

# Technology in National Litigation: Creating Efficiencies

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# Technology in National Litigation: Creating Efficiencies

Jurisdictional Overview

Depositions

Trial

Moving Forward

# Jurisdictional Overview: Remote Hearings, Settlement Conferences and Trials

# Remote Hearings, Settlement Conferences and Trials in Key Jurisdictions

Many courts had already adopted remote hearings prior to the pandemic

- ▶ Telephonic hearings more common than video but that has changed depending on the available technology
- ▶ Ideal for routine court conferences and straightforward discovery, dispositive and *in limine* motions
- ▶ Cost savings can be substantial – attorneys don't have to bill for travel and as much court waiting time
- ▶ True not only in trial courts but also for appellate hearings which often require travel over great distances
- ▶ Requires different set of presentation skills

# Settlement Conferences

- ▶ “Zoom”-type video platform ideal for settlement conferences
- ▶ Allows clients to not have to lose working days traveling
  - ▶ Permits most knowledgeable people to participate without as much conflict in schedules promoting higher likelihood of resolution
- ▶ Use of breakout rooms is virtual equivalent to different conference rooms at a mediation or court MSC
- ▶ Judicial officer conducting conference controls the technology

# Jurisdictions Allowing Remote or Hybrid Trials

- ▶ **Washington State:** Leads the rest by a large margin
  - ▶ 700+ remote civil jury trials by July 2021
  - ▶ King County found the process increased jury pool
  - ▶ Rule allowing remote jury selection post-pandemic?
- ▶ **California:** Up to individual judicial discretion
  - ▶ Alameda County – almost all remote
  - ▶ San Francisco – in person but witnesses by video
  - ▶ Los Angeles-not yet
  - ▶ California emergency provisions allow for suspension of any court rules that prohibit remote technology
- ▶ **Florida:** Remote trials allowed by stipulation of parties

# Jurisdictions Allowing Remote or Hybrid Trials (cont.)

- ▶ **Illinois:** Remote jury selection in civil trials allowed
- ▶ **Massachusetts:** Remote civil trials allowed by written consent of all parties
- ▶ **Minnesota:** Remote civil trials allowed if consented to by judge and all parties
- ▶ **New Jersey:** Most civil jury trials continue to be conducted virtually, but may be in-person if plaintiff has limited life expectancy



# Depositions



# Video v. Telephonic Depositions

- ▶ Telephonic depositions common prior to pandemic
- ▶ Video depositions now here to stay
- ▶ Variation in methods of conducting in exigent cases
  - ▶ One defense attorney in the room
  - ▶ All defense attorneys in the room
  - ▶ All defense attorneys appearing remotely
    - ▶ CA code section amended to allow, but not require, any party or their attorney to be present
- ▶ Court reporters can often handle exhibits if pre-marked and submitted electronically

# Using Technology in Depositions to Engage Jurors

- ▶ Jurors can quickly become disinterested in viewing video depositions
- ▶ Incorporating documents as another visual medium can keep jurors engaged
- ▶ Further, overlaying documents with the questioning of a witness can help jurors conceptualize a topic
- ▶ This effect can be achieved by using multiple cameras and an Elmo
  - ▶ Witness
  - ▶ Questioner
  - ▶ Documents

# Utilizing Documents Effectively in Remote Depositions

- ▶ This same effect can be achieved in remote depositions
- ▶ However, it is important to be well-versed in the technology and how to best utilize it
- ▶ Additionally, trial techs can help ease this process

# Value of Videotaped Depositions in Trial

- ▶ It is beneficial to have videotaped depositions “in the can” for trial; especially if your judge has you begin your case-in-chief earlier than expected
- ▶ This has become even more crucial during COVID given how comfortable, or not, witnesses may be with appearing live at trial
- ▶ Further, given the ever-changing landscape of COVID variants, witnesses who initially committed to appearing live may change their minds
- ▶ This also impresses the importance of preserving the record and getting the information you need out of the witness
- ▶ A videotaped deposition may be your only bite at the apple

