

REMOTE JUSTICE

Communication in the Virtual Courtroom



The **public health crisis** that began in early 2020 forced courts across the country to close their physical doors and rely exclusively on video for all essential courtroom proceedings. As courts begin re-opening, numerous jurisdictions are weighing whether to make the use of video permanent. However, there is little empirical research documenting the impacts of video in the **criminal courtroom context**, which relies heavily on verbal and non-verbal cues. **Academic scholarship** and **social science research** on video communication in other contexts offer important insights and **sound an alarm**: video is unable to achieve the same level of effective communication as in-person interactions. This could be especially problematic for incarcerated individuals. Policy makers and criminal justice stakeholders must be **hypervigilant** when making decisions about video's continued use following the public health crisis.

NON-VERBAL COMMUNICATION AND PERCEPTIONS

Communication is more than just the words we say. Eye contact, body language, and tone of voice are crucial cues affecting how we judge and are judged by others.

1. Eye Contact



IN PERSON: Frequent eye contact makes you appear more attentive, friendly, cooperative, confident, mature, and sincere.

OVER VIDEO: Eye contact is not possible.

2. Body Language



IN PERSON: An important component of building trust and empathy between parties.

OVER VIDEO: Gestures and posture may not be visible or captured due to lags in technology.

3. Tone of Voice



IN PERSON: Emotion is often expressed through low and high pitches.

OVER VIDEO: Low and high pitches may be lost as video software tends to prioritize mid-range frequencies.

HOW VIDEO CAN AFFECT PERCEPTION AND ENGAGEMENT, AND CHANGES IN DECISION-MAKING

Human interactions include perception, engagement, and decision-making. All three are intertwined, and the use of video carries significant implications for each.

- **Perception** is how you are seen by others. Empathy is easier to generate among people who know each other and during longer interactions. Over video, interpersonal connections may take longer to develop and strangers perceive each other as less likeable and less intelligent than they do in-person.
- **Engagement** is how you experience an interaction. Seeing oneself over video leads to self-consciousness, which can limit the cognitive space available to complete a task and reduces satisfaction with the overall process. Local

coalitions—the phenomenon whereby participants tend to agree with those in the same room or virtual group versus the “outgroup”—are also more likely to form over video than in-person. Native language speakers may attribute non-native speakers’ seeming low level of engagement over video—fewer spoken words, less looking into the camera—to factors such as shyness, lack of interest, or untrustworthiness, rather than language difficulties.

Case Study: How Perception and Engagement Over Video Led to Altered Decision-Making in the Workplace

A 2013 study compared job interviews conducted in-person versus over video. Overall, employers gave video applicants lower ratings and viewed them as less likeable. Video applicants felt the medium offered them less of a chance to perform and provide employers with information about their qualifications. Ultimately, video applicants were less likely to be hired and considered their remote interviews as less procedurally fair.

VIDEO AND THE COURTROOM: WHAT WE KNOW

- **Cook County, IL: How Video Affected Bail Outcomes:** In 2010, a study compared felony bail-amount decisions in Cook County, IL, over an eight-year period before and after implementation of video bail hearings. Researchers found the switch to video led to an average increase of \$21,000—or 51%—in overall bail amounts.
- **Judges** presiding over video hearings often do not have the assistance of courtroom support staff and may find it difficult to juggle core judicial tasks such as managing courtroom behaviors, gauging the emotional state of witnesses and defendants to ensure a fair process, and conveying community-held beliefs. Over video, judges feel less confident in their ability—and the perception of their ability—to maintain control of the courtroom.
- **Child witnesses** are perceived as less credible and trustworthy when testifying over closed-circuit television than in-person. **Expert witnesses** are less able to use gestures and body language when testifying about exhibits and to ensure the comprehension of the judge and/or jury. Experts also believe appearing from their homes instead of a courtroom leads to their being perceived as less legitimate, effective, and authoritative.

« *When the client is brought into the [video] courtroom, they have four boxes in front of them, and they don’t know who is talking to them. It’s not easy for them to see the judge. One time, [a defendant] started talking to the court clerk thinking that was the judge. They are hurried in there, and don’t have time to get oriented. They’re not able to pick up on any cues.*

— Defense Attorney, June 2020

- **Defendants** in video immigration court face issues with technology, access to attorneys, and language interpretation. Researchers founds 70% of non-English speakers experienced at least one problem related to video during their hearing.

RECOMMENDATION

A scan of the social science research makes clear that the quality of communication in the criminal courtroom can be compromised when conducted over video. **Rigorous, in-depth research and analysis** on how video may alter courtroom experiences and case outcomes is critically needed. Especially important is a greater understanding of defendants’ perspectives. As soon as the public health crisis subsides, all high-stakes criminal court appearances should **resume in-person**, particularly when an individual’s liberty is at risk.

FOR MORE INFORMATION

“How Video Changes the Conversation: Social Science Research on Communication Over Video and Implications for the Criminal Courtroom,” The Center for Court Innovation and National Legal Aid and Defender Association, White Paper, September 2020.

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To access additional resources, email:
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