technology. Litigation Insights is headquartered at 9393 W 110th St. #400, Overland Park, KS 66210 – [www.litigationinsights.com](http://www.litigationinsights.com). It also has offices in Minneapolis, Dallas, Los Angeles, Baltimore, and Chicago.

## Education

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- Ph.D., Communication Studies, Southern Illinois University, Carbondale, IL
- M.S., Communication Studies, Southern Illinois University, Carbondale, IL
- B.A., English & Communication, Southwestern University, Georgetown, TX

## Professional Experience

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- 2020- Senior Litigation Consultant  
Litigation Insights, Inc.  
Chicago, IL
- 2017-2020 Senior Litigation Consultant  
Trial Behavior Consulting  
Chicago, IL
- 2014-2016 President and Senior Litigation Consultant  
Jury Trial Dynamics, LLC.  
Chicago, IL
- 2008-2014 Litigation Consultant  
TrialGraphix  
Chicago, IL
- 2006-2008 Associate Director  
Academic Center for Excellence, University of Tampa  
Tampa, FL
- 2001-2006 Assistant Professor  
Department of Speech Communication and Rhetorical Studies,  
Hofstra University  
Hempstead, NY

## Selected Publications

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- Pounds, K. & Cook, K. (2021). Is The Pandemic Courtroom Here To Stay? *Adapting Advocacy for the Post-Pandemic World. USLAW Magazine (Summer), 30-31.*
- Pounds, K. (2021). Virtual Depositions Are Here to Stay. *Insights.*
- Pounds, K. (2020). Preparing Witnesses for the COVID Courtroom. *Insights.*
- Pounds, K., & Minick, B. (2010). Storytelling in Legal Arguments. *For the Defense: Defense Research Institute: 10-14.*
- Pounds, K. (2006). Speaking the Beyond: Loss and the Recuperative Grace of Voice. *Text and Performance Quarterly 26: 309-312.*
- Pounds, K. (2005). On Performative Writing: Recognition. *Liminalities: A Journal of Performance Studies, 1.*
- Pounds, K. (1999). Book Review, Susan Broadhurst, Liminal Acts: A Critical Overview of Contemporary Performance and Theory. *Text and Performance Quarterly 21: 222-224.*

## Selected Professional Presentations

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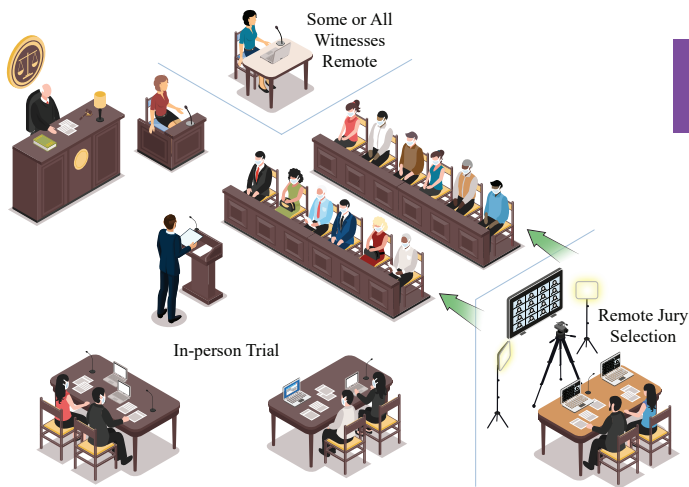
- Pounds, K. & Cook, K. (2021). Defending Education: Juror Perceptions and Plaintiff Tactics. *State of Idaho Risk Management Program.* June 9, 2021.
- Pounds, K. & Marinakis, C.M. (2021). Preparing Drivers and Corporate Designees for Deposition. *Webinar for Great West Casualty Company.*
- Pounds, K. & Polavin, N. (2021). Best Practices in Defending Law Enforcement Cases. *State of Idaho Risk Management Program.* May 19, 2021.
- Pounds, K. (2021). How to Tell Your Case Story in an Age of Misinformation. *Presented to Chicago Bar Association.* Chicago, IL.

- Pounds, K. (2021). Practice Pointers for Remote Depositions. *Presented for Federal Bar Association, Minnesota Chapter, Class Action, Mass Tort, and Multi-District Litigation Practice Group.*
- Pounds, K. (2020). The Show Must Go On: Jury Trials Post-Pandemic. *Presented online for Idaho State Bar, Boise, ID.*
- Pounds, K. (2020). What Pandemic Misinformation Can Teach Us About Crafting Case Stories. *Presented online for Husch Blackwell, Overland Park, KS.*
- Pounds, K. (2020). The COVID-19 Courtroom: Changes in Juror Attitudes and Trial Presentation Strategies. Invited Speaker. *Presented for Young Lawyers Section of the Idaho State Bar, Boise, ID.*
- Pounds, K. (2019). The Polarization of the American Jury. Invited Speaker. *Presented to Law Department, Corporation Counsel for the City of Chicago, Chicago, IL.*
- Pounds, K. (2019). Juries and The Growing Mistrust of Science. Invited Speaker. *Presented to Law Department, Corporation Counsel for the City of Chicago, Chicago, IL.*
- Pounds, K. (2018). Effective Witness Preparation for City of Chicago Witnesses. Invited Speaker. *Presented to Torts Department, Corporation Counsel for the City of Chicago, Chicago, IL.*
- Pounds, K. (2018). Strategic Uses of Jury Research and Trial Consultants for Courtroom Success. Invited Speaker. *Presented for State of Idaho, Risk Management Program Civil Litigation Conference, Boise, ID.*
- Pounds, K. (2018). Evolving Issues in High Exposure Litigation. Invited Speaker. *Thompson Hine, Cleveland, OH.*
- Pounds, K. (2017). Jury Selection Techniques and the Use of Jury Focus Groups. Invited Speaker. *Presented by the ISBA Labor & Employment Law Section, Chicago, IL*
- Pounds, K. (2016). Jury Selection: Best Practices for the City of Chicago. Invited Speaker. *City of Chicago Law Offices, Chicago, IL.*
- Pounds, K. (2013). Current Trends in Voir Dire and Jury Consulting. Invited Speaker. *Loyola University School of Law, Chicago, IL.*
- Pounds, K. (2012). Voir Dire and Juror Profiles Training. Invited Speaker. *Securities and Exchange Commission, Miami, FL.*
- Pounds, K. (2012). To the Brink and Beyond – Confessions of a Jury Consultant. *CLE Presentation to Baker & Hostetler, New York, New York.*
- Pounds, K. (2012). An Insider’s View of Damages Experts in Patent Cases. Invited Speaker. *Charles River Associates, Chicago, IL*
- Pounds, K. (2012). Effective Witness Preparation. *CLE Presentation to Hunton & Williams, New York, New York.*
- Pounds, K. (2012). Voir Dire Strategies. Invited Speaker. *KITA: Kirkland Institute of Trial Advocacy, Chicago, IL.*
- Pounds, K. (2011). Trial Consulting 101. Invited Speaker. *American Society of Trial Consultants Annual Conference, Seattle, WA.*

## Professional Memberships

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- American Society of Trial Consultants
- National Communication Association
- Performance Studies International



# IS THE PANDEMIC COURTROOM HERE TO STAY?

## Adapting Advocacy for the Post-Pandemic World

Keith Pounds, Ph.D. and Katrina Cook, Ph.D. | Litigation Insights

Legal advocacy has changed. The pandemic has seen courts and parties adopting technology to depose witnesses, hold hearings and mediations, and conduct trials in all-virtual or “hybrid” environments (such as jury selection by Zoom and trial in person). As a result, the ways attorneys tell case stories have had to adapt to the unique situational factors of a courtroom that exists entirely online, or one that has been drastically modified to fit social-distancing guidelines.

If you are an attorney on one of the hundreds of cases pending when courts open in your jurisdiction, you may be breathing a sigh of relief. It is tempting to believe that an end to the pandemic will return things back to the way they were in the courtroom.

Don't give in to that temptation quite yet. Some of the technological and physical changes that courts have implemented will live on in many courts, at least for the short term. And just as importantly, courts are not the only thing that has changed during the pandemic; they merely reflect what jurors have experienced in numerous facets of their lives. A savvy attorney needs be aware of how jurors' new experiences and expectations will impact their perceptions of your case in the post-pandemic world.

### PERSUASION IS AN EVOLVING ART

To make a message persuasive, it must be relevant and timely. Ancient rhetoricians referred to the concept as *kairos*, the importance of time and setting when making arguments – in other words, the *situational* factors that impact an attempt to persuade. Fast forward to our current pandemic: As you go forth to argue your case's merits, it is rare to encounter a time so likely to have impacted the way juries view your case and how they make decisions.

To study these changes, we surveyed

over 200 prospective jurors to learn more about their expectations and preferences. Not surprisingly, 80% indicated that they are at least somewhat comfortable using online video-conference tools such as Zoom. We also asked if it would be more difficult to pay attention to a trial that took place entirely online; 60% said it would be at least as easy to pay attention as it would be in person. One very interesting finding is that, when presented with a choice to report for jury duty in person or via Zoom, more than half would choose jury duty online. While there are any number of different practices courts are implementing to accommodate civil trials this year, it is clear that jurors have higher expectations that technology be used to make the experience better for them. In the post-pandemic courtroom, counsel should consider demonstrating a proficiency with these potential accommodations, from remote technology to the use of masks.

### ACCOMMODATIONS HAVE CREATED NEW DIFFICULTIES

Of course, these accommodations are a double-edged sword. Indeed, from a juror's perspective, one of the biggest challenges sitting through an online or partially online civil trial has been tuning out all of the new distractions. For remote jurors, these include the challenges of being at home, or in an office, and being required to focus for long stretches of time on a Zoom screen. For example, 67% of those we surveyed said it is harder to judge other people's body language in a video meeting than an in-person meeting. And jurors don't fare much better in the hybrid trial, where the modified courtrooms place parties at safe distances, often with jurors farther away from witnesses and counsel. Add in the now-ubiquitous plexiglass dividers

and the fact that everyone is wearing masks, and it is easy to see how these changes add up to a challenging and uncomfortable experience for our jurors.

It is up to trial counsel to help a jury overcome some of these challenges, and it starts with trial preparation. From the beginning, counsel should emphasize the integration of themes and demonstratives that help keep the jury engaged in this distraction-prone courtroom environment.

### KEY THEMES ARE MORE IMPORTANT THAN EVER

We have long advocated using key themes for trial advocacy, and they are more important than ever in a courtroom filled with potential distractions. Themes are more than just pithy statements – they should reflect a key message or idea about your case that your juror supporters can easily remember and use to argue for your case in deliberation. Your themes should tie to evidence in your case and should be repeatable by witnesses in their testimony. Jurors will better assimilate your case messages through themes that are identifiable and repeated often.

For instance, in a recent wrongful death case involving a snowplow, the driver and expert established the concept that “You Cannot Avoid What You Cannot See.” This theme helped persuade jurors that despite the best practices of the driver, a pedestrian who was not exercising necessary care can be struck and killed by walking in the plow's blind spot. Memorable themes tailored to your case, such as “Safe When Used Safely” or “Dose Makes the Difference” or “A Time-Tested Product,” will help juries go to bat for you in deliberations, especially when they are repeated often enough that jurors can recall them easily.

## WITNESSES WILL REQUIRE SPECIAL PREPARATION

Your next significant consideration should be working with witnesses to incorporate those themes and to present as credibly as possible, whether via Zoom or in a modified courtroom. And while 66% of our respondents said they would find a witness who testified via video just as credible as one who testified in person, an online witness still poses a challenge to trial practice. For instance, in the pre-pandemic courtroom, witnesses were handed documents and exhibits, sometimes for the very first time, on the stand. These exhibits had the capacity to surprise and confound a witness, a potentially significant sign to a jury that the witness is not credible. On Zoom, it is more difficult for an attorney to “surprise” a witness; at the same time, however, any facial reaction a witness has will be magnified for the jury.

Consider a recent example of a witness testifying via Zoom, who was projected live into the courtroom on a screen large enough to be seen across the conference center. When opposing counsel asked a question, the expert rolled her eyes. What would have been a subtle expression under normal circumstances was caught easily by every member of the jury.

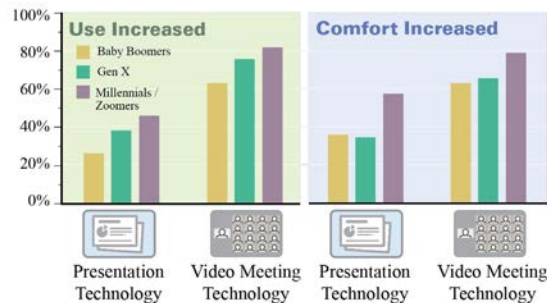
In short, there are trade-offs to consider when preparing witnesses. Preparation should not only incorporate relevant themes, but also nonverbal communication tips and technology training so the witness is comfortable with the format they will rely on to testify.