# Trial

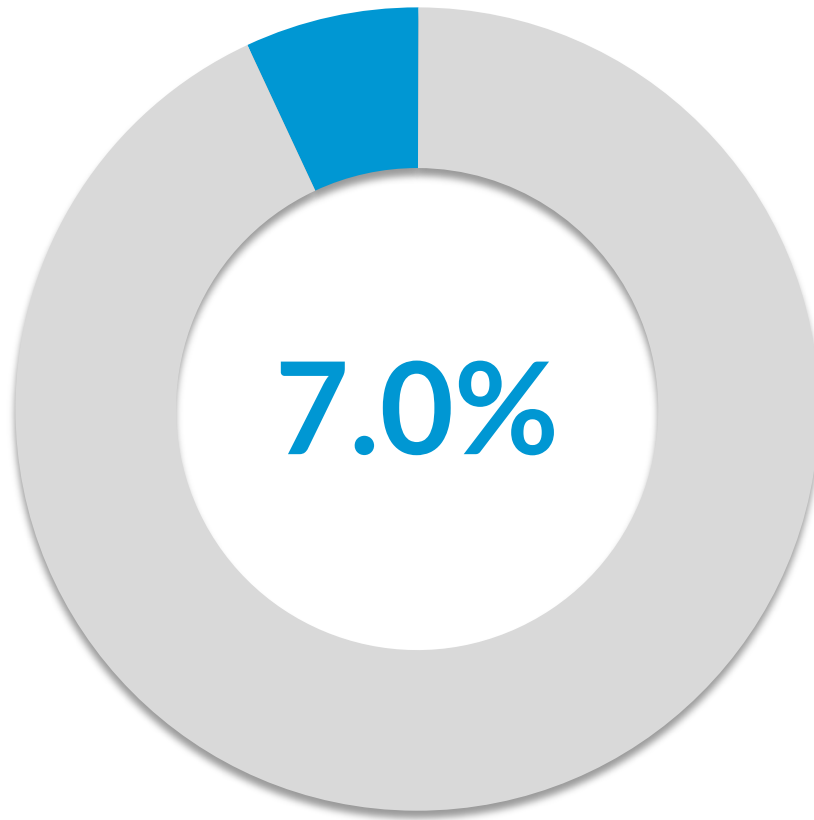
# Online Jury Selection



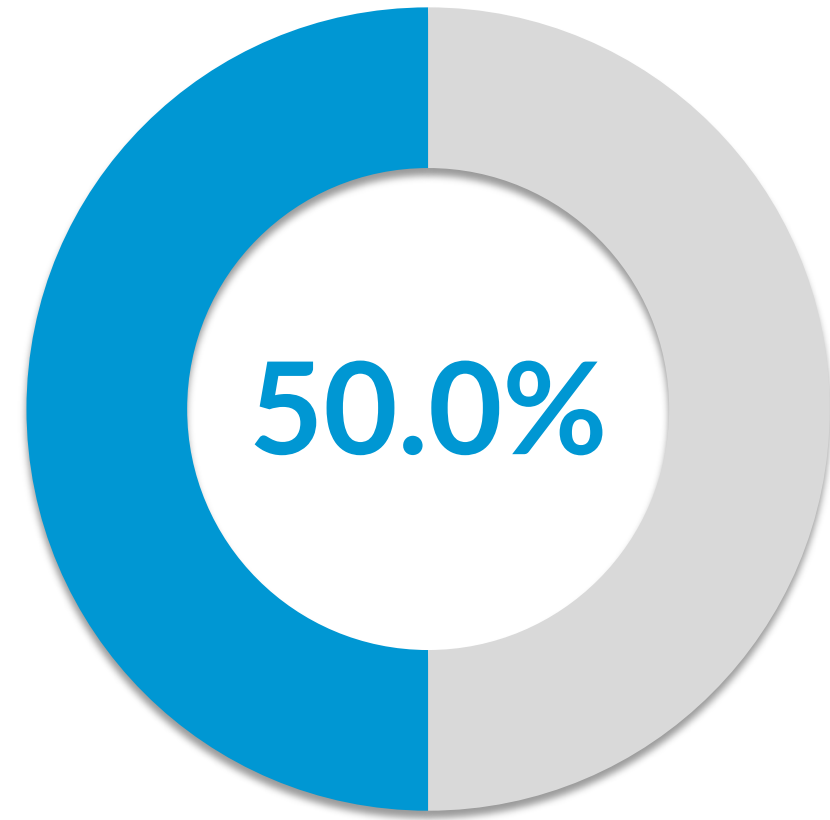
# High Level of Proficiency in Internet Usage

