



LITIGANT EMPOWERMENT
THROUGH CHOICE?

Insights from an Ongoing Study of Remote versus In-Person Family Court Hearings

There is little credible evidence to help inform policy and practice for remote courts. In this study of self-represented family law litigants, preliminary information suggests that remote court may not affect appearance rates or case timelines but may come at a cost in terms of litigants' perceptions of fairness.

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Why This Research? Why Now?

Most courts used some version of remote appearances during the COVID-19 pandemic, and many chose to continue doing so afterward, at least to some extent. Yet little credible research exists to help guide court leaders in setting policy and practice. Thus far, the most useful thing the research finds is “it depends.”

In this article we describe an ongoing study exploring the interplay among remote versus in-person appearances, case timelines, access, and perceived fairness. The Access to Justice Lab at Harvard Law School (A2J Lab) and LaGratta Consulting LLC, with funding from the State Justice Institute and in partnership with the commissioners and court staff of the Third District Court in Salt Lake County, recently embarked on an investigation of the experiences of the most vulnerable, and common, class of litigants: self-represented litigants (SRLs) in family law matters. The rise in remote-proceeding offerings brought on initially by the COVID-19 pandemic makes understanding this interplay critical. This article summarizes the progress at the study’s halfway point to inform ongoing policy discussions in advance of the publication of the full report in 2025.

State of the Research: What Do We Already Know?

Research to understand the effect of widespread remote justice is scant, particularly in family law where 80 percent of litigants are SRLs (California Judicial Council, 2005; Engler, 1999). What we know thus far from a mere two articles, both with severe methodological limits, is that litigants in this population perceived that online hearings, as compared to in-person proceedings, hindered fairness (i.e., procedural justice) but improved their ability to attend (Thornburg, 2020; Munro and Riel, 2020). That said, the methodologies of both studies limited their definitiveness.

Some scholars posit that remote proceedings help equalize inequities by reducing the opportunity cost of attending in-person proceedings.¹ Others suggest that remote participation may replicate the accessibility problems of in-person appearances (Morris, 2021).

There is no clear guidance regarding whether sustaining remote appearances necessitated by the pandemic facilitates or inhibits justice system access or fairness, let alone case timelines. Some recent research is helping the field to get closer to understanding how best to proceed. Quintanilla et al. (2023) found a preference for remote proceedings among SRLs in large-scale civil dockets. In this study, judicial officers chose to conduct some hearings remotely and adapted their processes to accommodate remote users, rather than merely replicating the in-person process, such as using breakout rooms for mediation. It seems that the court improved the remote court process—and litigant satisfaction was correspondingly higher. In contrast, in rural settings, Statz (2022) found that litigants overwhelmingly prefer to appear in person, a preference perhaps attributable to a prevalence of “active judging,” where judges actively assist SRLs to navigate the system. Similarly,

¹ Thornburg, 2020: 188; Munro and Riel, 2020; 259. See also Sela, 2016, for a broader discussion, extending beyond family law, of how online courts can help SRLs better obtain justice.

LaGratta Consulting's (2022) prior Court Voices Project found that litigants from rural pilot courts preferred attending court in person, which was not consistent with the preferences of litigants in the urban pilot courts.

Study Design

This study tests three hypotheses using a randomized control trial (RCT) design to collect quantitative data, litigant surveys, and other qualitative data. The three hypotheses are 1) online proceedings do not change case timelines; 2) online proceedings increase participation; and 3) online proceedings decrease litigant perceptions of fairness. We test these hypotheses using an RCT that randomly assigns litigants to in-person or remote participation. Random assignment ensures to the extent feasible that groups are statistically identical except for whether participation occurred remotely or in-person, allowing us to know with as much certainty as we can that the intervention caused any observed differences in timelines or experiences.²

The RCT and Quantitative Data Collection

We randomly assign custody and divorce matters scheduled to appear on the pro se calendar docket. Commissioner Joanna Sagers designed the pro se calendar as a mechanism to allow SRLs to engage with their cases in an environment with system supports, including lawyers-for-the-day who can assist litigants if so desired. Some litigants in the study have private or consistent legal counsel, but most do not. Once a

case enters the study, we follow it through court orders, docket entries, and minutes of proceedings. Data collection continues until September 2024.

Random assignment must occur upon the appearance of the case on the pro se calendar to allow clerks to schedule hearings quickly. Therefore, we assign cases based on their case number, with the understanding that case numbers themselves are as good as randomly assigned because neither parties nor court staff can manipulate the case number. The court divides pro se calendar dockets into days for remote cases and in-person cases. The court provides litigants either a notice to appear in person or one to appear remotely.