## CREATIVE DEMONSTRATIVES REINFORCE YOUR THEMES & KEEP JURORS ENGAGED

Finally, you can reinforce your themes through the use of creative and engaging visual aids that work in every setting, including Zoom trials. In our recent survey, participants reported increased use of video-conference platforms and other types of presentation technology since the start of COVID-19 (51% of potential jurors said their use of presentation technologies, such as PowerPoint, had increased since the start of COVID-19; 75% of potential jurors indicated their use of video-meeting technology, such as Zoom, had increased.). And not only have jurors indicated a general comfort with video-conference tools (as previously noted), but they also reported specifically that their comfort with such technologies has increased during the pandemic (55% of potential jurors stated their comfort with presentation technologies, such as PowerPoint, had increased; 72% said their comfort with video-meeting

technology, such as Zoom, had increased). *Even more interesting, this change was consistent across age groups as you can see in the following chart.*

### INCREASE IN USE/COMFORT BY PERCENTAGE



So, while the common stereotype that Millennials, along with the newest generation reaching juror eligibility, Zoomers, “need” visuals may hold true, older jurors such as Baby Boomers are not far behind. With a more technology-savvy population comes higher expectations for media presentations in the post-pandemic courtroom. This shift is further reinforced by our survey, where jurors indicated they expected attorneys to use some sort of visual aid when presenting their case (56% of potential jurors expected an attorney to use PowerPoint in presenting their case; 64% said they would expect attorneys to use creative graphics and videos to illustrate their case). Jurors in our mock trial exercises echo this sentiment, frequently expressing that they wish they could “see” what the attorneys were talking about or mentioning they had trouble visualizing exactly what the scene of an accident looks like.

Even beyond jurors’ expectations, demonstratives are helpful in opening and closing to bolster the themes introduced during witness testimony and oral arguments. The added repetition aids jurors’ recollection, and the visual format provides an effective medium for those with a more visual learning style.

From our experiences in both Zoom trials and hybrid trials, there are several important considerations when incorporating demonstratives into a presentation:

- First, consider how the demonstratives will be shown to jurors. Will jurors view them online via their computer screens? Will they be projected onto a screen in the courtroom? If the demonstrative is presented online, remember that jurors will have a much closer view of the information than they would if it were projected in a physical courtroom. For example, pulling a designation from an email and projecting it on a courtroom screen makes it difficult for jurors to read the parts of the email that are not being

magnified. That same designation presented online is much closer to the juror, so additional information is likely to be noticed. As such, it is important to think about what exactly you want jurors to focus (or not focus) on.

- Second, when demonstratives are pulled up on Zoom, the image frequently obscures the presenting attorney. Therefore, be especially selective in the number of demonstratives used in opening and closing, focusing on quality over quantity. The attorney will get more screen time as they make their arguments, and jurors will have a curated set of the most crucial themes and evidence to remember.

## CONCLUSION

Although many courts have reopened, and there are plans for more openings in the fall, the ripples of the pandemic lockdown are likely to resonate for some time. With the rise in technology comfort and the strong potential for distractions among remote jurors, certain preparations are more important than ever. Develop clear themes to convey your case, incorporate those themes into witness testimony, and use demonstratives strategically to emphasize your case message. Counsel will find an advantage in embracing the enduring technological changes and juror expectations of the post-pandemic world.



*Katrina Cook is a consultant at Litigation Insights with 11 years of practical application, study, and research in legal communication, jury research, and cognitive psychology. She has conducted and designed mock trials and experimental studies assessing juror attitudes toward the facts of a case and how other factors, such as attorney gender, may influence jurors’ judgments. Further, she has assisted counsel in implementing themes discovered during this research into their case argument.*



*Keith Pounds is a senior consultant at Litigation Insights with 17 years of litigation consulting experience. He has worked on numerous complex, high-exposure cases, including antitrust, patent, trade secret, contract, whistleblower, employment, and securities litigation. An expert in the fields of communication and storytelling, his practice area covers a variety of industries in venues across the country.*



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## Adapting Advocacy for The Post-Pandemic Courtroom

Presented to  
DuPage County Bar Association



**Keith Pounds, Ph.D.**  
Senior Jury Consultant

WE BRING YOUR CASE  
**INTO FOCUS**

# PARTNERING FROM START TO FINISH

## Jury Research



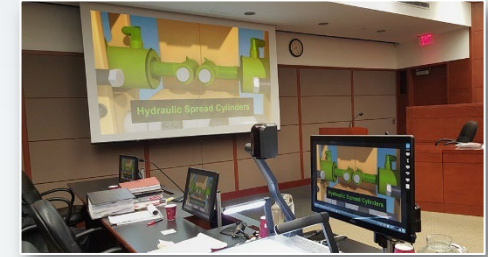
- **Pre-Trial: Early Case Assessment**
  - Focus Groups
  - Theme Development
  - Surveys
- **Post Discovery**
  - Mock Trials
  - Witness Prep
  - Themes
- **Trial**
  - Voir Dire/Questionnaires
  - Jury De-selection
  - Juror Internet Searches
  - Trial Monitor/Shadow Jury
- **Post Trial**
  - Exit Interview/Reconvening

## Graphics & Animation



- **Concept Development**
- **PowerPoint**
- **Timelines**
- **2D/3D Animations**
- **Medical Illustrations**

## Trial Technology



- **Document Management**
- **Deposition Management**
- **Trial Presentation Services**
- **Courtroom & War Room Installation**



# AGENDA

## **Changing Expectations and Experiences**

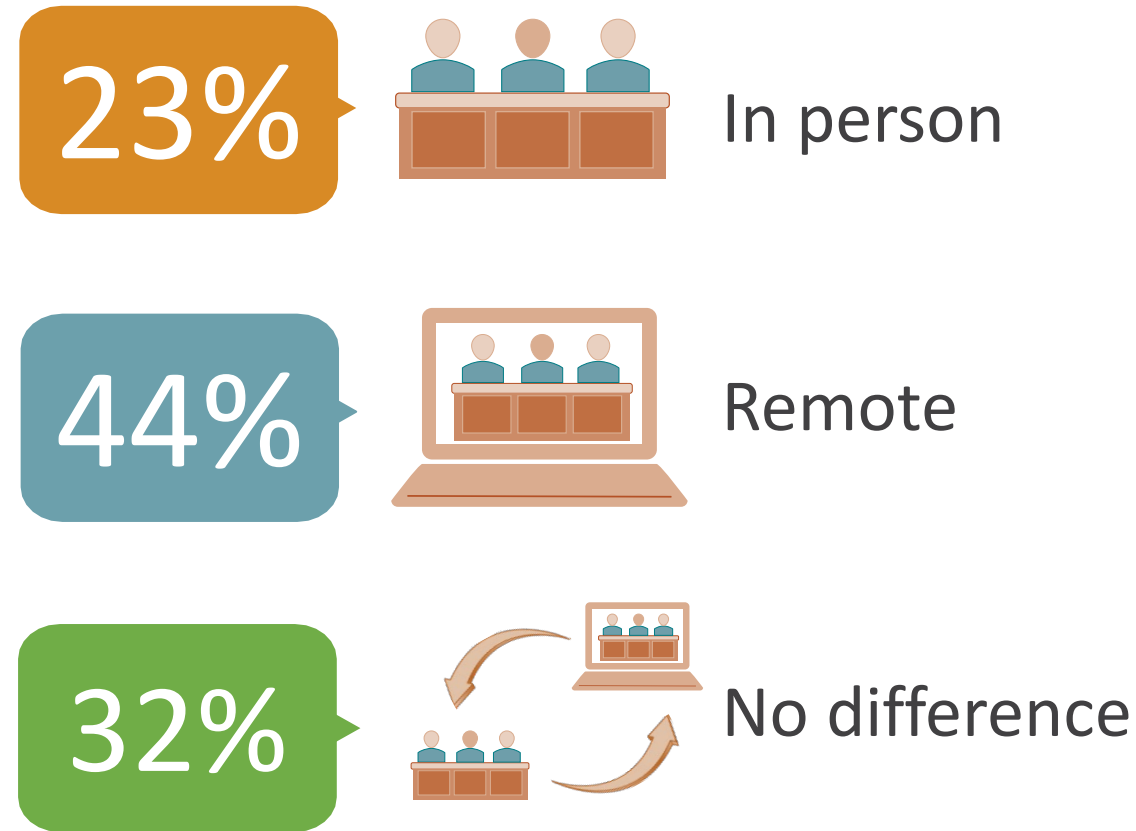
- **Juror Experience**
- **Juror Perceptions**
- **Courtroom Changes**

## **Case Story and Themes**

## **Jury Selection**

## **Best Practices and Lessons Learned**

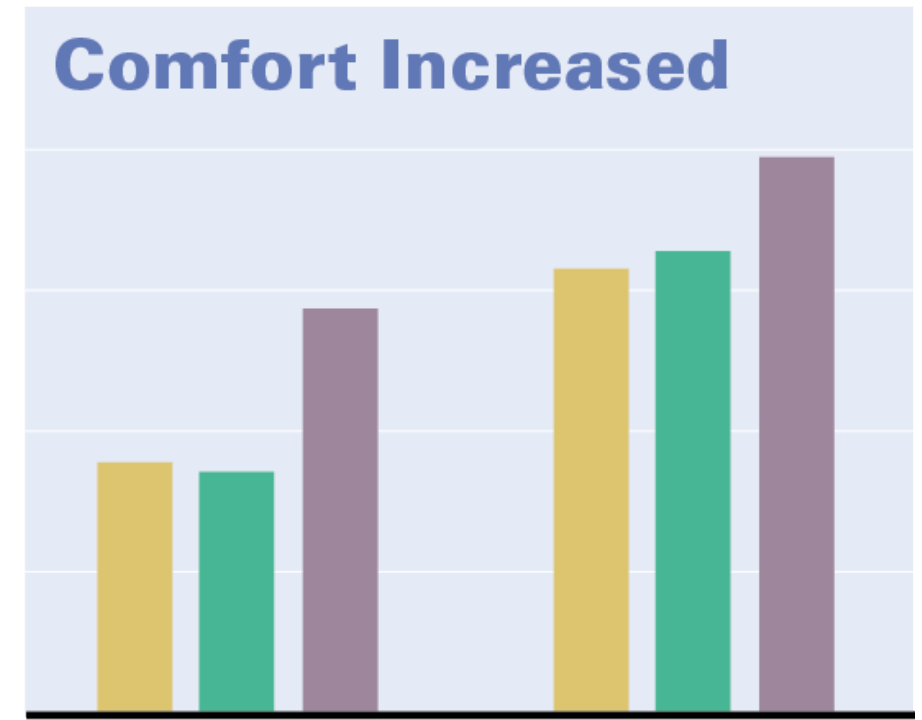
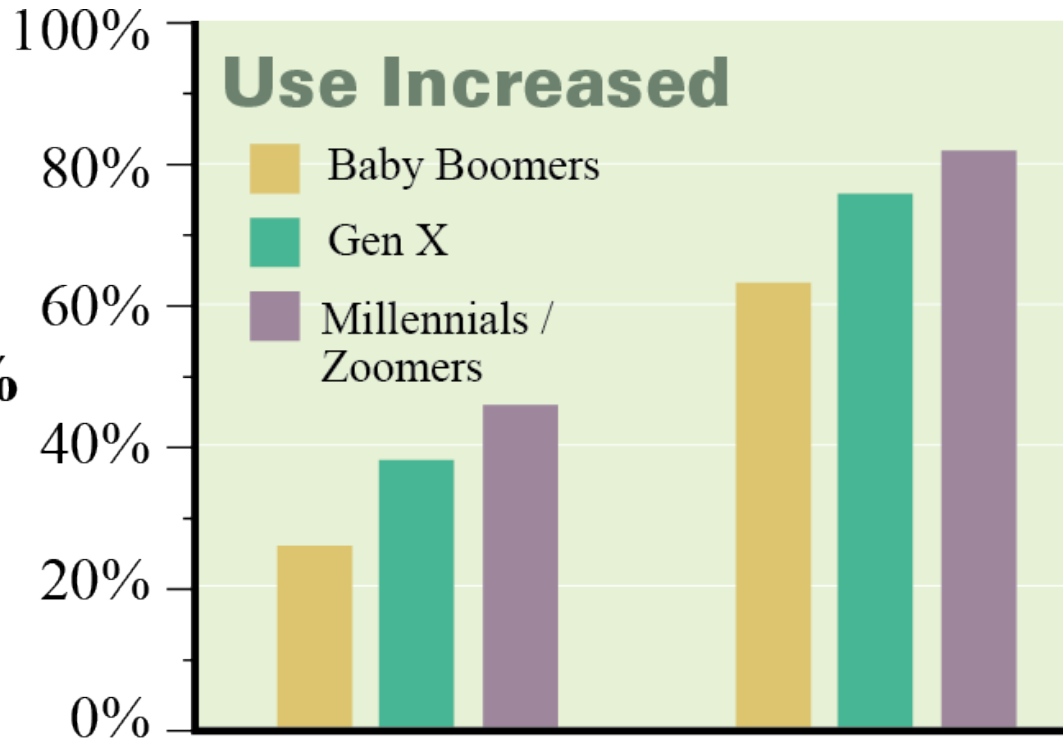
Are you more comfortable with in person or remote jury service?\*