**Adult Americans who do not use the internet:**

2021



2000



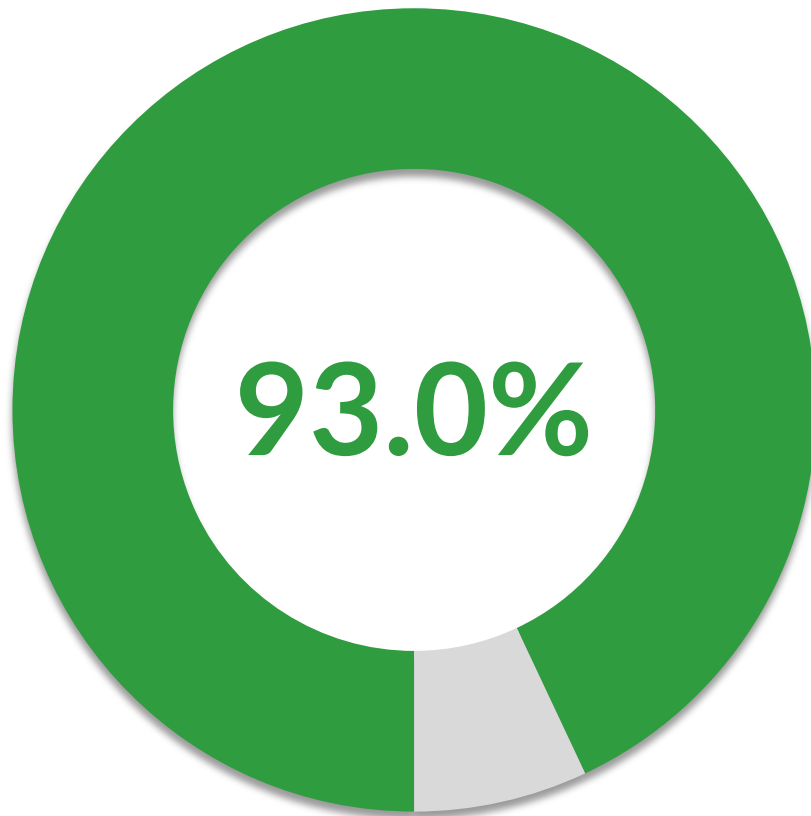
# Online Platforms



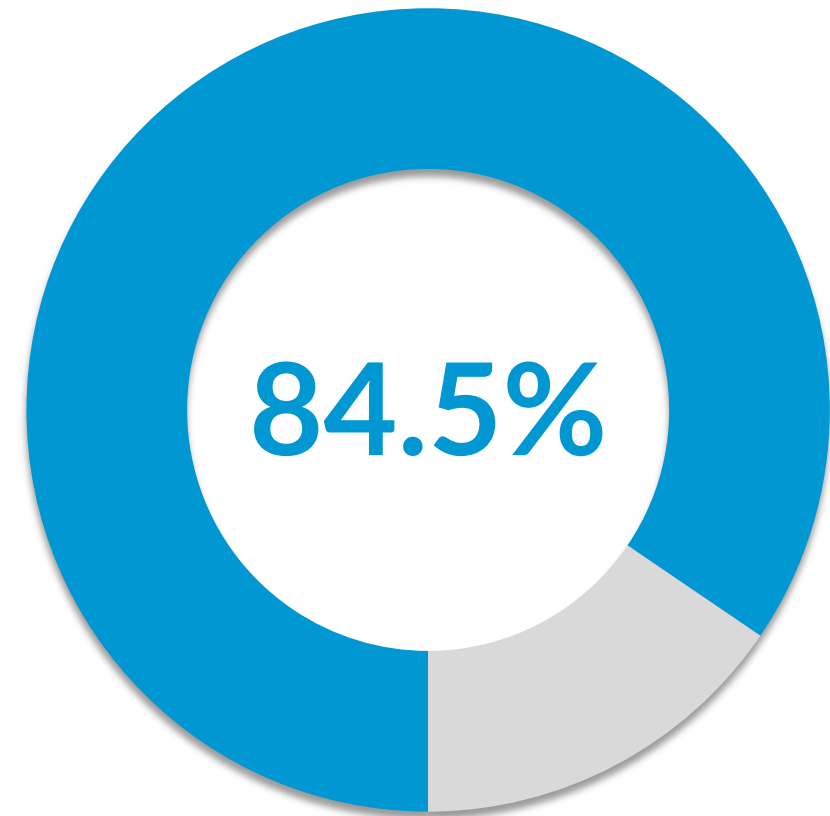


# Broward County, Florida: Computer and Internet Use

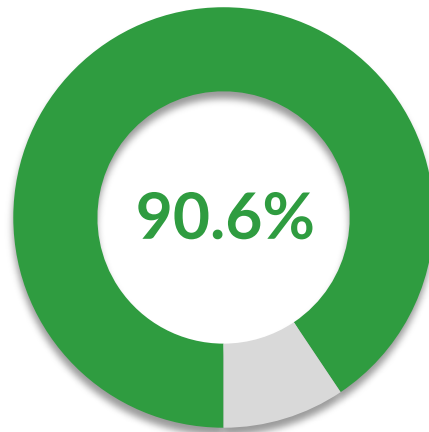