For the quantitative portion of the evaluation, we evaluate case-processing timelines and failure-to-appear (FTA) rates. We study whether the medium is the cause of 1) longer periods of time to disposition; 2) less durability of that disposition, measured by length of time to a modification or enforcement request with shorter periods of time indicating less durability; and 3) a difference in FTA rates.

Litigant Surveys and Observations

To gauge litigants' experience, we use a brief survey asking a few questions about litigants' experience as they leave their court hearing and structured court observations. This section describes those activities.

We administer surveys to litigants appearing in person via an iPad kiosk at the back of the courtroom and to litigants appearing remotely for whom email addresses were

² See Angrist, 2006: 24, arguing that randomized studies are considered the gold standard for scientific evidence.

known (the vast majority) via a follow-up email. Simple signs were posted at the courtroom entrance or inside the courtroom, inviting participation in the survey, including via QR code (see *Figure 1*). Approximately 20 percent of all litigants responded in both surveying contexts, which is a relatively high response rate for an unmanned and uncompensated effort. The questions asked are outlined below.

Figure 1
iPad Kiosk Signage and Placement


We conduct court observations periodically during the study through attendance at some remote and in-person proceedings. We look for visible indicators of litigants' experience with the key dimensions of procedural justice (e.g., confusion or misunderstanding of aspects of the process or judicial rulings), conflict or safety concerns among opposing parties, technological challenges, and other factors that may influence access or fairness.

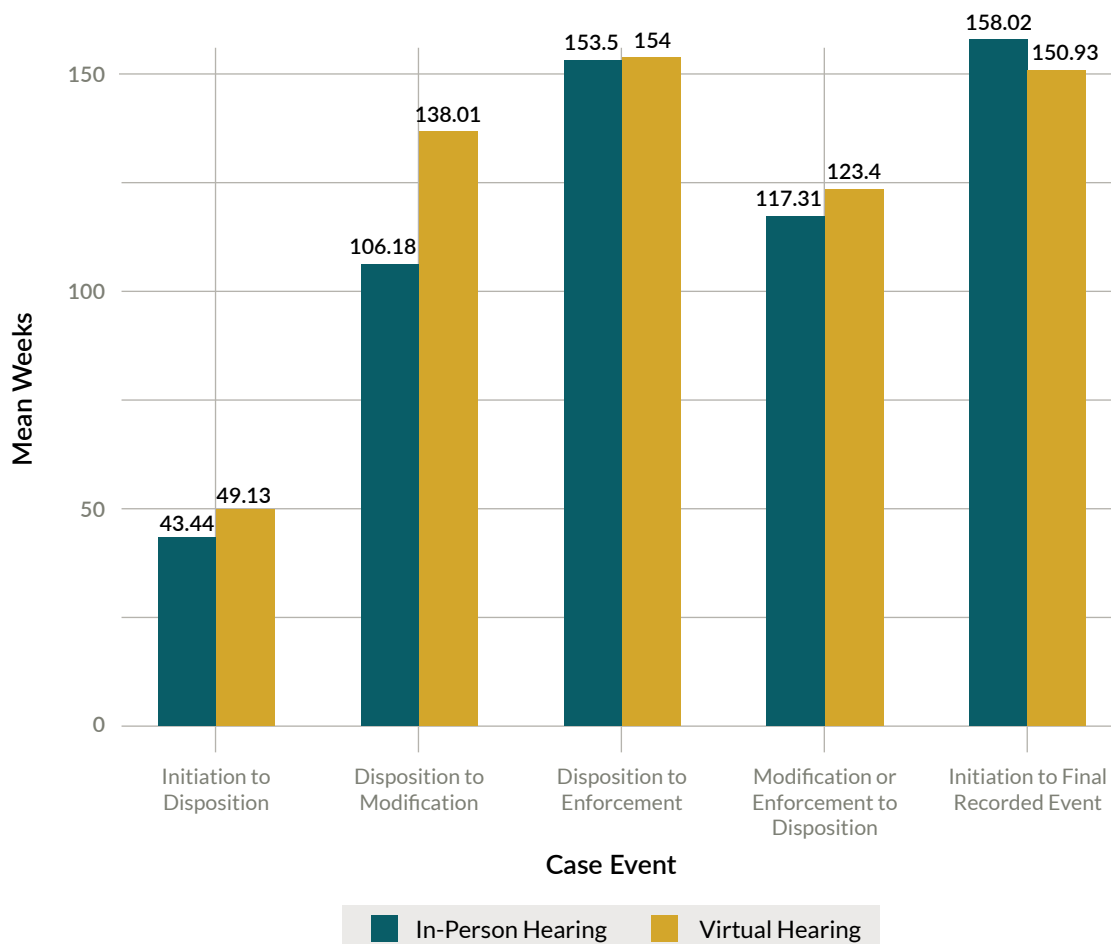
Early Insights

Using these methodologies and the data collected so far, we engage in preliminary data analysis to understand trends and offer early insights although we cannot opine on causation until we collect and analyze all data. Within this preliminary context, we can explore case-processing trends and litigant experience metrics obtained thus far.