\*Public Opinion Poll , National Center for State Courts

# USE AND COMFORT WITH TECHNOLOGY INCREASED

Increase in use/comfort, %



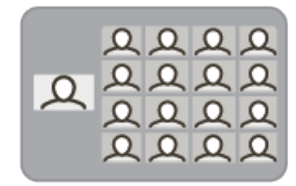
Presentation Technology



Video Meeting Technology

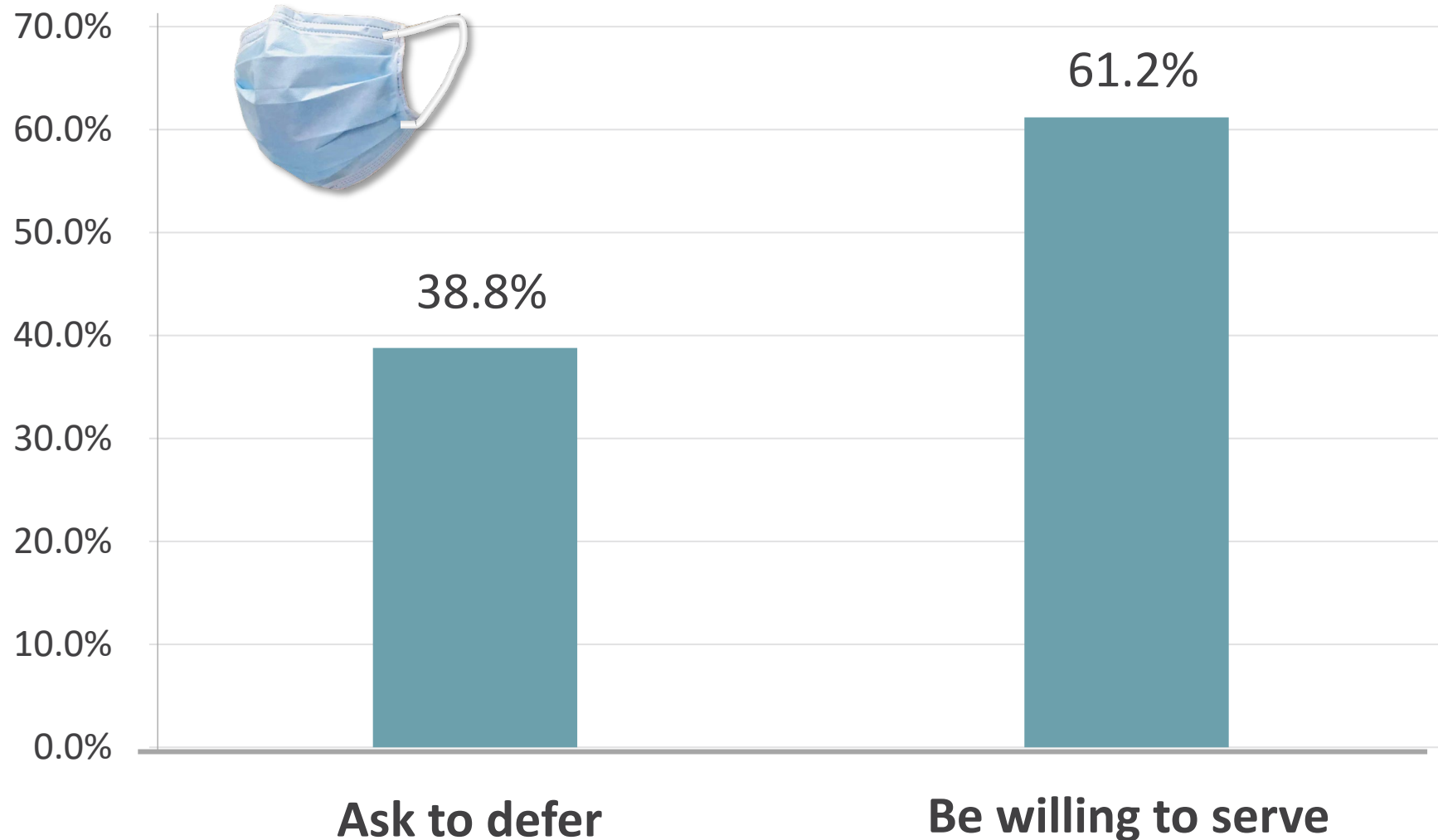


Presentation Technology

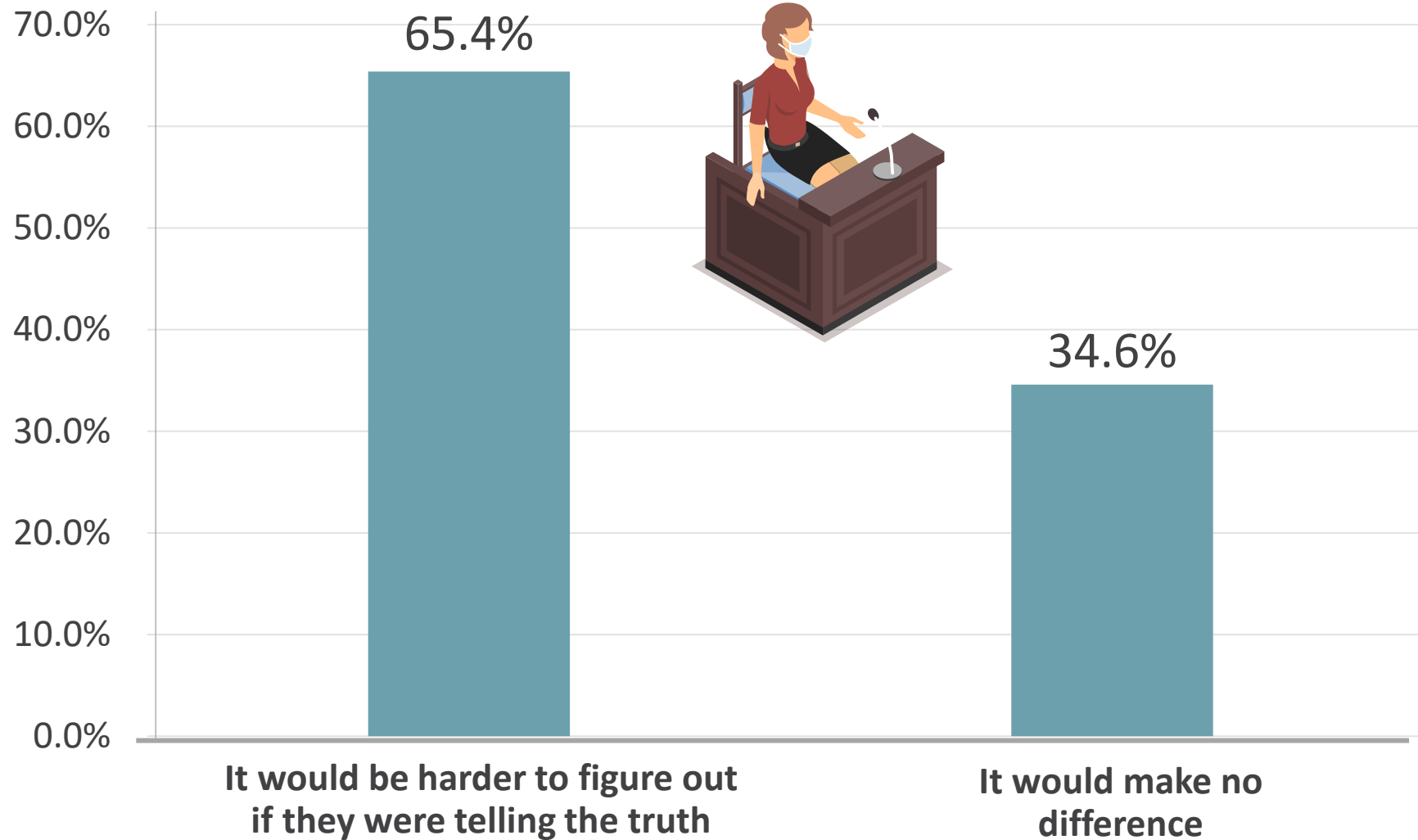


Video Meeting Technology

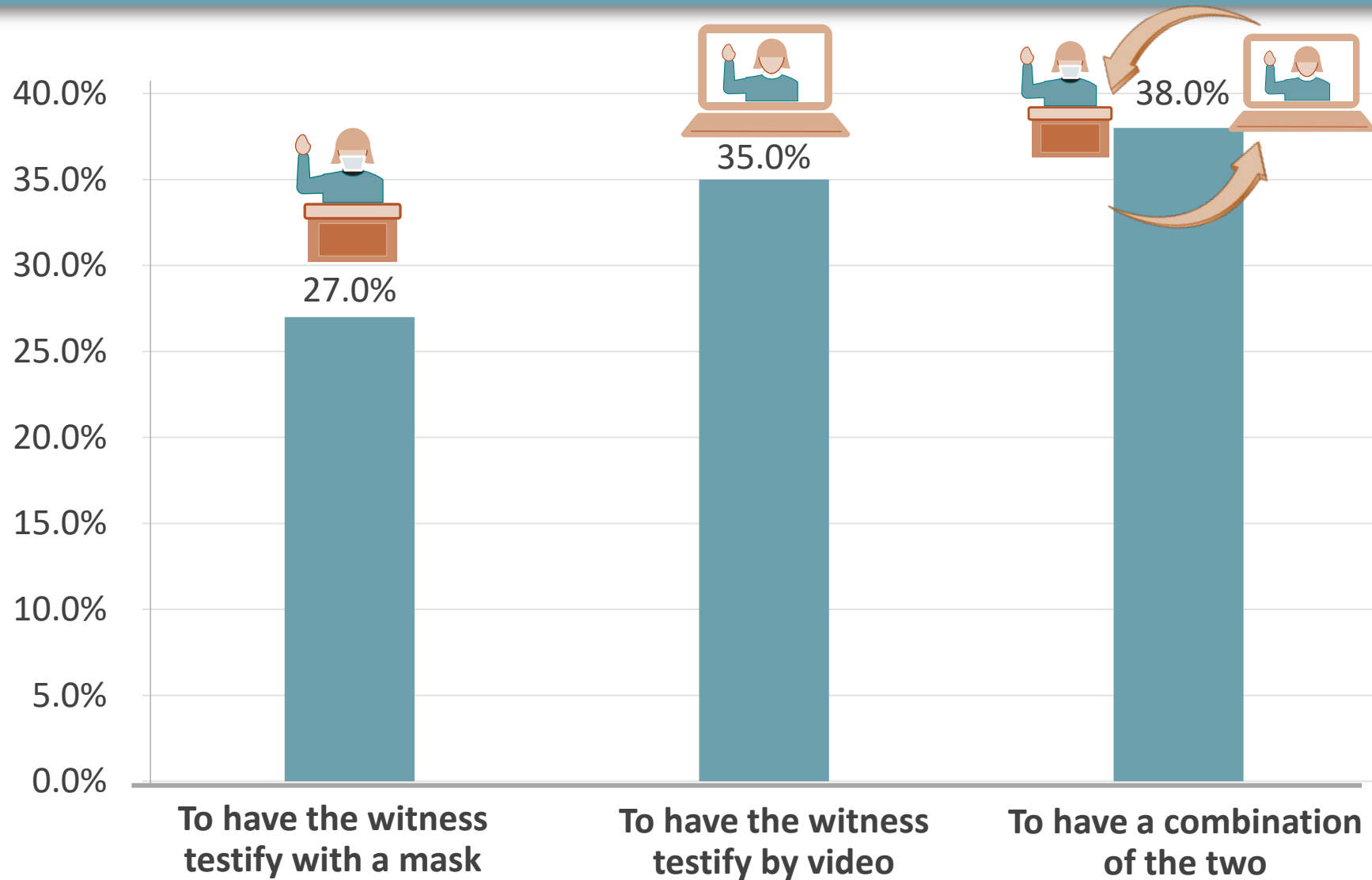
# If you were called for jury duty and were required to wear a facemask for the duration of the trial and during deliberations, would you:



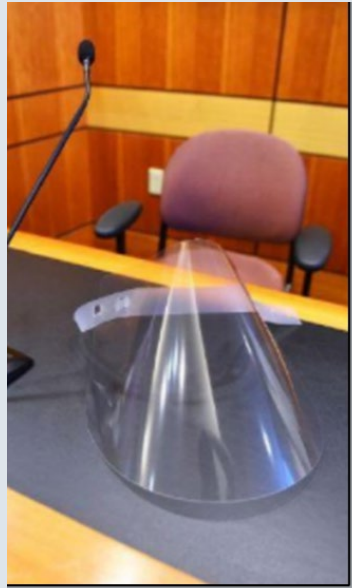
# If a witness on the stand was required to wear a facemask while giving his or her testimony:



# IF YOU WERE A JUROR IN A TRIAL AND A KEY WITNESS WAS TO TESTIFY, WOULD YOU CHOOSE:



# COURTROOM – AFTER COVID-19



**Face Shield  
Option**



**Masks on  
Jury**



**Masks on  
Counsel**

## Plexiglas Barriers

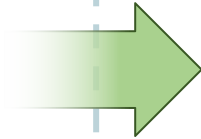


# HYBRID TRIALS

- Typically start with a remote jury selection followed by in-person trial once openings commence.
- Some or all witnesses may appear remotely.
- No standard approach across courts, will remain in 2021 and early 2022 as the pandemic subsides.