**Households with a Computer:**  
2015 - 2019



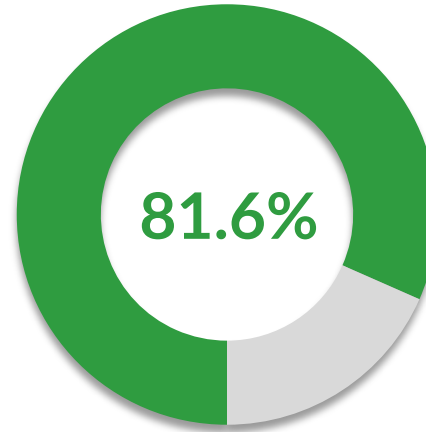
**Households with a Broadband  
Internet Subscription:** 2015 - 2019



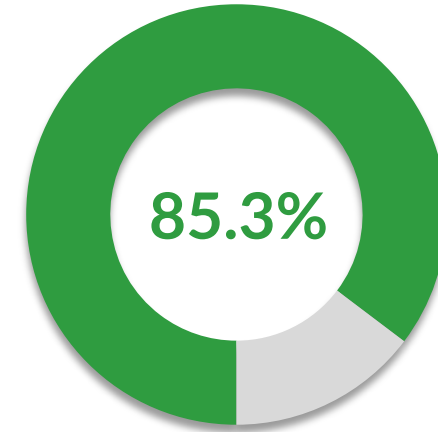
# Eastern District of Texas: Households with a Computer: 2015 - 2019