Case-Processing-Timeline Trends

Initial data offer insights into trends related to time to disposition and durability metrics. We see little effect in the current data set on time to disposition and durability between each medium. Figure 2 shows the mean number of weeks for time to disposition and durability metrics. We can calculate time to disposition only when the metric exists. We do not include data for cases with no disposition or no modification or enforcement request. At the conclusion of data collection, more advanced statistical methods can be used to account for cases which never get to those data points.

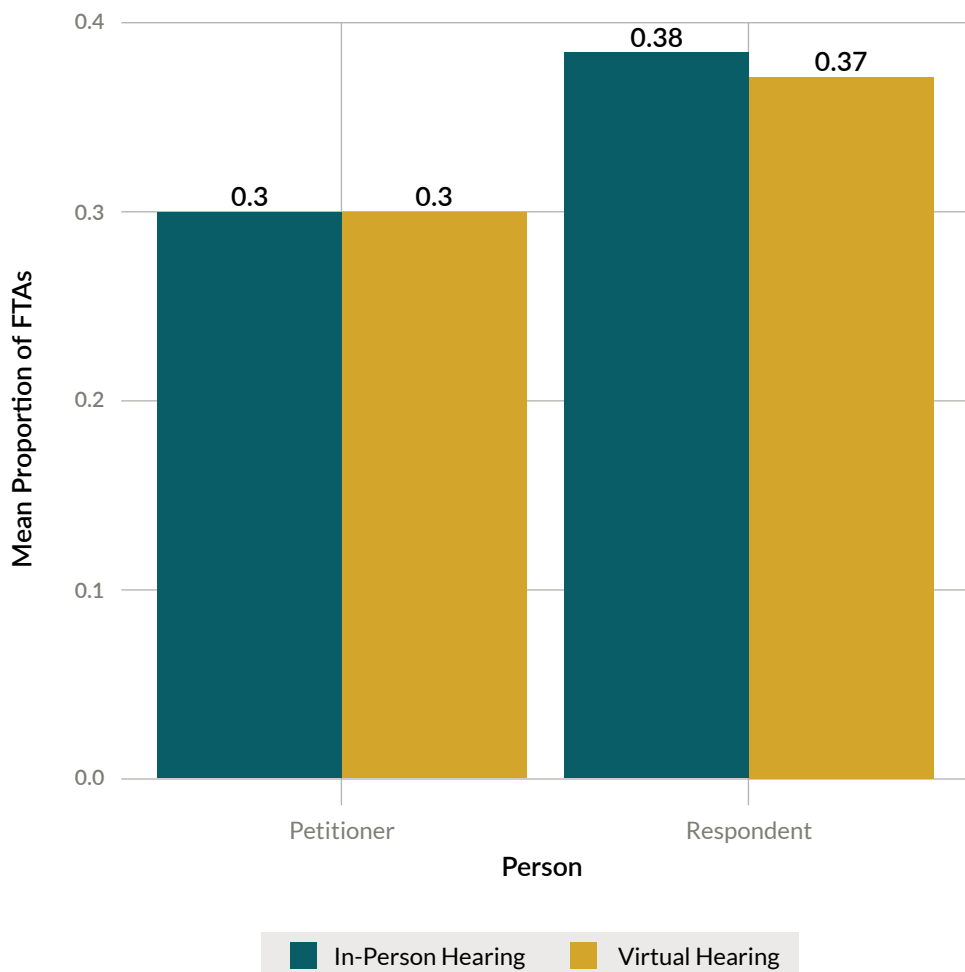
Figure 2 Average Number of Weeks to Case Event for Remote and In-Person Cases



Based on the court minutes, we can determine petitioner and respondent presence at each hearing. We are forced to assume that all absences are considered FTA. We display the proportion of hearings for which the individual failed to appear below in Figure 3.

Both parties appear at most of their hearings, with little variation between each medium. This suggests medium may not affect FTA, contrary to our initial hypothesis that remote proceedings would facilitate increased participation.