**Remote Jury Selection**



**In-person Trial**

**Some or All  
Witnesses  
Remote**



# “HYBRID COURTROOM” SET UP

COURT ROOM



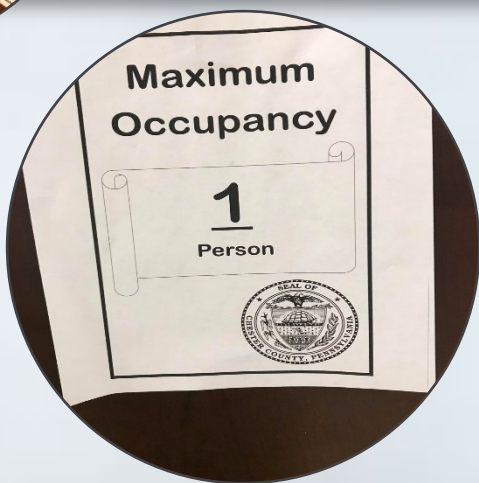
# COOK COUNTY COURTROOM SET UP

COURT ROOM

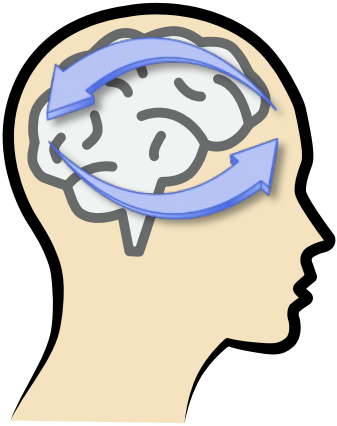




# LESSONS FOR CRAFTING CASE STORY



## Study at Princeton University:



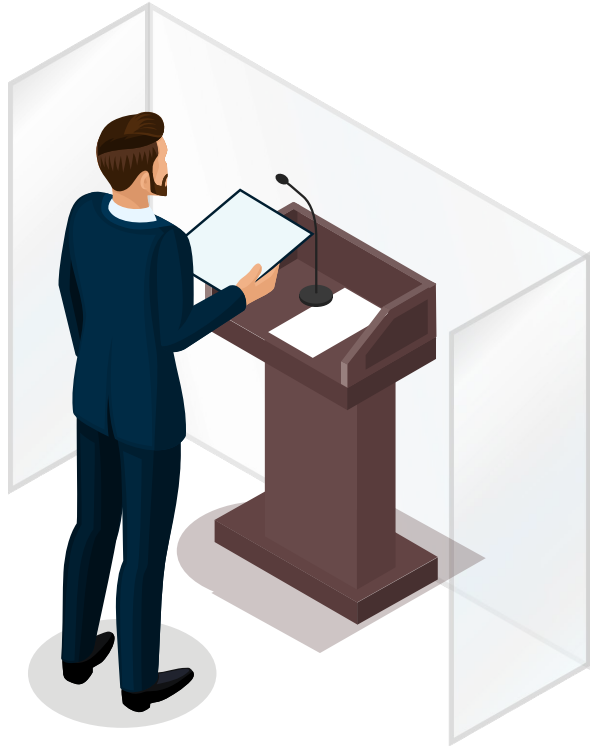
- When listening to another speaker tell a story, the same areas of both the speaker & the listener's brains light up in an fMRI.
- Subsequent research by the University suggests that memory improves up to 70% when a list of facts is presented in a story format.



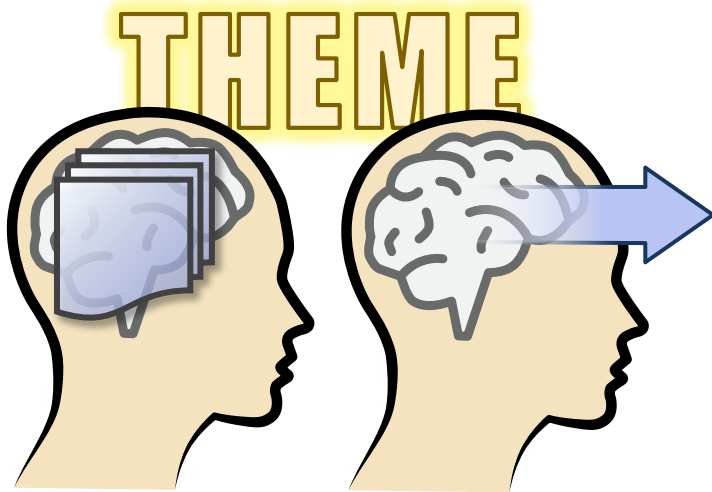
PRINCETON  
UNIVERSITY



- **Identify gaps and blind spots**
  - Jury Research
- **Select your audience**
  - Juror Questionnaires and Jury Selection
- **Craft a Complete Case Story**
  - Affirmative Story
  - Addresses Motives for Decisions
  - Frames with the Proper Context
  - Alternative Causation
  - Strengthen with Visual Presentation that is Organized



- **Identify Case Themes**
  - Repeated by witnesses, in the opening, and closing
  - Rule of three
- **Address Motives & Give Context**
  - Jurors will wonder why
- **Alternative Causation**
  - Personal injury and wrongful death cases



## THEME:

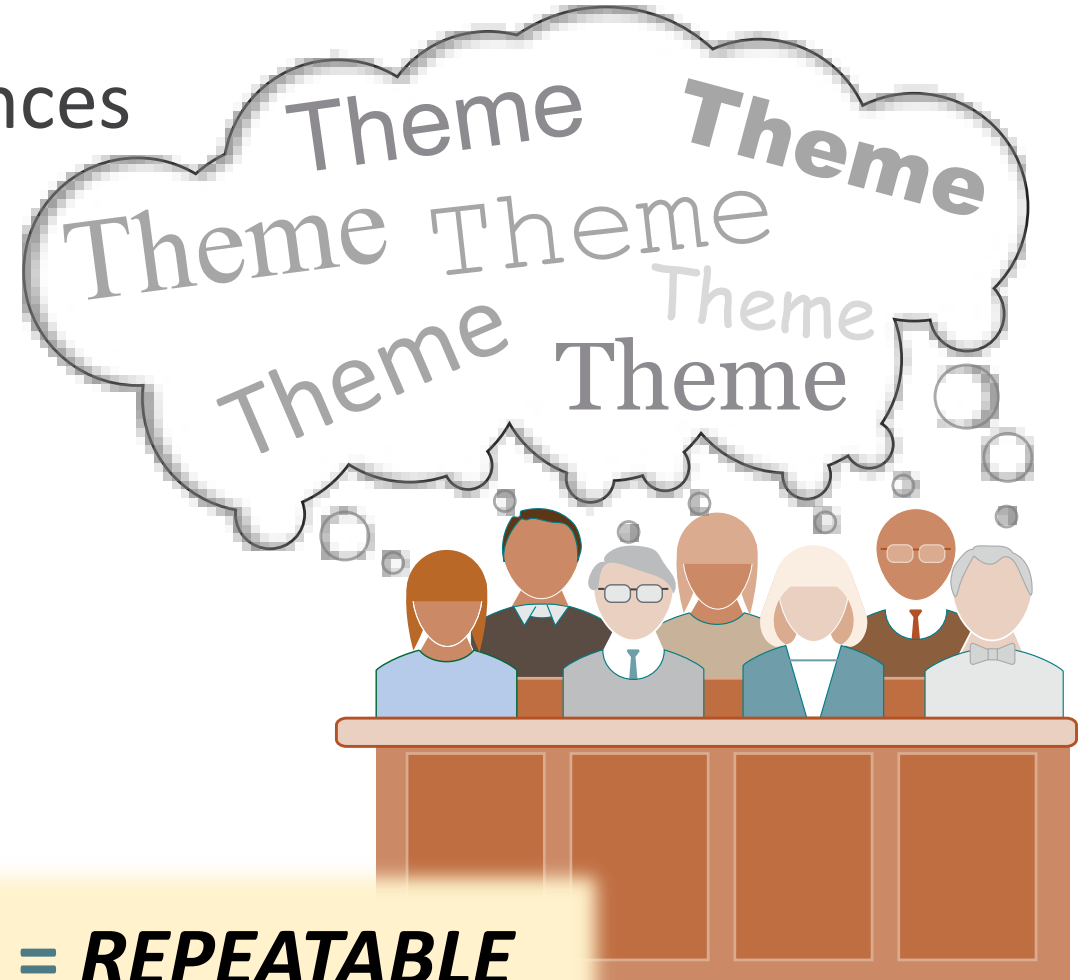
*Intentionally oversimplified concept that connects complex evidence with jurors' experiences, beliefs and predispositions.*

- Headlines for your case story
- Drive home key messages
- Arm your jurors to argue

# WHAT MAKES A GOOD THEME?

## SOMETHING JURORS WILL *REPEAT*

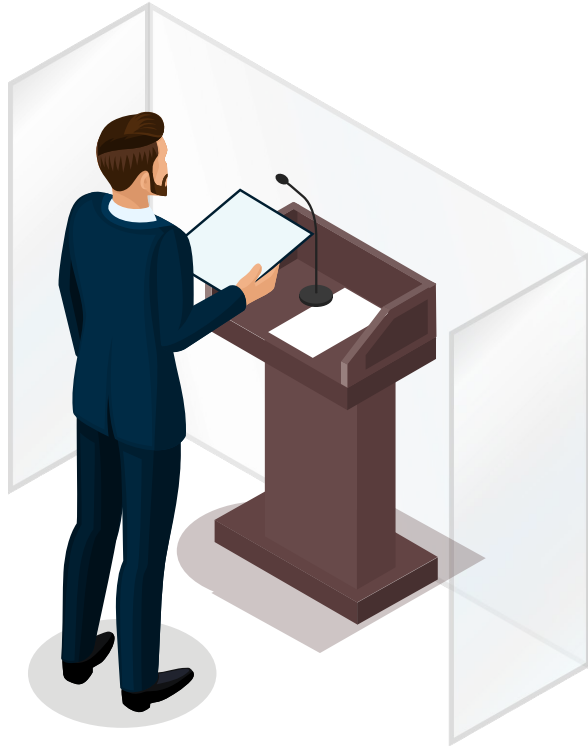
- **Simple** – think phrases, not sentences
  - Newspaper Headlines
  - Short, clear messages
- **Memorable**
  - Alliteration
  - Common phrases
  - Idioms
  - The rule of 3's



