



IS ONLINE JURY RESEARCH RIGHT FOR MY CASE?

By Merrie Jo Pitera, PhD, David Metz and Jennifer Cuculich, JD

IMS Consulting & Expert Services

Thanks to COVID's upending of our judicial system, virtual proceedings have been embraced—or, at least, tolerated—in many civil courts. Judges facing backlogs continue to rely on virtual proceedings as an expedient way to clear their overcrowded dockets. But, backlog or no backlog, it is likely we will never fully return to the way things were pre-pandemic. Arguments can be made for and against this new reality; few can deny that it has required attorneys, judges, and jurors to adapt.

The effects of virtual communication have become a hot topic within the jury consulting community as well, given the related uptick in mock trials, focus groups, and deliberation groups being conducted online. Such jury research projects share many of the same pros and cons as virtual court proceedings when compared to the in-person, “gold standard” format. Namely, while the internet can offer financial and logistical efficiencies, it undoubtedly changes the interpersonal dynamics of those hearing your case, particularly when they are deliberating to reach a verdict.

For these reasons, parties contemplating online jury research should be cognizant of its shortcomings and complications before determining whether it is right for

their cases. Based on a close examination of the existing literature, communication psychology, and our personal experience designing and conducting thousands of jury research exercises, we offer the following considerations to assist you in this regard.

WHAT MAKES THE ONLINE ENVIRONMENT DIFFERENT?

LIMITED NONVERBAL COMMUNICATION

In communication and persuasion, words aren't everything. As supported by the authors of the peer-reviewed article, [Justice and Nonverbal Communication in a Post-pandemic World: An Evidence-Based Commentary and Cautionary Statement for Lawyers and Judges](#),¹ facial expressions, gaze patterns, postures, hand gestures, and other body movements provide information on their own and improve the listener's understanding of the speaker's verbal information. Listeners then rely upon these patterns of nonverbal communication to process and comprehend what is being conveyed.

Zoom and other virtual platforms, however, limit the breadth of view and the ability of attorneys and jurors to choose their focus; the available visual informa-

tion is limited to mere squares on a screen. Attorneys advocating their cases, and jurors subsequently advocating their positions, will find it more difficult to make headway without the power of nonverbal cues.

NO INTERPERSONAL EXPERIENCES

What we have noticed with both mock and real juries is that online juries demonstrate far fewer compromises; jurors will often vote when they get in the deliberation room and never really change their minds. Several of our clients have raised this issue and voiced frustration that the groups failed to come to any type of consensus.

For instance, in recent jury research conducted by our team, we tried the exact same case in both an in-person and online format (the online exercise even utilized video recordings of the attorneys' in-person presentations). Comparing the two exercises, participants' support for the prosecution or defense tracked closely throughout the day—until their deliberations. The jurors who deliberated in person came much closer to reaching, or did reach, a consensus, while those deliberating online remained nearly evenly split. In-person jurors likewise demonstrated a greater shift in their case leanings as a result of delibera-

tions; their positions were more malleable.

As social psychologists, we have hypothesized that one key issue at play here is the lack of interpersonal experiences between online jurors prior to the deliberations—no pleasantries, no holding the door open, no having lunch, no getting to know one another during breaks. It would stand to reason that the removal of these small but crucial “human” interactions means jurors are less likely to work together or make compromises during the deliberation process.

Indeed, we spoke with two jurors who had just completed a real trial by Zoom. Both attested that although they could see the evidence better because it was presented right on the screen in front of them, rather than across the room, they disliked that there was no interaction with any of their fellow jurors until deliberations. One of the jurors (who had served in person many times before) explained that it felt awkward discussing the case with “complete strangers;” she never felt the same sense of camaraderie she had in other trials.

LESS INTERACTION = MORE CONFLICT

As a quick scan through Twitter can confirm, an online environment emboldens some people to strike out against others when they would otherwise face social pressure to be more polite, understanding, or equitable. A similar dynamic creates opportunities for additional interpersonal conflicts among jurors in the online format for verdict-driven projects. A virtual environment can allow disagreements and misunderstandings to snowball and create deeper divides than we see with in-person groups, where participants are able to “read” each other better and have a stronger appreciation of each other as “people.”