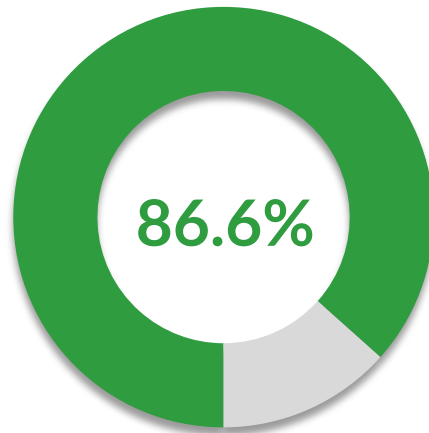
Hardin County



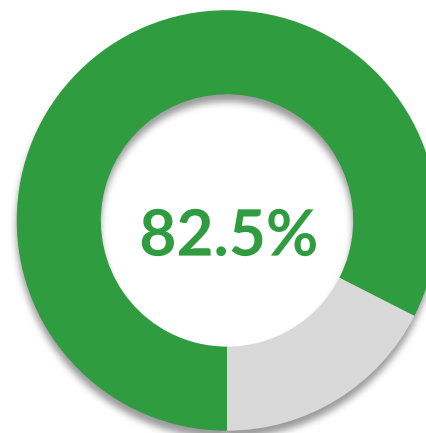
Jasper County



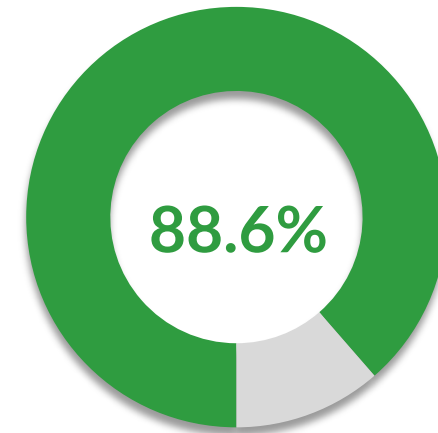
Jefferson County



Liberty County



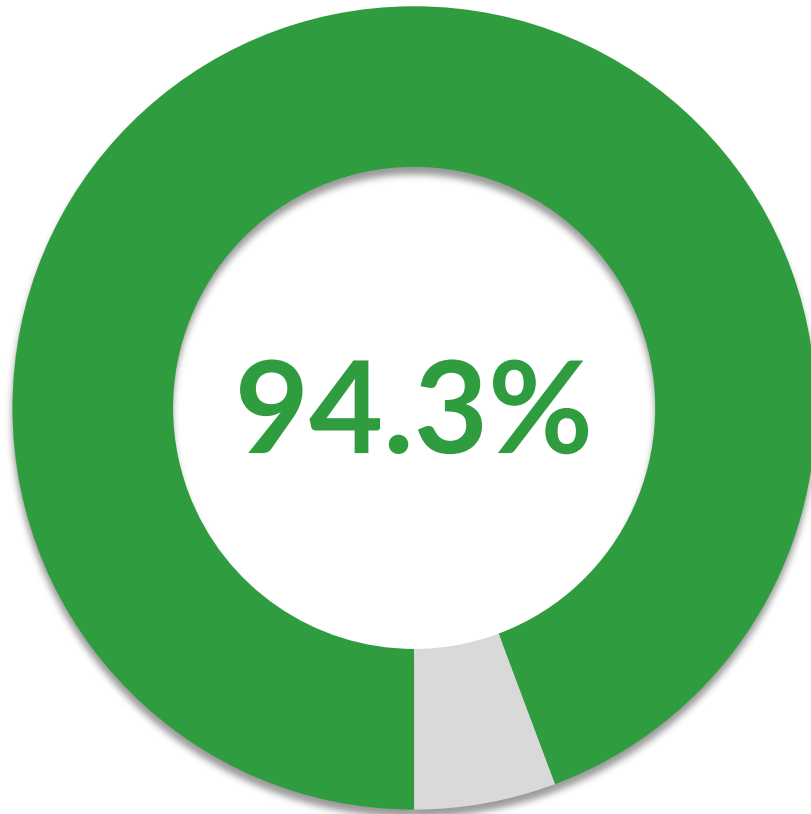
Newton County



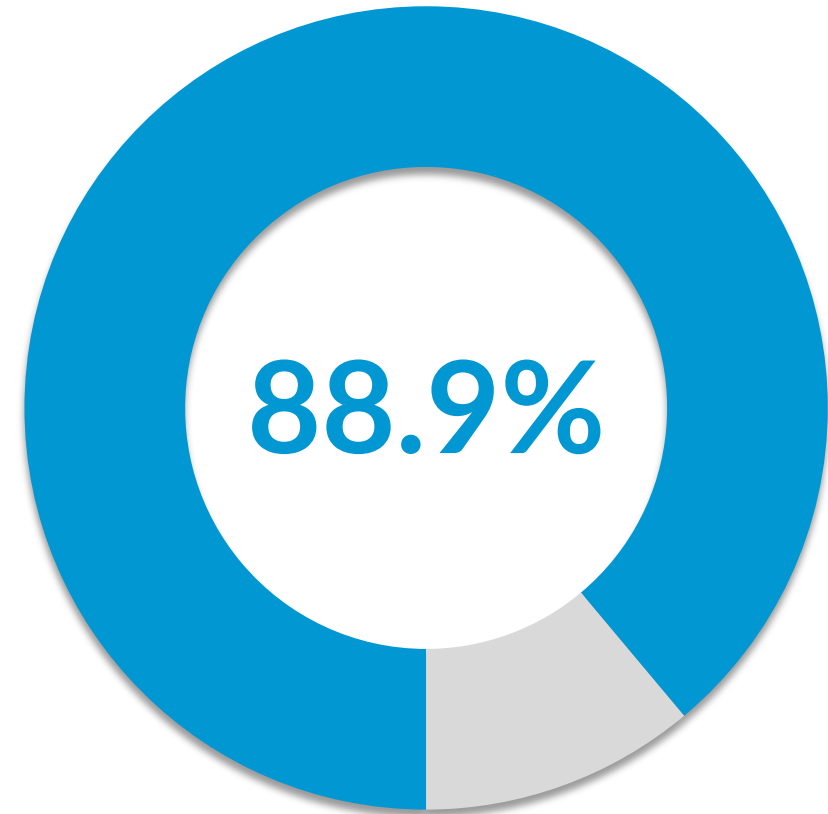
Orange County

# Alameda County: Computer and Internet Use

**Households with a Computer:**  
2015 - 2019



**Households with a Broadband  
Internet Subscription:** 2015 - 2019



# Remote Trials: Growing Pains and Making It All Happen

- ▶ Distracted jurors
- ▶ Challenges with exhibit exchange
- ▶ Multiple technological difficulties
- ▶ Improper juror contact
- ▶ Complexity of online deliberations



# Fillichio & Hastings Remote War Room Set Up





# Juror Comments Post Trial

- ▶ Preferred Zoom trial over an in-person trial
- ▶ Liked that the attorneys would put a D or a P next to their name – easier to follow
- ▶ Attorney locations (home or office) and whether they sat or stood made no difference jurors
- ▶ Drawing images by hand did not work as a demonstrative

# Juror Comments Post Trial

- ▶ Paid attention to the technology used
- ▶ Had concerns about remote deliberations
- ▶ Preferred the use of exhibits in Zoom - closer to exhibits on computers
- ▶ Felt they had to be more “on”

# Pros and Cons of Online Jury Trials

## Pros

- ▶ Cost savings
- ▶ Juror comfort level
- ▶ Time saving for jurors
- ▶ Travel not required for witnesses
- ▶ Jurors do not get to know each other