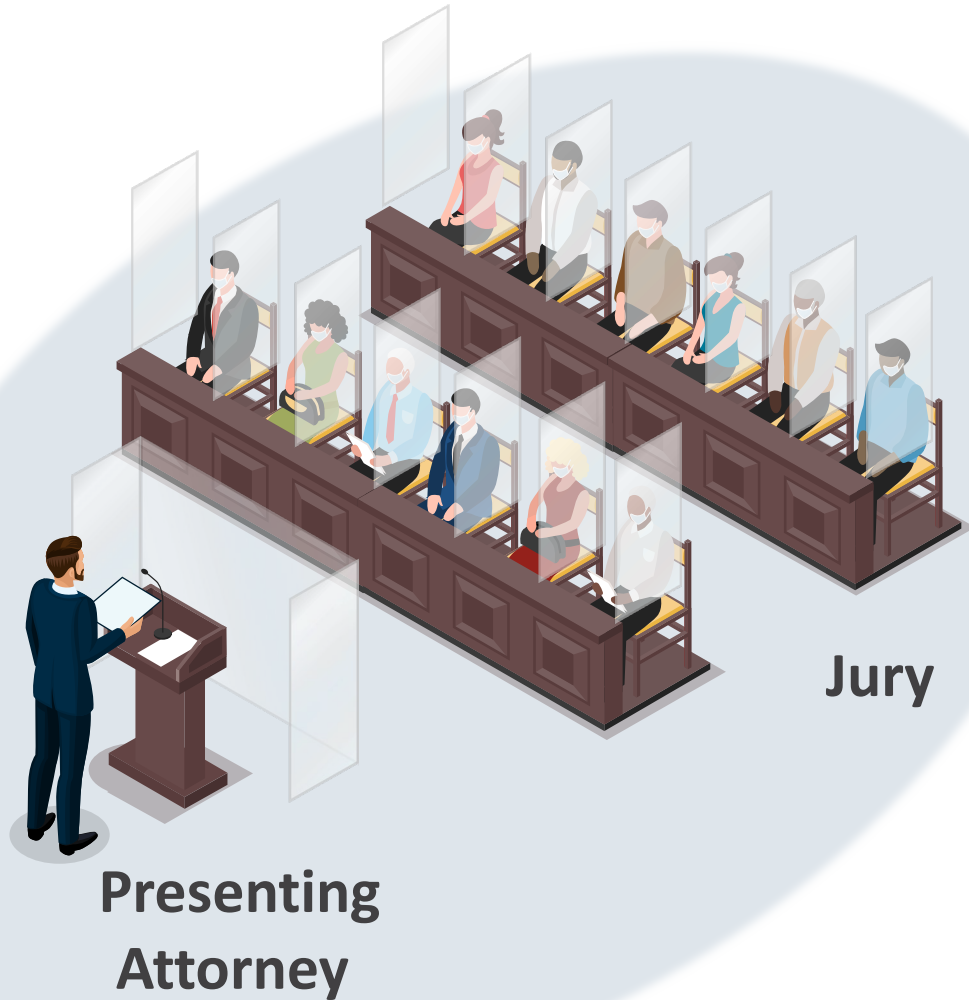
**Simple + Memorable = *REPEATABLE***



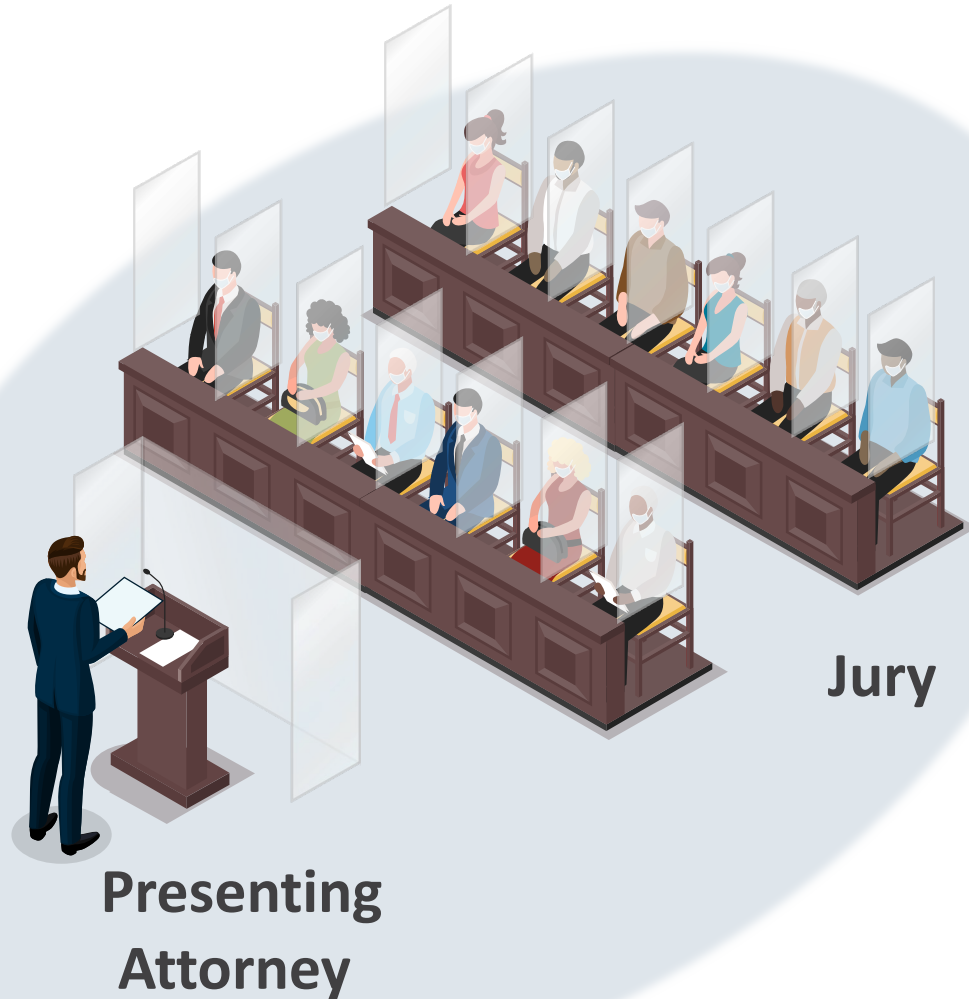
- A Time-Tested Product
- Safe When Used Safely
- Divided Responsibility – We Met Ours
- Dose Makes the Difference
- Probabilities, not Possibilities
- We Don't Make the Rules; We Follow Them
- Plaintiff Knew the Rules and Knew the Risks



- **Head and Heart rule**
  - How balanced is your case between the two
  - Give jurors reason to want to find for your client
- **Narrative Consistency**
  - Conceptualized in terms of beginning, middle and end
  - Witnesses working together
  - Timelines, competing narratives, unreliable narrators



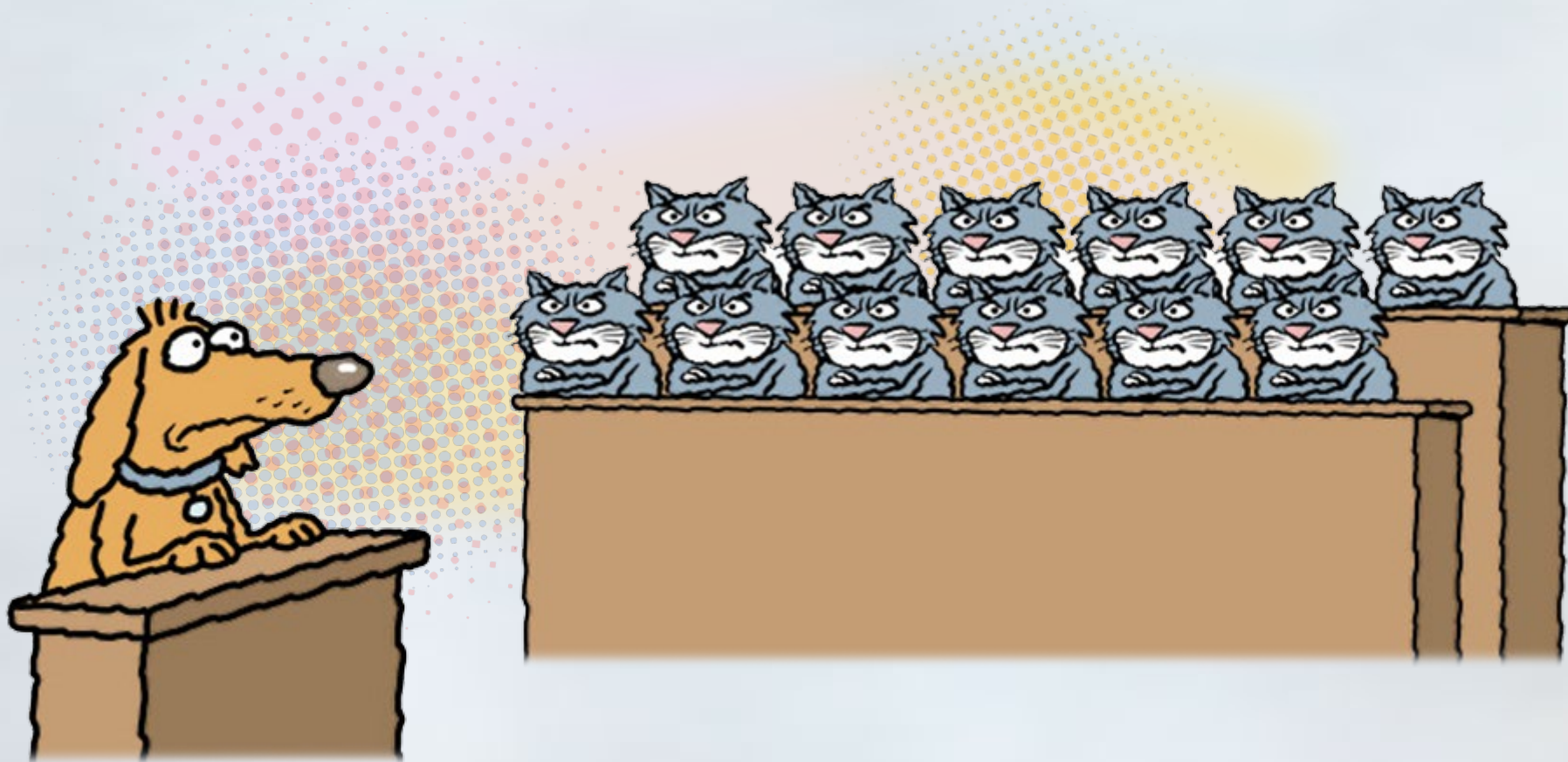
- **Benefits of appeals to values over facts**
  - Juror backgrounds
  - Interests
- **Demonstratives**
  - Enhance
  - Explain
  - Repeat and make interesting



- **Science vs Sympathy**
  - A false dichotomy, does it have to be one or the other?
- **Infusing your Science with...**
  - Face validity
  - Credibility
  - Relevance
- **Scientific Evidence vs E-mails, Memos and Other Contemporaneous Evidence**

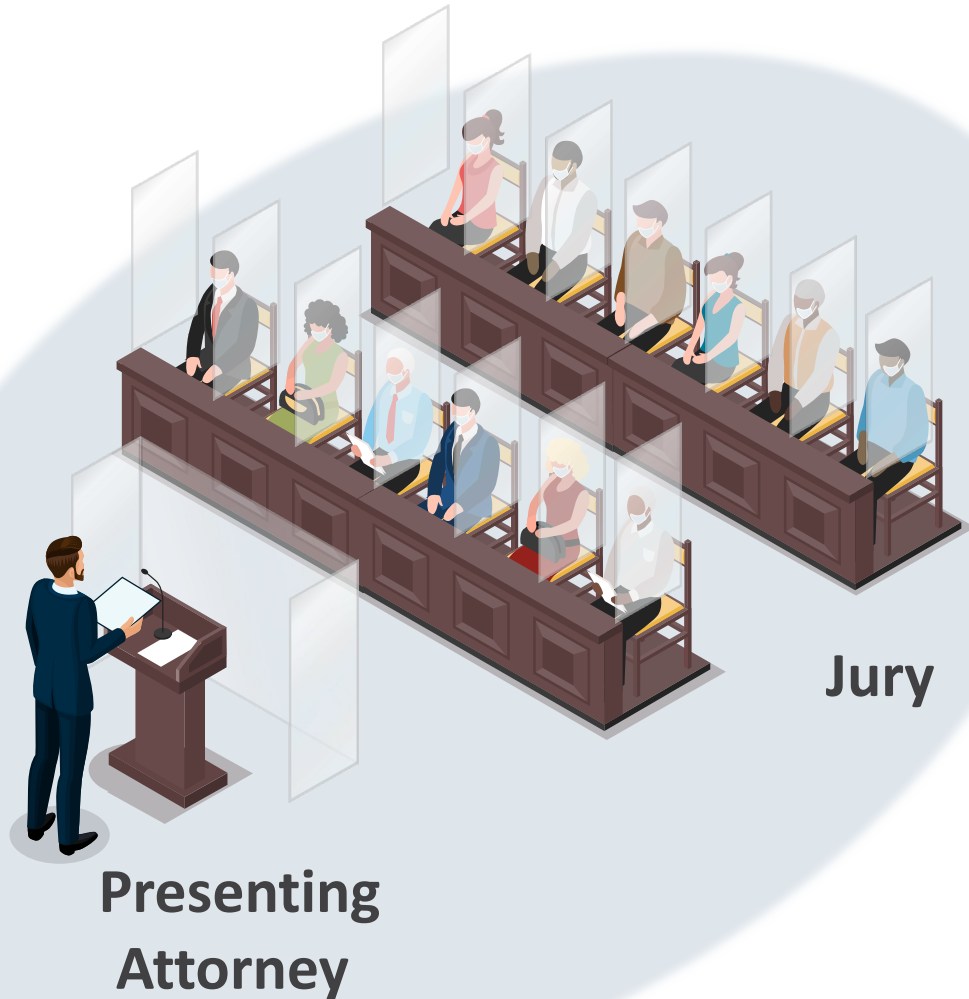
# JURY SELECTION

# It doesn't look good...



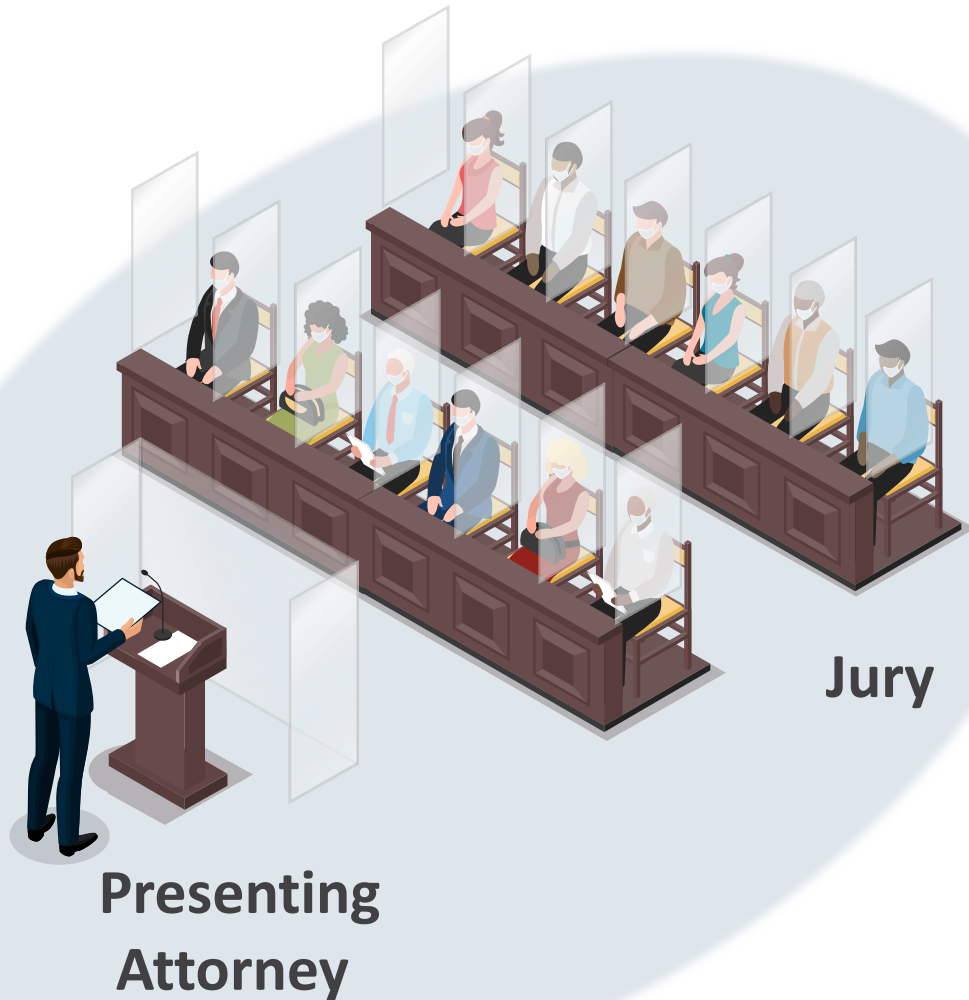


- Be a good representative
- Preview weaknesses
- Ask the right questions
- Rehab your best jurors
- Eliminate through cause
- Anticipate Group Dynamics
- Do your research