WHEN IS ONLINE JURY RESEARCH APPROPRIATE?

Based on the factors above, a reasonable conclusion is that conducting jury research online can adversely affect group dynamics, as compared with in-person research. It is, therefore, the deductive, verdict-driven models that suffer most; while presenting attorneys will struggle to communicate non-verbally with jurors in all online formats, deliberations (where jurors’ social cues and solidarity are impeded) stand to be affected most negatively. Thus, the accepted thinking supports using an in-person format for ver-

dict-driven research, such as a mock trial or deliberation group.

Ultimately, when making the decision to conduct jury research virtually or in person, we recommend that the research goals (what you want to learn), the type of research project, and the nature of the case be considered as key decision criteria.

RESEARCH GOALS

Virtual research is better suited if your goals are inductive in nature—that is, if you want to learn how jurors react and respond to discrete issues. This is typically done using a funnel approach to introducing the case content, i.e., a broad overview that funnels down to specific case issues. With less emphasis on attorney advocacy, it is not as dependent upon nonverbal cues as is a deductive, verdict-driven project. In our experience, online jurors are attentive to the pacing and structure of a focus group and provide quality feedback on discrete and straightforward issues.

RESEARCH TYPE

Tied closely with the goals of the research is the type of research to be considered. As an inductive design, a focus group works well in an online format to receive feedback by way of individual, virtual breakout rooms. Presentations are conveyed to the larger group, and then, at key points throughout the exercise, jurors are broken into small breakout groups to discuss what they just heard. And since jurors are not being asked to come to a group consensus via a verdict form, this format is effective to identify case gaps and develop case themes and arguments—all focused around the most important topics in dispute.

As one example, we recently conducted an online focus group for a client in the early stages of class-action litigation to identify the strongest and weakest fact patterns in the Plaintiff Class and to assess potential damages drivers. We then used its findings to develop and strengthen case themes and strategies for further testing at an in-person mock trial.

CASE NATURE

Online projects can be draining on jurors’ attention spans. Therefore, more complex cases—such as intellectual property or commercial litigation—can affect jurors’ ability to absorb and discuss the information. Further, jury consultants can set preventative

rules and supervise online participants to the best of their abilities, but we cannot fully control the variety of distractions a juror’s viewing location may present. As a result, we find that the virtual platform works best with less complicated matters, including vehicle accidents, products liability, and simpler breach of contract cases.

WHAT JURY RESEARCH FORMAT IS BEST FOR MY CASE?

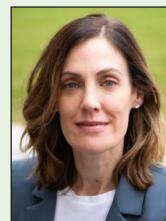
While there can be efficiencies associated with a remote jury research project, it is best to decide on a case-by-case basis whether virtual is the right choice. We suggest a careful evaluation of what you want to achieve with your jury research, whether the type of research is suitable for a remote platform, and what type of case you are testing. We believe online jury research is most successful in a focus group format, where there are (traditionally) no deliberations and where nonverbal cues are less important. If you are evaluating a complex set of facts with a verdict-driven result, you would be well served to conduct your research in person to ensure a reliable assessment of your case.



Dr. Merrie Jo Pitera, senior jury consulting advisor at IMS Consulting & Expert Services, is a psychology and communication expert who specializes in complex litigation and trial consulting. With more than 30 years of experience, Dr. Pitera helps clients build persuasive case themes and perform at their highest level.



David Metz, brings an important storytelling perspective to his role as a jury consultant with IMS Consulting & Expert Services, helping litigators understand their audience and the messaging required to persuade them. Clients benefit from David’s skills in developing jury research test designs and analyzing data to produce actionable strategies.



As a jury consultant with IMS Consulting & Expert Services, Jennifer Cuculich, JD supports trial teams in high-stakes civil matters and advances clients’ cases with robust research, data-driven strategies, and persuasive messaging. Her background in litigation and education allows Jennifer to translate complex concepts and help attorneys “teach” the jury.

¹ Denault, V., Patterson, M.L. Justice and Nonverbal Communication in a Post-pandemic World: An Evidence-Based Commentary and Cautionary Statement for Lawyers and Judges. *Journal of Nonverbal Behavior* 45, 1–10 (2021).