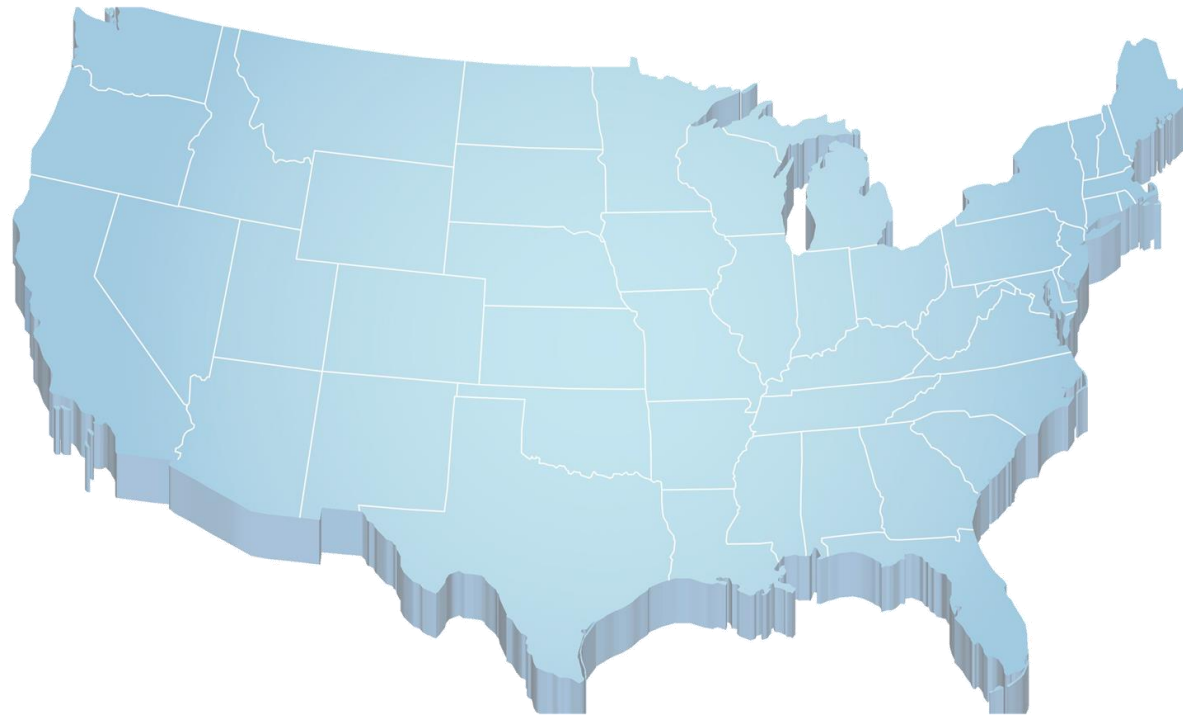
## Cons

- ▶ Confidentiality concerns
- ▶ Difficulty in creating rapport with the panel
- ▶ Flow of discussion in voir dire a challenge
- ▶ Jurors do not get to know each other



# Jurisdictions Conducting In Person Trials

State and federal courts around the country



Examples: Houston, Dallas, New Orleans, Lafayette, Miami, Ft Lauderdale, Tampa, North Carolina, Georgia, San Francisco, Los Angeles, San Diego, Orange County, Chicago, St Louis, Seattle/Tacoma, Portland, Philadelphia, some NY courts



# Los Angeles Superior Court







# Los Angeles Superior Court





# Pierce County Superior Court -Tacoma, WA





# Consider the Impact on Jurors

- ▶ Possible loss of job, illness from Covid-19, or worse
- ▶ Change in financial stability
- ▶ Isolation, fragmented relationships
- ▶ Boredom
- ▶ Technological advances accompanied by “Zoom fatigue”
- ▶ For white collar workers, work at home
- ▶ Sensitivity to new issues: the cause and spread of disease
- ▶ Soul searching-what is important and does jury service make the cut?



# Moving Forward

# Verdict Trends

## Leading up to the Pandemic

- ▶ Significant damages verdicts reached unprecedented highs in 2018 and 2019
- ▶ Talc, tobacco, toxic tort verdicts
- ▶ The pandemic arrested this trend

# Verdict Trends

## Since the Pandemic

- ▶ **Online:** jurors like not having to travel, are comfortable in their homes, commonly multi-task (despite admonitions)
- ▶ **In-person:** hardships readily granted, panels skew younger, social distancing protocols make it more difficult and time consuming
- ▶ **Preliminary verdict data:** early trial results showed defense and low verdicts; data is still inconclusive; no predictions are yet supported
  - ▶ Alameda County, CA: \$26.5M against J&J – 8/21 – all remote



# Impact of Pandemic on Juror Attitudes

- ▶ More favorable views of essential workers and some corporations/entities
- ▶ Less favorable views of certain litigants/types of claims
- ▶ Some jurors have been impacted by the pandemic more than others

# Characteristics of Plaintiff Jurors

Traditional plaintiff  
characteristics



Feels disproportionately  
impacted by pandemic

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Negative COVID-19 illness or  
related healthcare experience

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Greatly concerned  
about family's financial  
stability since pandemic

# How Can In Person Trials Proceed Effectively?

- ▷ Are jurors responding to their jury summons?
- ▷ Juror questionnaires are critical
- ▷ Masks and social distancing can be managed
- ▷ The “trial plan” or protocol
- ▷ Jurors spread out across the courtroom
- ▷ Jury selection issues
- ▷ Live stream issues

# Thank You



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