## Supplemental questionnaires

- Know your profile
- Neutral wording vs horse trading
- More experiences than attitudes
- Avoid the kitchen sink approach



## How to establish rapport

- Acknowledge circumstances and what might feel different
- Good listening goes a long way
- Economize if you have questionnaires
- Have a plan for your questions



## How to “read” your jury on Zoom

- Face is front and center
- Artifacts include what is in their background
- Tone of voice and eye contact can show interest



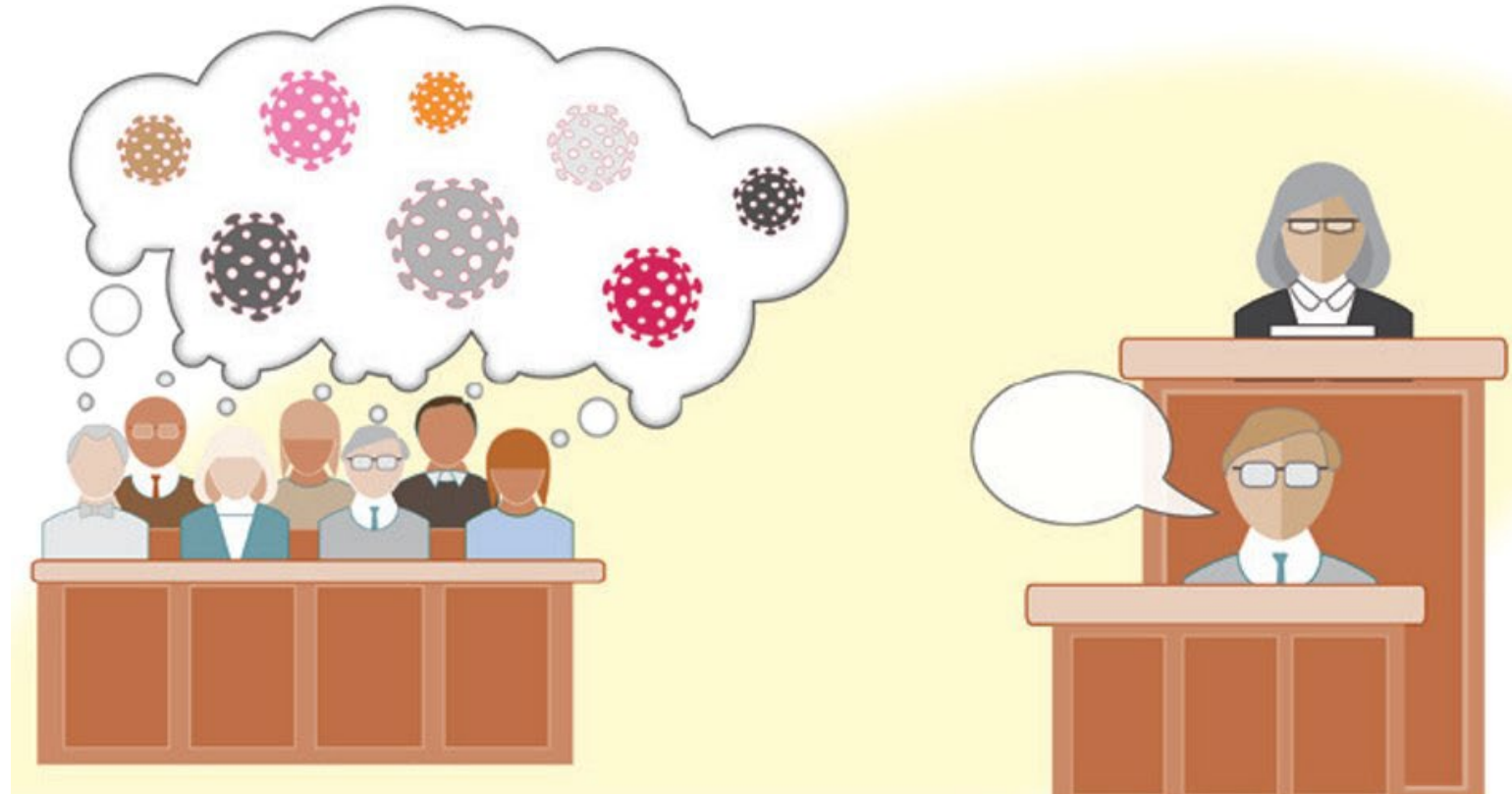
***Practice-tip:*** Conduct a test run with “jurors” dialing in on Zoom to get used to the process



# CHANGES IN JURY POOL COMPOSITION

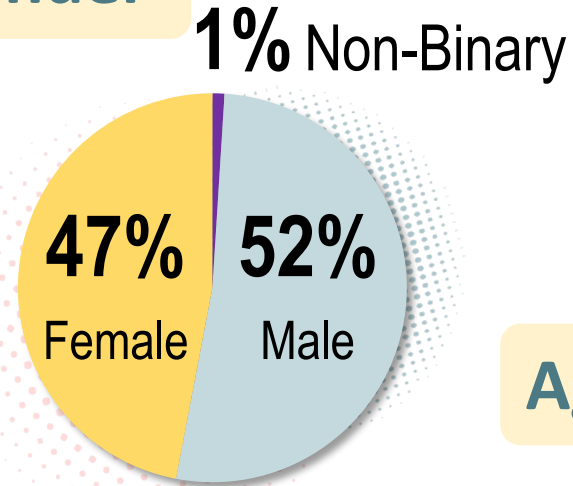
## Jury Pool Composition:

- Health Hardships
- Caretaker Hardships
- Financial Hardships
- Vacation Hardships
- Adherence to Rules
- Access to Technology

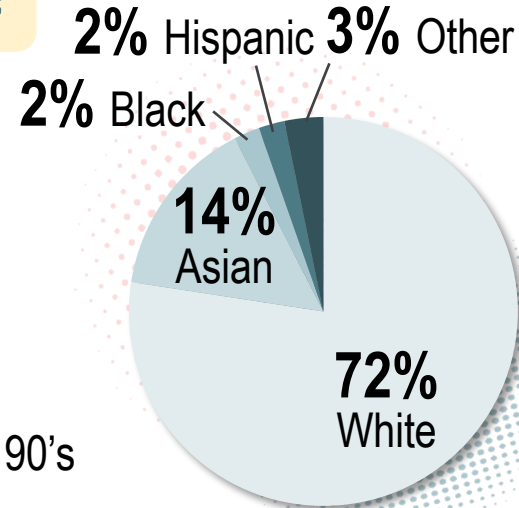


## Pre-Hardship Jury Pool Composition (89 Jurors):

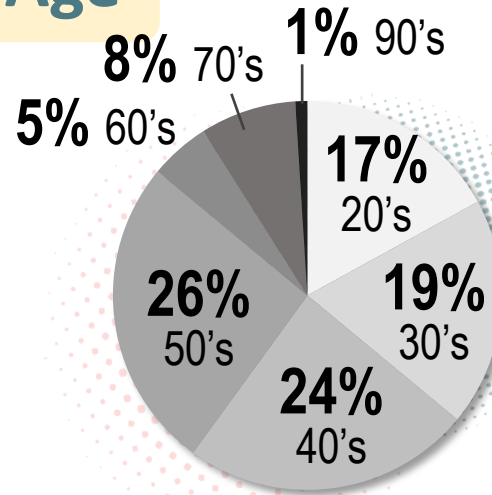
### Gender



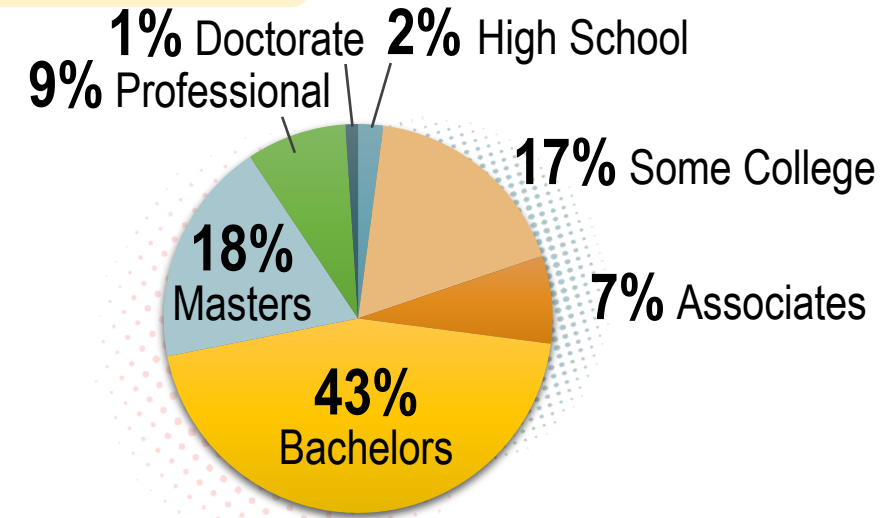
### Race



### Age



### Education



## Hardship Requests:

- **Caretaker of Child**  
Female, 30s, White, Bachelors  
Female, 40s, Asian, Masters
- **Caretaker of Dependent Family Member**  
Male, 70s, Prefer not to Answer, Bachelors
- **First Responder**  
Male, 40s, White, Masters  
Male, 50s, White, Bachelors
- **Long-term Care Facility**  
Female, 20s, White, Some College  
Female, 50s, Asian, Some College  
Female, 20s, White, Masters  
Male, 50s, White, Bachelors



- **Refusal to Wear a Mask**

Male, 40s, White, Bachelors  
Male, 40s, Prefer not to Answer, Bachelors  
Male, 50s, Asian, Some College

- **COVID-19 Concerns (26 jurors)**

**Gender:** 18 Female  
7 Male  
1 Non-Binary)

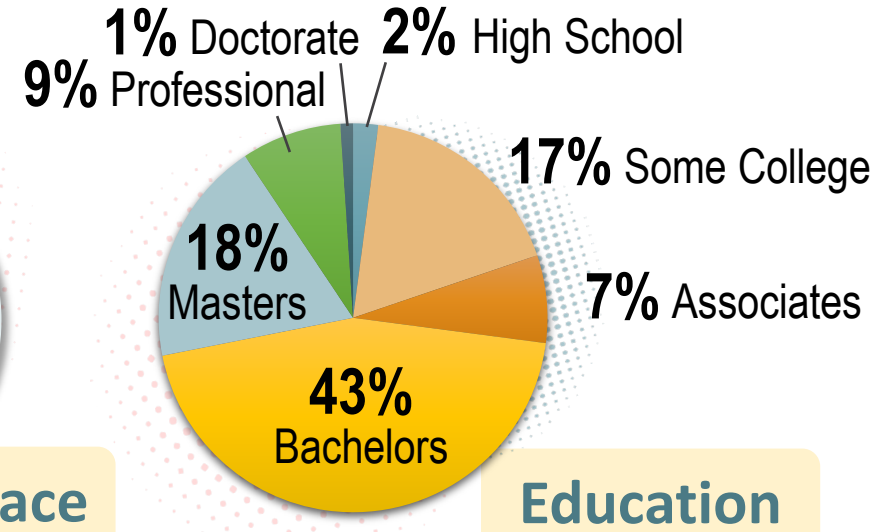
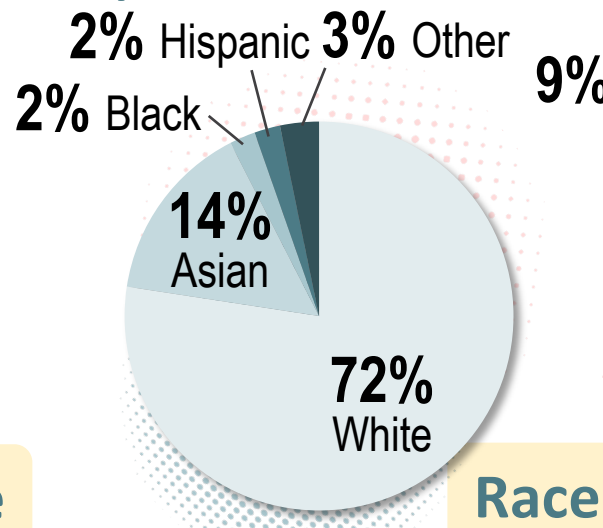
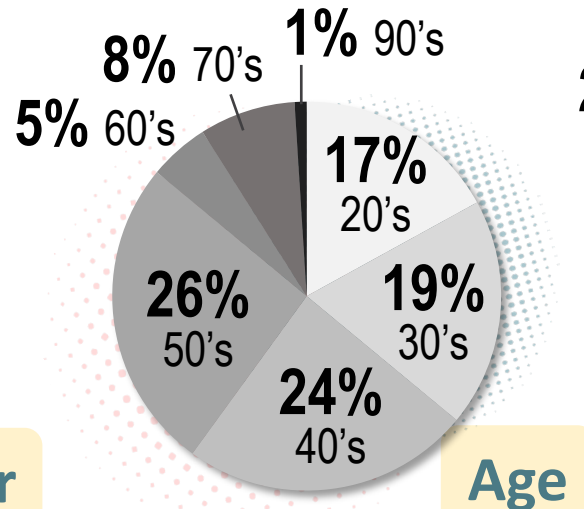
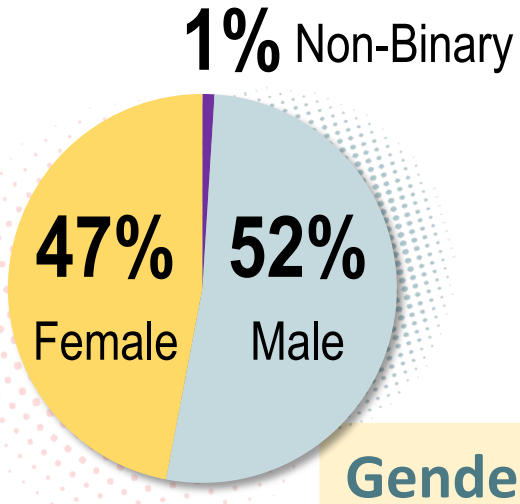
**Race:** 17 White  
5 Asian  
1 Other