Figure 3 Mean Proportion of FTA by Study Condition



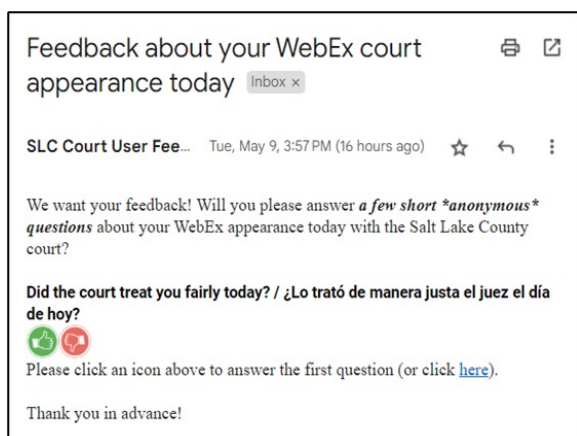
Litigant Experience

As with administrative data, the litigant survey data received as of September 2023 gave a preview of potential trends in litigant experiences.

Of all responding litigants, most rate their experience as fair when asked, “Did the court treat you fairly today?” However, the rates vary by medium. Approximately 84 percent of in-person litigants answered this question favorably, while only 65 percent of remote litigants did so. Figure 4 depicts this question as viewed by remote-medium study participants. Response numbers and rates to date are similar across both contexts, with approximately 60 litigants responding in remote and in-person settings, respectively (a 20 percent response rate as noted above).

As to litigants’ appearance-medium preferences, only a slight majority prefer their randomly assigned medium. Specifically, 44 percent of remote litigants indicate a preference for in-person appearance, and 41 percent of in-person litigants indicate a

Figure 4 Fairness Survey Question for Remote Litigants



preference for remote appearance. Stated another way, approximately half of litigants prefer appearing remotely and half prefer appearing in person.

In response to the third and final question, “How could the court better serve you?” several litigants offer constructive feedback about some procedural aspects of remote appearances, and several comments center on the procedural justice dimension of voice, more so in the remote context than in person. Examples of each are presented in Figures 5 and 6.

Figure 5

Fairness Survey Responses About Remote Court Procedures

- *The connection failed and froze several times during my hearing.*
- *I would just check in with everyone at the start and maybe in between cases. I was on the line for over 1.5 hours and wasn't sure what was going on.*
- *I wish things ran on time. I also wish that the commissioner had given me the chance to talk.*

Figure 6

Fairness Survey Questions for Remote Litigants

- *To actually have a (volunteer) attorney to represent me would have been nice, that way, maybe my concerns would have actually been heard.*
- *[The Commissioner] asks open questions not directed at a specific person and if I answer acts like I spoke out of turn.*
- *The court could have improved my experience by letting me explain my side of the issue*
- *Let me be heard.*

How Can We Use This Information Now?

While we still have additional data to collect and analyze, and thus cannot say for certain that preliminary trends will hold up, it is valuable to take notice at this stage what factors and measures all court leaders should be monitoring closely. Namely, dimensions of litigant choice, access, appearance rates, and perceptions of fairness all seem to be key pieces for understanding what is happening in these cases, alongside more traditional administrative case data. And it seems we may be approaching a new paradigm: that court timelines and attendance are not impacted much in either appearance context, yet litigants have preferences for how they handle their court matters. Perhaps courts do not need to prescribe the medium by which hearings must occur to maximize the benefits for courts or court users.

In this vein, the early insights for this project reveal a couple of broad takeaways:

1. At least in the short-term, medium may not affect case timelines. But it is not enough to look only at case timelines without considering the impact on the litigant experience.
2. When read alongside other recent research, these insights caution against generalizing the policy question to a binary “to Zoom or not.”

If the trends hold up, it may be that there is no difference on key court case-processing metrics, at least in the studied contexts, and litigant preferences seem split. Adapting remote processes to maximize the experience in ways with which judicial officers feel comfortable, which seems necessary for fairness, we may find that more litigants prefer remote appearances, as happened in the Quintanilla et al. (2023) study. If the perceived benefits of in-person appearances are important to a litigant and cannot be achieved in a remote setting, as observed in the Statz (2022) work, we may find more litigants appearing in person.

It is worth noting that there are also downstream benefits to approaches that generate improved perceptions of fairness. Litigants who perceive their experience in court to be fair are more likely to comply voluntarily with court orders and appear in court next time (Tyler, 2007).

Considering the infrastructure now exists for both in most courts, albeit by necessity, and there may be no outsized case processing harm done to either SRLs or the courts, perhaps the power to choose should rest with the individuals that are in the best position to know what works best for themselves and who have the most at stake.

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