**Age:** 3 20's  
6 30's  
4 40's  
4 50's  
2 60's  
6 70's  
1 90's

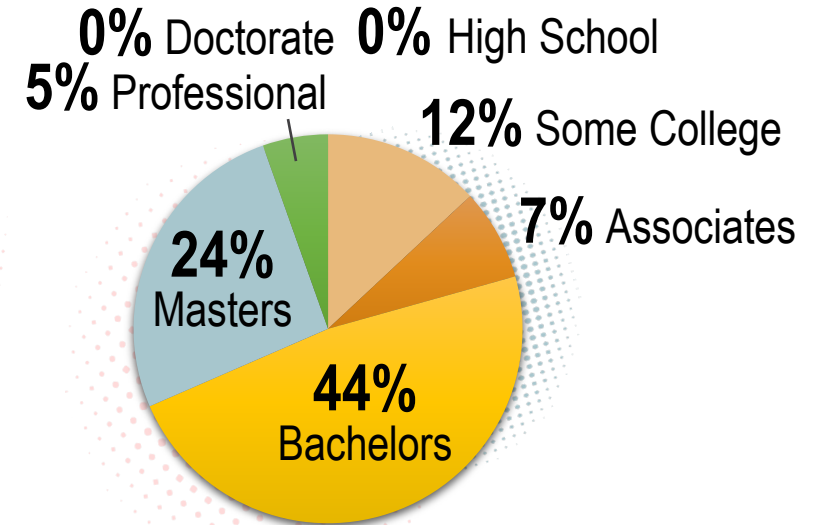
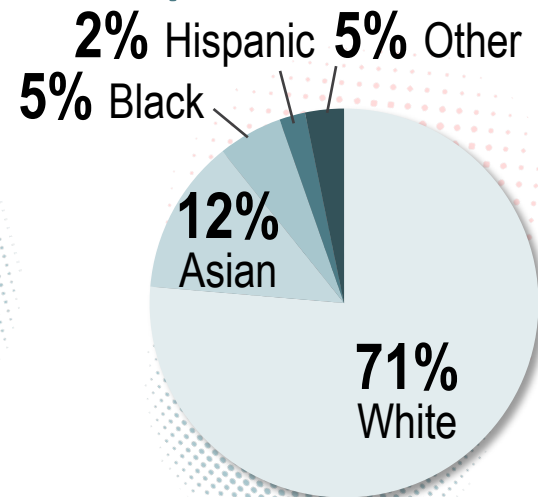
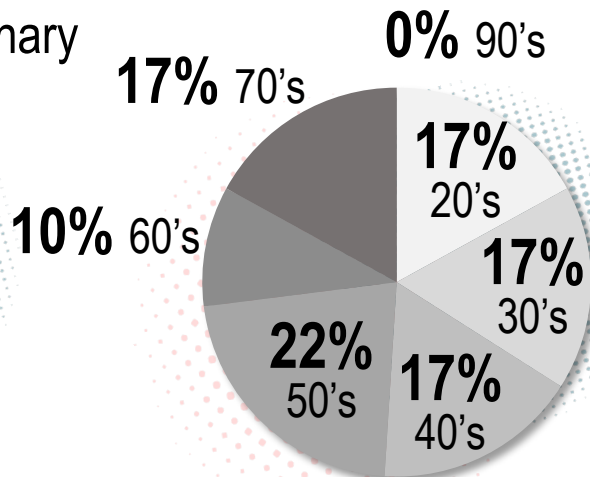
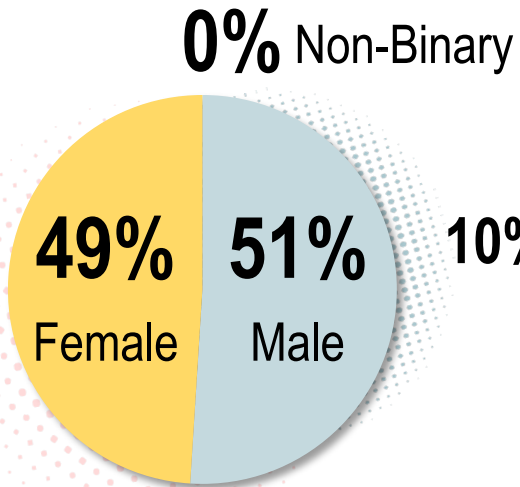
**Education:** 4 Some College  
4 Associates  
14 Bachelors  
3 Masters  
2 Professional

# JURY POOLS POST COVID-19: SEATTLE CASE STUDY

## Pre-Hardship Jury Pool Composition (89 Jurors):



## Post-Hardship Jury Pool Composition (41 Jurors):



# QUESTIONS

# BEST PRACTICES & LOGISTICS

# FULLY VIRTUAL JURY TRIALS



- All parties, counsel, Court and jury presenting remotely.
- Witnesses also present remotely.



**Remote Witness**



**Remote Judge**



**Remote Presenting Attorney on Camera**



**All Jurors Remote via Zoom**



**Remote Plaintiff and Counsel**



**Remote Defendant and Counsel**

# FULLY VIRTUAL BENCH AND JURY TRIALS

COURT ROOM



## Tips:

- Tech checks are essential
- Lights, framing, and sound are all important considerations
- We recommend a three-room set-up



Remote Witness



Remote Judge



Remote Presenting Attorney on Camera



All Jurors Remote via Zoom



Remote Plaintiff and Counsel



Remote Defendant and Counsel

# PRESENTATION ROOM SET-UP

COURT ROOM



# PRESENTATION ROOM SET-UP

COURT ROOM

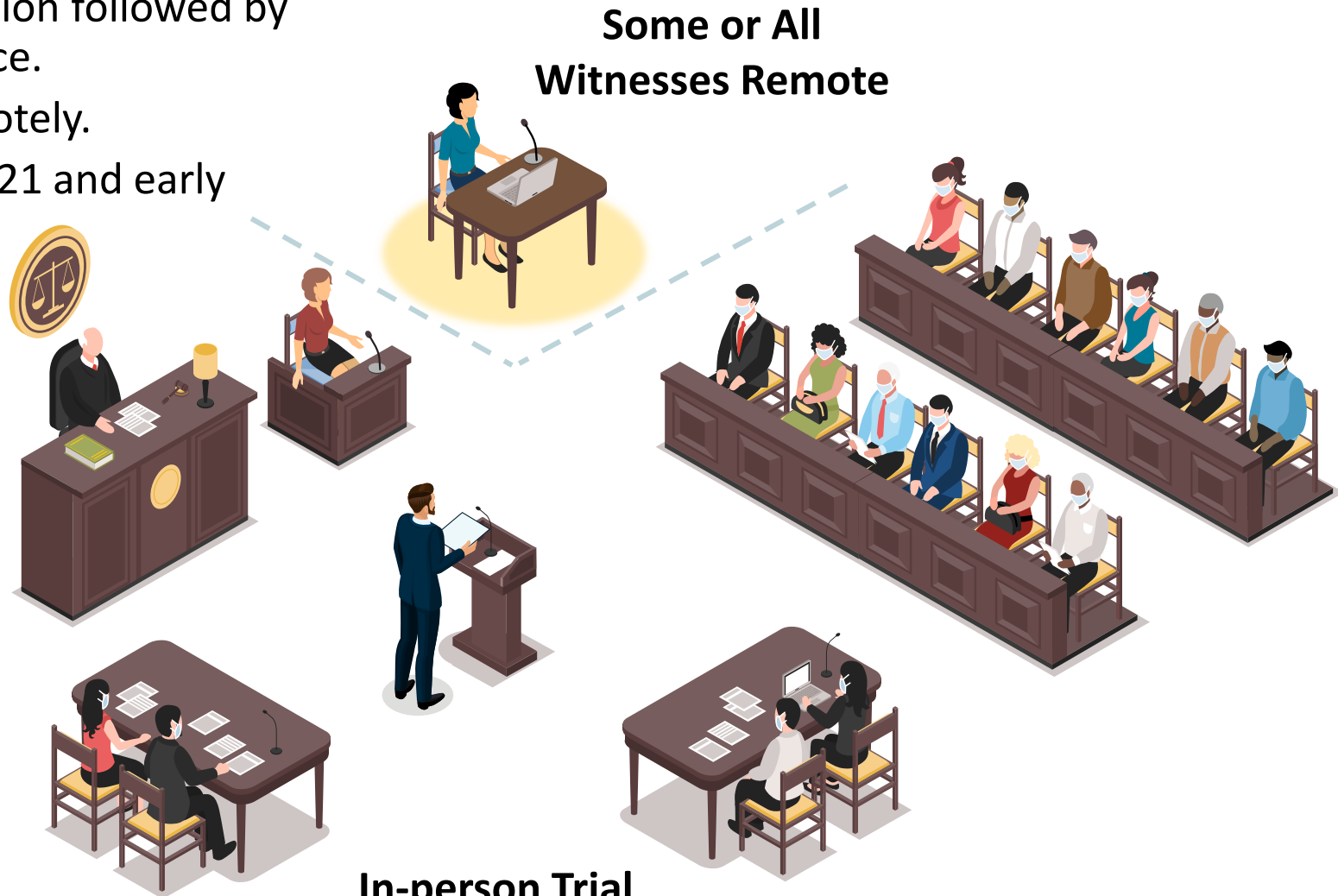
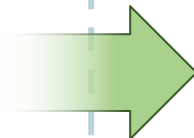


# HYBRID TRIALS

- Typically start with a remote jury selection followed by in-person trial once openings commence.
- Some or all witnesses may appear remotely.
- May become more common later in 2021 and early 2022 as the pandemic subsides.



**Remote Jury Selection**



**In-person Trial**

# REMOTE JURY SELECTION

COURT ROOM



# SOME OR ALL WITNESSES REMOTE

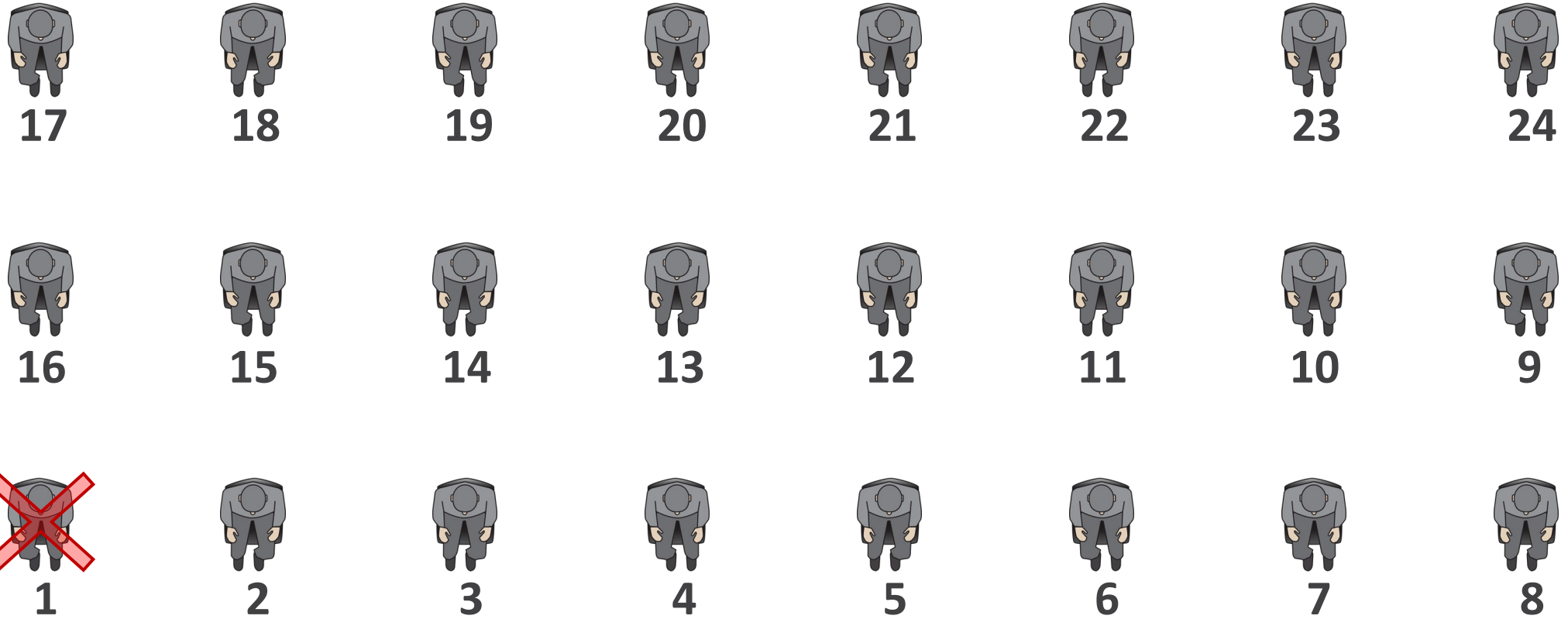
COURT ROOM



# COOK COUNTY JURY SELECTION

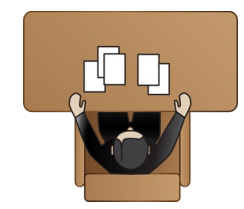
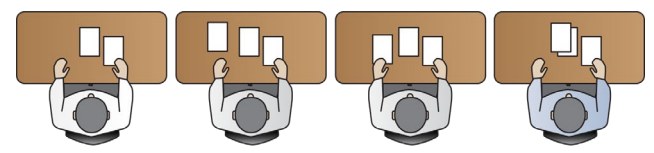
COURT ROOM



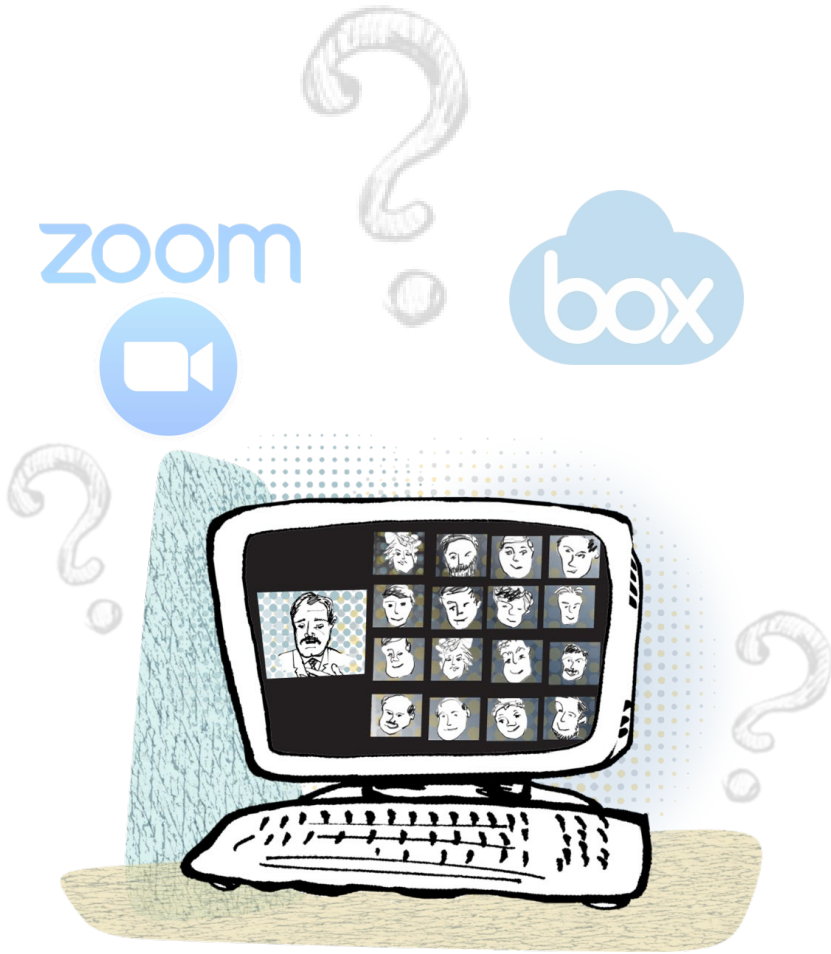


**Court Reporter**

**Attorneys**



**Judge**



Typically, it is the Zoom for Government platform (ZoomGov.com). The Court also typically uses an online storage site for submitting exhibits (such as Box.com). The Court will provide the links and access to counsel.

- No meaningful difference between regular Zoom and ZoomGov
- The Court may restrict viewing video only to Counsel and Parties. Other observers (e.g., insurance representatives, interested parties), may have to dial in for audio only.

## Remote Locations

- Ideally Counsel are able to set up the majority of their team in one locations (while adhering to CDC guidelines).
- Choose one office or small conference room as the presenting room, and a larger conference room for other counsel and team members to listen to/watch proceedings.
- For any key witnesses attending with counsel, select a third room for their testimony.



**Office or Small  
Conference Room for  
Presenting**

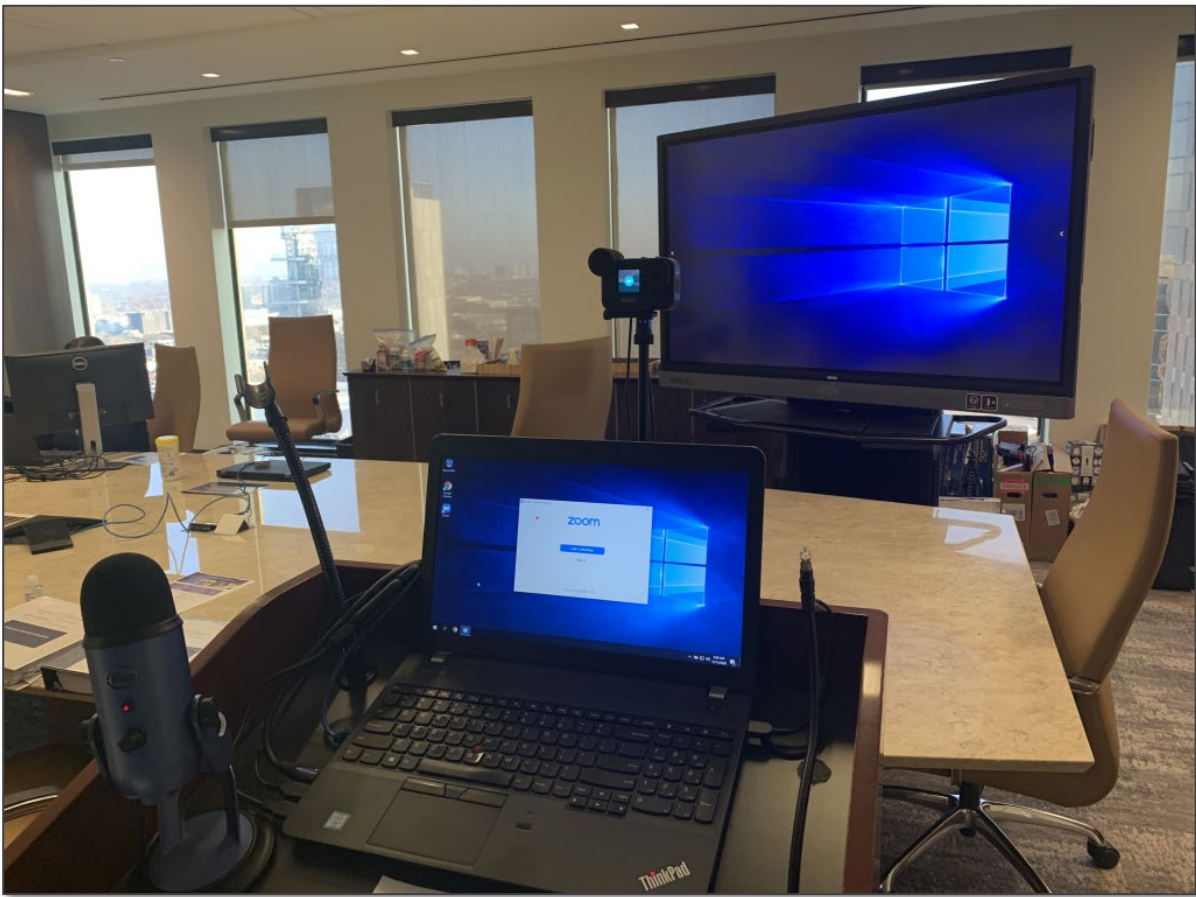


**Larger Room for Trial Team to  
Watch Proceedings**



**Third Room for Key Witnesses and  
Their Counsel**

# COURT ROOM





# PRESENTATION ROOM SET UP

COURT ROOM



# PRESENTATION ROOM SET UP

COURT ROOM





Remote Witness



Remote Presenting Attorney

- **Witnesses should be prepared**, both for the setting and for the examination that is to come
- **Greater emphasis on nonverbals** to combat confirmation bias
- **Establish rapport** with the jury through use of nonverbals
- **Vocal delivery is very important**, if court does not have amplification the witness should be prepare to speak up



**Remote Witness**

## **Direct examination**

- Practice with your witness over the online platform
- Themes have never been more important
- What is their headline?



**Remote Presenting Attorney**

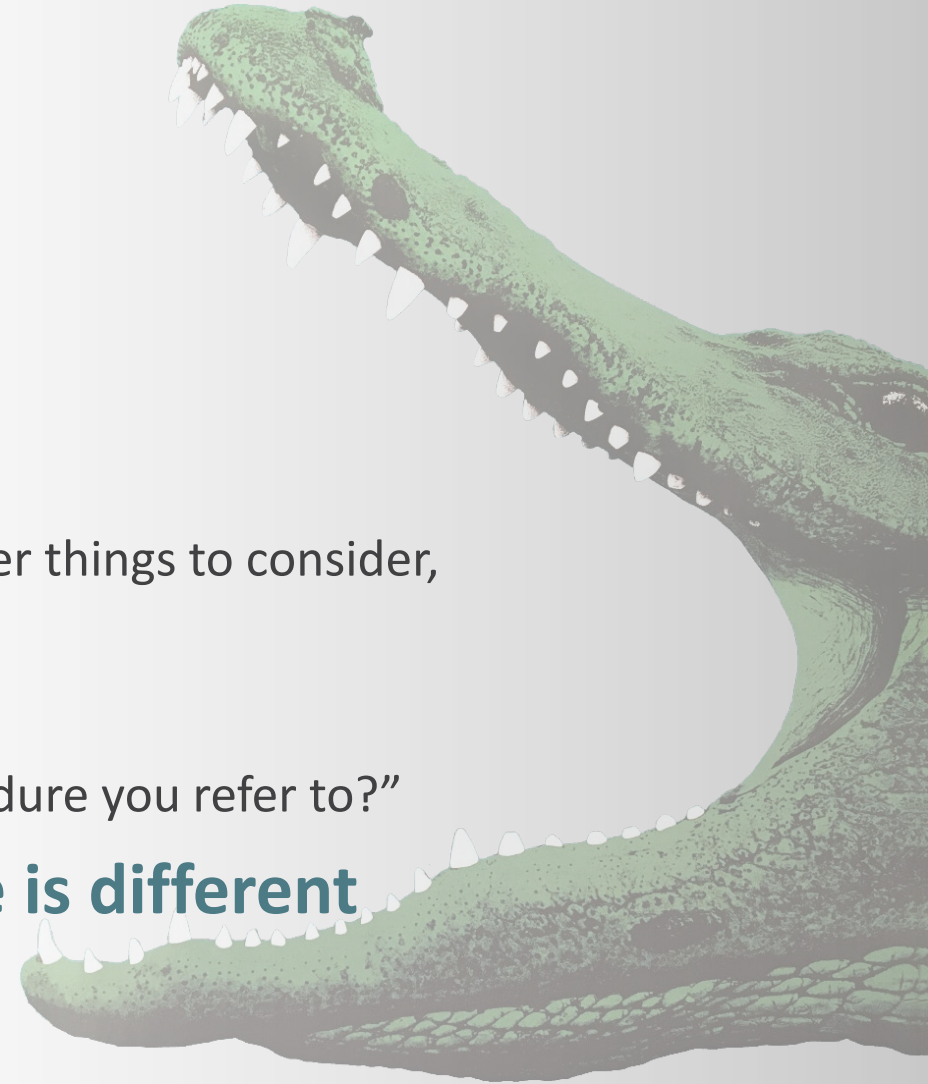
## **Cross examination**

- Effectively use courtroom technology for impeachment
- Will your style have to change? Make a plan for that

# PREPARE WITNESSES FOR REPTILE TACTICS

COURT ROOM

- **Don't agree to absolutes**
  - “Generally, yes”
  - “Sometimes, but not always”
  - “It depends on the circumstances”
  - “That’s one of the things we consider”
- **Don't agree to 100% action 100% of the time**
  - “We strive for a welcoming work environment, of course”
  - “Our general policy is equal pay for equal work, but there are other things to consider, such as ability to generate new business.”
- **Require context in plaintiff's questions:**
  - “Safety is a broad term, can you be more precise about the procedure you refer to?”
- **Answer hypotheticals, but explain how this case is different**
  - “If that were the situation, that would be true, but in this case...”



# INCORPORATING THEMES

COURT ROOM

- Preview themes in voir dire
- Make your themes the headers of your PowerPoint slides
- List facts that support the theme in the text of the slide
- Incorporate the theme into your questions of witnesses
- Have your witnesses incorporate the themes into their responses
- Repeat themes in closing

**Theme!** Theme!  
Theme! Theme!  
Theme! Theme!





Remote Witness

## Witnesses Using their Themes

- Start with your theme (punch line upfront)
- Use your own words

*“People are our priority, so our focus was on making sure that our driver was okay”*

## Themes as Safe Harbors

*“It’s true that the plaintiff injured herself on our product because of how she held it, our products are safe when used safely.”*



Remote Presenting Attorney

# QUESTIONS



[WWW.LITIGATIONINSIGHTS.COM](http://WWW.LITIGATIONINSIGHTS.COM)



LITIGATION  
INSIGHTS

## Adapting Advocacy for The Post-Pandemic Courtroom

Presented to  
DuPage County Bar Association



**Keith Pounds, Ph.D.**  
Senior Jury Consultant  
[kpounds@litigationinsights.com](mailto:kpounds@litigationinsights.com)

WE BRING YOUR CASE  
INTO FOCUS